



**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

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.

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 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

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.

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

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 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

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.

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

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.

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.

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

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>

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

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.

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

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 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

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, 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>

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 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 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.

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