



**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-Hussein, 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.

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