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Human Rights In Burma
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Thank you, Mr. Chairman, for holding this hearing and for the Commission's sustained concern about Burma over the years. I am particularly grateful to the late Tom Lantos himself, who played a critical role in shaping U.S. policy. I appreciate the opportunity to outline for the Commission the administration's views on human rights and democracy in Burma.

As the members of the Commission are aware, the last 18 months have brought a number of changes to Burma—from the release of hundreds of political prisoners to the revision of several repressive laws—that many would have said were unthinkable just two years ago. Of course the many activists and advocates who have been pushing for and laying the groundwork for the beginnings of a democratic opening in Burma didn't accept change as unthinkable—they maintained their struggle and their courage for decades. And today, the United States seeks to support the government and people of Burma as they seize the opportunity of change, we recognize that here, as elsewhere, change has come and will come principally from within.

As President Obama said at Rangoon University during his historic visit last November, "I came here because of America's belief in human dignity. Over the last several decades, our two countries became strangers. But today, I can tell you that we always remained hopeful about the people of this country, about you. You gave us hope and we bore witness to your courage."

During his visit, President Obama welcomed the progress made in beginning a transition to democracy, and urged further action. The government used the occasion of his visit to commit to eleven substantial steps to deepen and advance the reform process, including the creation of a credible process to resolve remaining political prisoner cases, providing unhindered access by the ICRC to all prisons and labor camps, and inviting the UN High Commissioner for Human Rights to open an office in Burma.

In the 18 months since his government assumed office, President Thein Sein has driven a reform agenda aided by a group of reform oriented Ministers in his Cabinet, two reform-minded parliamentary speakers, and by the hard work of many others within and outside government who share a vision for a stronger, more prosperous, fair, and peaceful Burma. I would also highlight that these developments have been a vindication of Aung San Suu Kyi's stalwart support for reform and opening in Burma. With the tide of reform she helped put in motion coming in, Daw Suu remains a unique symbol of hope and freedom in Burma, even as she immerses herself in the difficult daily work of improving the quality of democracy as a parliamentarian in her country.

The United States needs to continue to support and push for reform. Despite the progress that has been made in many areas, such as the release of political prisoners and the successful by-elections last year, many serious problems remain. The road to reform will be long and

challenging; it will continue to be bumpy. But the United States should remain committed to serving as a long-term partner in the reform process as long as it continues to move forward. Our engagement should extend from our longstanding, strong commitment to promoting continued progress on democracy and human rights.

I've just returned from my fourth and final trip there, where I followed up on the President's visit and on the first-ever bilateral human rights dialogue, held in October in Naypyitaw. That discussion, which covered everything from legal reform to responsible investment to the protection of civilian populations in war zones, featured a Burmese interagency delegation including three ministers, members of the military, opposition leader Daw Aung San Suu Kyi, as well as our own delegation including representatives from the White House, the Pentagon, and several other agencies.

Last week, U.S. Ambassador Derek Mitchell, Deputy Assistant Secretary Daniel Baer and I met with a range of civil society actors, including representatives from the Kachin, Rohingya, and Rakhine ethnic communities and former political prisoners. We met with Daw Aung San Suu Kyi, now in her eighth month as a member of parliament, as well as key actors in the government in Naypyitaw. By now, we have become accustomed to the open, candid, and constructive exchanges we are able to have with government officials – previously unthinkable.

I want to recap for the Commission where progress has been made and where progress still needs to be made in four key human rights areas: 1) the status of political prisoners; 2) legal reform; 3) the situation in Kachin State, Rakhine State, and the prospect for a broader national reconciliation; and 4) the political economy of democratic reforms.

I. Political Prisoners

The U.S. government first engaged directly with senior Burmese government officials on this issue based on an extensive list of political prisoners we compiled in 2011. In several stages over the last 18 months the government has released nearly 800 political prisoners, including its most high profile dissidents—leaders of mass movements, journalists, bloggers, human rights defenders, people like Min Ko Naing, Ko Ko Gyi, U Gambira, Hkun Htun Oo and others. They walked out of prisons across the country to cheering crowds and weeping family members.

While the release of these prisoners was historic, the story of political prisoners in Burma did not end there. Nearly a year later, the government has formed an official “Political Prisoner Review Committee,” which held its first meeting in February in Rangoon. This Committee, led by the Office of the President, is composed of eight government officials and eight former political prisoner representatives. The work of this committee will not be easy. But its existence is a major step forward and the key to finding out the facts, healing wounds of the past, and moving forward towards national reconciliation.

The Committee has the potential to achieve three objectives critical to the country's democratic transition. First, it can accurately determine the number of remaining political prisoners in detention and prompt their unconditional release. Our hope is that Committee members will have access to information and organizations that allow them to ascertain relevant facts about

remaining prisoners. This includes access to prisons, prison records, court records, and prisoners themselves so that the Committee can make truthful determinations about the status of these prisoners. In addition, the Committee may wish to consult with organizations such as the UN Office of the High Commissioner for Human Rights, the Special Rapporteur for Human Rights in Myanmar, the Special Rapporteur for Arbitrary Detention, and other experts. By operating in a systematic and transparent manner, including by establishing a mechanism for current prisoners to contact its members, the Committee should be able to gain the public's trust in its processes.

In the course of its investigations, the Committee will be asked to address cases of prisoners from various ethnic nationality areas who have been involved in or associated with the armed struggle against the government. Our hope is that the Committee will find a way to address these cases in a way that is consistent with the goal of national reconciliation.

Second, the Committee's consideration of specific cases should give it an opportunity to identify laws that need to be reformed going forward and to make recommendations to that end. This is not in the Committee's initial mandate, but can be an important collateral benefit as the government and civil society work together to implement legal reform and build the rule of law.

Finally, the Committee has the potential to help advance efforts to provide care and facilitate the reintegration of released prisoners. Many former prisoners experienced extremely harsh conditions, many years of solitary confinement, and denial of medical care. A number of these former prisoners are struggling to reintegrate into society. They lack housing and medical care, and many suffer from PTSD or depression. In some cases, the government has denied them passports or prevented them from continuing their educations or obtaining credentials they had already earned, so they lack the degrees and certificates necessary to find jobs. Since release, several former prisoners have died from severe medical complications developed while in prison. These released political prisoners need greater attention to these needs and hopefully the Prisoners Committee can help shape the government's response to this set of needs. The United States stands ready to provide technical assistance and funding to support such initiatives.

In short, the prisoner process represents a double opportunity—not only can it bring the release of remaining political prisoners, it also can provide an example of how government and civil society can work together in an open and credible process to tackle difficult problems. It won't be easy but the potential is tremendous.

II. Legal Reform

An important element of strong, democratic societies is adherence to the rule of law, which in turn depends on a strong constitution that has broad public support. Civil society actors, ethnic nationality representatives, and international human rights experts alike have repeatedly called for changes to Burma's 2008 Constitution so the document may better reflect the country's new democratic aspirations. The Constitution is the foundational document of any society — in the run up to the 2015 national elections there is an opportunity for the people and government to debate and decide how best to address these issues.

Revision and repeal of flawed laws and regulations is another key area to which the government – both executive and legislative branches – should pay attention in the coming years. In the last two years the parliament has drafted, and the executive has signed, a series of new laws that constitute the first important phase of legal reform. During this period the government has passed laws criminalizing forced labor, legalizing labor unions, and allowing the opposition to run in the April by-elections. However, a number of other laws remain in place, many are hold-overs from the colonial administration that are inconsistent with international human rights standards. The government has begun to review and revise these laws, for example by repealing two problematic laws last month, one banning public gatherings of more than five people and another banning daily newspapers.

Broadly speaking, these remaining laws fall into three categories: 1) media and “electronics” laws that restrict freedom of expression and the press; 2) laws that are inconsistent with the freedom of association by restricting membership in associations of which the government does not approve; and 3) vaguely defined national security laws that give the government overly broad authority to arbitrarily arrest citizens. While the government has mostly ceased enforcing these laws, reforming outdated legal statutes should be a high priority for the parliament and the executive.

For example, the 2011 Law on Peaceful Assembly and Procession legalized protests for the first time in 20 years – a major step forward for freedom of association. However, the new law also contains provisions that have proved problematic, for example, the requirement to apply five days in advance with detailed information about a planned protest or demonstration. According to the law, the right to protest will be denied if “the security of the State, rule of law, public tranquility and the existing laws protecting the public are to be breached.” Any protest for which permission is denied is deemed illegal under the law, and anyone taking part can be arrested and sentenced for up to a year in prison. Dozens of protesters have been arrested, and many have been charged and are awaiting trial for violations of this law since its adoption in 2011.

We met a Kachin activist on our recent visit who faced charges that could land him in prison for six years under the Law on Peaceful Assembly and Procession for joining a peace walk through Rangoon calling for peace in Kachin State. He received one count worth one year for each of the six townships through which he walked.

Independence of the judiciary also is critical to advancing reforms. There is no independent bar association, and we are told that there is not one lawyer on Burma’s Supreme Court. The justice system also lacks a number of basic elements of due process. For example, defendants are not guaranteed the right to a state-appointed attorney except in capital (death penalty) cases. Improvements need to be made in the quality of legal education, training of legal professionals and investigators, accessibility of laws and of electronic and forensic evidence. We stand ready to assist in these areas.

The government has taken several promising steps in recent months. Dozens of lawyers who were previously disbarred for taking politically sensitive cases have had their licenses restored; government officials have stated that those still without licenses will be able to seek reinstatement. We understand also that there are plans underway to create an independent bar

association. In addition, efforts are underway to train prosecutors and other government legal staff on international standards and the rule of law. Going forward, as long as we see signs of genuine political will to make these and related reforms, we stand ready to provide technical assistance and support. The Office of the High Commissioner for Human Rights can also, among other functions, provide key technical assistance and training to the government and civil society actors to support the rule of law and legal reform.

At our October 2012 bilateral Human Rights Dialogue in Naypyitaw senior government representatives were open and candid in their assessment of the challenges in the legal system and in expressing their intention to undertake wide legal reform. We also urged the government to take steps to sign and ratify key human rights treaties, including the International Covenant on Civil and Political Rights and the Convention Against Torture. We raised our concerns about legal and other restrictions on religious freedom and our desire to collaborate to address them. We look forward to working with the government and with civil society to lend support and technical expertise in this important process.

III. Kachin State and Rakhine State Updates

Many of the country's vast natural resources are located in its ethnic nationality regions, particularly in Kachin State, where war is being waged for both reasons of political autonomy generally and control over these resources specifically. This ongoing fighting has contributed to human rights abuses and social instability. In the past when the military and business join forces, often we have observed patterns of land confiscation, forced labor, environmental destruction, and severe human rights abuses on local populations around these projects.

The government has signed ten ceasefire agreements with armed ethnic groups in the past year, including with the Karen National Union with which it had previously been at war for over 60 years. Still, the government's previously longest running and most stable ceasefire with the Kachin broke down 18 months ago and fighting has intensified in recent months. In December, the military used helicopters and jets to attack Kachin Independence Army positions, marking the first use of air power against an armed ethnic group in decades. The Army continued using heavy artillery to shell KIA positions. Estimates are that tens of thousands of Kachin IDPs remain cut off from international humanitarian aid since July 2012. In our talks with the government, I stressed the urgent need to grant immediate access for humanitarian organizations to all those in need. Since the December escalation both sides have tentatively returned to the negotiating table, though a ceasefire will not be reached easily. In the immediate term we have pressed for, and the government has committed to, restoring international humanitarian access to IDPs both in government and in KIA-held territory.

There have been recent signs of improvement: major international humanitarian groups such as ICRC and UNOCHA have recently regained limited access to deliver aid to Laiza and Hpakant in Kachin State; we are hopeful that these initial visits will produce the long-term sustained access these organizations need. Smaller community based Kachin organizations we spoke with have emphasized the need for these larger organizations to continue to fund smaller service delivery groups who do not need government permission to deliver assistance to IDPs in difficult to reach places. We have continued to press the government to allow ongoing humanitarian

access for all groups which is crucial not only for delivering assistance but also laying the groundwork for the kind of trust that a ceasefire requires.

We remain concerned about the situation in Rakhine State, which has resulted in more than 100,000 IDPs since violence erupted in June and October. This violence broke out quickly and included attacks on non-Rohingya Muslim communities such as the Kaman, one of the country's 135 officially- recognized national races. The Rohingya, unlike the Kaman, are not recognized as an ethnic nationality and with an estimated population of 800,000 inside Burma, they are the world's largest stateless population. Hatred of, and discrimination against, the Rohingya are widespread, with little public support to recognize them as an ethnic nationality. The central government played a key role in stemming the violence in June and October 2012, although local Rakhine security forces were often cited as contributing to if not inciting violence. But the medium and long term solutions to the Rakhine crisis present very difficult political obstacles. Practical interventions to prevent further violence along with training in conflict mediation, dialogue facilitation, and community dialogue are necessary. For now, the U.S. approach has focused on delivering humanitarian aid to both the Rakhine and the Rohingya communities in IDP camps and diplomacy with the government on longer term solutions to ensure that these temporary solutions do not occlude comprehensive reintegration and reconciliation of both the Rohingya and Rakhine communities. We will watch with great interest the findings and recommendations of the government's Rakhine Commission report, which is due in March.

On the religious freedom front we are deeply concerned about reports of continuing human rights and religious freedom violations in the ethnic nationality regions, including reports of sexual violence, the use of churches as military bases by the Burmese army in Kachin State, and coerced religious conversions in Chin state. We have engaged the government on this issue both during the human rights dialogue and in subsequent meetings, and encourage the Government of Burma to promote religious freedom and tolerance throughout the country and to hold accountable those who commit violent acts against religious minorities.

IV. The Political Economy of a Rights-Respecting Democracy and U.S. Sanctions Policy

At the turn of the 20th century, Burma was one of the wealthiest states in Southeast Asia, boasting vast reserves of fossil fuels, rubies, gold, jade, tin, copper, timber, teak, and a plentitude of other natural resources. Today it is the poorest country in the region in per capita GDP. This reversal of fortune is the result, at least in part, of decades of self-isolation, repression and regression in the rule of law and quality of education coupled with economic mismanagement and civil war. The military-business nexus is still strong despite recent political reforms. There is still insufficient transparency relating to revenues from natural resource or into where these revenues end up. Some critics allege that the country's natural wealth, auctioned off to highest bidder, continues to be siphoned to offshore accounts rather than flowing into the national budget. Investment in many natural resources are still controlled and financed by military controlled enterprises, such as the Myanmar Economic Corporation and the Myanmar Economic Holdings Limited or their sub-entities. Our sanctions remain in place on these entities for this reason. If Burma is to develop the political economy of a modern, rights-respecting democratic state, the government will have to tackle this nexus with the tools of transparency—auditing, public disclosure, and full accountability for corruption. The Government of Burma has committed to

join both the Open Government Partnership and the Extractives Industries Transparency Initiative, both of which will provide opportunities to enhance transparency and ensure broad based development.

President Thein Sein's government has pledged to do business differently, and the United States has committed to supporting these efforts through our calibrated easing of economic sanctions to support political and economic reforms. In 2012, we broadly authorized new investment in Burma for the first time in 15 years, including in Burma's multi-billion dollar oil and gas sectors. However, to ensure that military-owned enterprises would not benefit from this opening, investment in military-owned companies remains off limits. Similarly, U.S. companies are not authorized to make payments to the military to provide security for their investments, as the military is the primary driver of the worst human rights abuses. We also instituted the Reporting Requirements for Responsible Investment, which require U.S. persons making investments over \$500,000 to report on their human rights, environmental, labor, and anti-corruption due diligence procedures. Companies without such due diligence procedures in place may nevertheless invest in Burma, provided they report that they do not have these policies in place. Our expectation is that companies that report a lack of adequate human rights policies will face pressure from civil society actors here and in Burma to develop them, and our hope is that companies will develop policies in collaboration with these groups.

Some have argued that these reporting requirements are too onerous and discourage investment, while others argue that they are too permissive and do not providing adequate human rights safeguards. But we've also heard from large American companies and members of Burmese and U.S. civil society who strongly support them. Our intention is to strike a balance, guarding against an economic free-for-all that would funnel investment to the military and its companies while still incentivizing responsible investment that contributes to Burma's economic modernization, job creation, and widely-shared prosperity.

Bottom-up Action to Match Top-down Reform

President Thein Sein's government and the parliament have admirably created a top-down reform process that has pushed through a range of important initiatives at a rapid pace. These changes have opened important and unprecedented political space. But open political space will not bring meaningful change unless more people throughout the country and in all segments of the society move into this space and start to use it.

Making Burma a home for all of its people will require broad, grassroots engagement by the widest possible range of its citizens, from ethnic leaders and bloggers, to lawyers and lawmakers, to factory workers and human rights advocates.

All of these groups will need to push for structural changes from the bottom up, at the same time as the political leadership works to push reform from the top down.

Where these two forces meet is not for the United States to say. It's up to the Burmese to build trust on both sides and to negotiate a space where they can coexist peacefully, and in so doing to begin to make durable, systemic change.

Reforming the system from within is an immense task. It will require political will from the top down, dynamism from the bottom up, and for those who have profited from power to share it.

I am optimistic about Burma's future. Our optimism should not result in easing up on our efforts to promote further reform or putting blinders on about the profound challenges ahead in the country. But it does mean that we reconsider long held assumptions, recognize the dynamic change that is occurring, and seize the opportunities to support the Burmese people – and especially its politically active civil society – as they pursue real, sustainable reforms from within.