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February 28, 2013**

Mr. Chairman, thank you for inviting me to testify today.

I was in Burma for a week in January, my second visit in the last year. I am still amazed by how much has changed since the start of reforms in 2011. The political opposition has gone from prison to a place in parliament. Daily newspapers are publishing real news and honest criticism of the government. Activists who just two years ago were serving life sentences for sending emails or telling jokes are now sitting across the table from government ministers, discussing how to identify and release the last remaining political detainees in the country. Police violence is being investigated by a government commission chaired by Aung San Suu Kyi. Opponents of the military are coming home from exile, and jumping into the country's political life. A government that treated its people as enemies is beginning to treat them as citizens; a regime that thumbed its nose at the world is now extending a hand for assistance and advice.

In short, Burma is on the path to becoming the country its people sacrificed and struggled to build during the terrible years of military rule. It is on the road to becoming the country that the United States has pressed for, year in and year out, thanks in good measure to the U.S. Congress, and to the leadership of Republican and Democratic presidents from George Bush Sr. to Barack Obama.

But to say it "is becoming" is very different from saying it "has become." Burma is still not a democracy. Indeed, it retains the laws and constitutional structure, if not all the practices, of a military dictatorship.

Meanwhile, the Burmese military is still waging one major war against an ethnic minority group and committing serious human rights abuses. Another part of Burma suffered two severe outbreaks of ethnic violence last year, from which desperate refugees continue to flee.

The hopeful changes thus far have come about because of the good will of a small number of people in the leadership; but they have not been institutionalized; if a different group of people gained influence, there would be few formal checks against a return to oppression. The changes that still must be made will be harder; those with power and money to lose, particularly in the military, the security ministries, and military-dominated industries, will resist them every step of the way.

Most important: Nothing will be settled until 2015, when Burma is scheduled to hold its first nationwide parliamentary elections in which the opposition will be able to compete. Only then, if the military allows it, will the country's democratic forces have a chance to form a government and to institutionalize reform.

In a world with little happy news, it is tempting to showcase Burma as a fully realized success story – and as a vindication of whatever policies we believe best encouraged the changes thus far. Burma can become a success story; in a few years, it might even, as fantastic as it sounds, set a good example of peaceful transition to democracy for China and Vietnam. But we are not there yet. We will not help Burma if we hype it too soon, and lose the disciplined focus that will be needed to encourage the difficult changes to come.

The challenge at this delicate stage is to find right balance between rewarding the progress already made and retaining leverage to press for more. With some exceptions, I think that the administration has maintained that balance reasonably well thus far. It has been right to suspend many of the economic sanctions, but not to lift them entirely – supporting reformers, while maintaining restrictions on those elements of the Burmese economy still controlled by the military and its allies, allowing American companies to invest in some sectors, while requiring them to maintain a degree of transparency and encouraging social responsibility. This is a far wiser approach than the European Union's wholesale lifting of sanctions, and one that must be sustained at least until Burma has, as we hope, a democratically elected government in 2015.

Until that time, we should focus on encouraging, through assistance where possible, and pressure where necessary, the Burmese government

to meet the reform commitments it has made to its people and to the international community, including to the United States. Burma's president Thein Sein made a number of important pledges during President Obama's visit to the country last November; they are a good starting point for discussing the challenges Burma still must meet.

### Ethnic Conflict

Burma's first experiment in democracy, after it won its independence in 1948, was derailed in part because of warfare between the central government and ethnic minority groups living on the country's frontiers. The Burmese military's justification for seizing power in 1962 was that "weak" democratic government could not end the rebellion of the minorities and hold the country together. As it turned out, six decades of "strong" authoritarian rule only made matters worse, exacerbating, not resolving, conflicts that have claimed untold civilian lives and displaced millions of Burmese from their homes.

Today, the army maintains fragile cease fires with most of Burma's ethnic minority armies, but is engaged in fierce fighting with the Kachin Independence Army (KIA), in the country's north and northeast. During President Obama's visit, the government pledged that it "will continue to pursue a durable ceasefire in Kachin State and other areas to de-escalate violent conflicts." In fact, despite repeated cease fire announcements by President Thein Sein, the army has continued to conduct offensive operations against the Kachin, including the use of indiscriminate air strikes and artillery fire against the KIA stronghold of Laiza, which is crowded with displaced civilians. Since conflict resumed in the Kachin State in 2011, the Burmese army has attacked Kachin villages, razed homes, pillaged properties, and forced the displacement of tens of thousands of people. Soldiers have threatened and tortured civilians during interrogations. Women have been raped. The KIA has also committed serious human rights abuses, including using child soldiers and laying landmines.

Burma's constitution, which grants the civilian president no power over the armed forces, appears to be functioning exactly as intended in the Kachin conflict. Whether Thein Sein genuinely wishes to restrain the army or not, the army has no legal obligation to heed his wishes. It has continued to fight, whether motivated by anger over the losses the KIA has inflicted on its forces, or its desire to control lucrative natural resources in the conflict area, or both. While some observers have suggested that rogue local military commanders are responsible for the ongoing fighting, the sustained use of air power, based in central Burma, and rotation of

divisional size infantry units to the Kachin State from other parts of the country demonstrate that the top commanders of the armed forces are very much in charge.

Recently, the government did give the International Committee for Red Cross access to the Kachin State, where it delivered its first assistance two days ago, meeting another commitment it had made to President Obama. Government negotiators have also continued to meet with representatives of Burma's various ethnic minority rebel groups to move the peace process forward. But as I stressed to senior Burmese officials during my last visit, it will take time to resolve the political issues that are the cause of the longest continuing armed conflict anywhere in the world. In the meantime, the military must cease human rights violations, including indiscriminate shelling, which claim civilian lives and will make it even harder to reach a settlement. The government should also allow humanitarian groups and journalists unfettered access to the conflict area.

### Systematic Attacks and Persecution of Rohingya Muslims

In June and again in October of 2012, deadly sectarian violence broke out between Arakan Buddhists and Rohingya and Kaman Muslims in the Arakan State in Western Burma. While both sides suffered serious casualties, the Rohingya bore the brunt of the violence. Human Rights Watch obtained satellite imagery showing entire communities burned systematically to the ground. On both occasions, the Burmese military eventually restored order, but police and local security forces either stood by as people were murdered or driven from their homes, or in some cases joined in the violence. Security forces also launched a campaign of mass roundups of Rohingya, detaining hundreds incommunicado.

The Rohingya people are among the most persecuted in the world. The government and Burmese society at large roundly reject claims that the Rohingya Muslim populations of Arakan State are entitled to Burmese citizenship, even though many have lived in the country for generations. Many citizens of Burma, of all ethnicities, do not acknowledge the term Rohingya and commonly refer to the Muslim population in Arakan State as "Bengali," "so-called Rohingya," or the pejorative "Kalar," claiming that all are illegal migrants from what is now Bangladesh. Rohingya are prohibited from marrying, working, or traveling through Burma, unless they obtain permission from local authorities.

During President Obama's visit, the Burmese government pledged that it "will take decisive action to prevent violent attacks against civilians" in the

Arakan State; that “it will hold accountable the perpetrators of such attacks; it will work with the international community to meet the humanitarian needs of the people; and it will address contentious political dimensions, ranging from resettlement of displaced populations to granting of citizenship.”

Since then, there have been no major outbreaks of violence. But no progress has been made in addressing the causes of violence. President Thein Sein appointed a commission, with broad participation from Burma's civil society, to investigate what happened last year and propose solutions. But the committee's report has been repeatedly delayed. And there has been no accountability for the violence. While we wait for the government to act, some 126,000 internally displaced Rohingya remain in camps, enduring miserable conditions, restrictions on movement and no livelihoods, and with inadequate international assistance. The rainy season is just a few months away, and when it comes it will flood out thousands who are living in unofficial IDP encampments in the rice paddies. Given the inadequate water and sanitation, a major onset of waterborne diseases is a likely outcome, worsening an already desperate humanitarian situation. Not surprisingly, in the last year, at least 20,000 have taken to the seas, trying to make their way to Malaysia. There have been media reports of at least 500 dying during the trip; the true number is undoubtedly higher.

Meanwhile, many influential Burmese, including Buddhist monks, have demonized the Rohingya. Burma's political leaders – including, most notably, Aung San Suu Kyi -- have hesitated to denounce human rights abuses committed by the Buddhist Arakanese against the Rohingya, for fear of antagonizing supporters who believe the Rohingya have no place in Burma. Their political calculus is easy to understand in the short run, but in the longer run they are taking a great risk. For if the virus of anti “Bengali” or anti Muslim hatred is allowed to spread, reactionary, anti-reform forces could exploit it to derail transition.

Leadership is needed from the Burmese government and from the political opposition to promote ethnic and religious tolerance in Arakan State and to end these tragic abuses. The ultimate solution is to change Burma's 1982 citizenship law to allow Rohingya who were born in the country to be counted as citizens. Until then, they should at least be treated as human beings – allowed to return to their communities with the protection of the central government, and to work, marry and buy and sell property like anyone else. The U.S. government must hold Thein Sein to the commitments he made to President Obama on this issue, recognizing

that the central government in Burma has the power to compel local authorities in Arakan State to act; all it needs is the political will.

### Political Prisoners

Most of Burma's prominent political activists were released from prison last year. We believe that over 200 political prisoners detained by the former military regime remain, though it is important to stress that no one knows the true number. Some were plainly convicted of offenses that they did in fact commit, but which consisted of nothing more than political activism. Others were convicted of real crimes – including violent acts – that they likely did not commit. Others are members of armed groups that have been involved in armed conflict, and could be released as 'reconciliation' prisoners to assist the resolution of the civil war.

During President Obama's visit, Thein Sein pledged to "devise a transparent mechanism to review remaining prisoner cases of concern by the end of December 2012." The mechanism was established in February of this year, with the appointment of a committee that includes former political prisoners, opposition parties, and representatives of the government. This is a good development, but it is essential that the committee work quickly, with full access to prisons and to court records, to identify political detainees and others who were unfairly convicted by the kangaroo courts of Burma's dictatorship, and that President Thein Sein release those prisoners whom the committee clears. The political prisoner mechanism should also take up the cases of activists arrested for engaging in peaceful, but unauthorized, demonstrations since President Thein Sein took office, under Burma's new, but still highly flawed law on assembly. If it does not, these activists will have to be added to our list – and to the U.S. government's – of Burma's political prisoners, even as others are removed. The government must also, whether acting through this mechanism or outside of it, release over 500 Rohingya prisoners arbitrarily detained after last year's sectarian violence.

### UN High Commissioner for Human Rights

Perhaps the most straightforward pledge President Thein Sein made to President Obama was that his government would "extend an invitation to the UN High Commissioner for Human Rights [OHCHR] to establish an office in Myanmar." An OHCHR office could provide technical assistance to the Burmese government and parliament as it reforms the country's repressive laws. It could send staff to conflict areas to monitor respect for human rights by both the army and ethnic minority armed groups. It could help the new quasi-governmental Myanmar National Human Rights

Commission become an effective, and independent, institution. OHCHR maintains offices and field missions in many countries in transition from dictatorship to democracy, and from war to peace, in Asia and around the world. A Burma that welcomes international institutions from the World Bank to the IMF to the UN Development Program, and that wishes to be welcomed back to the international community, should welcome the presence of the only UN institution dedicated to the promotion of human rights.

Unfortunately, the Burmese government has stalled in implementing this pledge. At the same time, it is demanding that the U.N. Human Rights Council in Geneva discontinue its usual practice of discussing Burma under Item 4 of its agenda, when it debates serious human rights situations requiring its attention. Burma should not receive this upgrade in its status at the Human Rights Council until it signs an agreement allowing the High Commissioner to establish an office there. This is the right thing to do, and, after all, something it already has promised to do to the president of the United States.

### Transparent and Accountable Governance

Another of President Thein Sein's promises to President Obama last November was to improve governance, in line with "core principles of transparency, civic engagement, anti-corruption, and using technology and innovation to make government more open, effective and accountable." He announced that Burma would seek membership in the Open Government Partnership, an initiative designed to promote disclosures over government finances and greater public access to decision-making processes. He had previously pledged that Burma would work to join the Extractive Industries Transparency Initiative, an effort to advance openness regarding natural resource revenues.

The Burmese government's aspiration to join these and other initiatives is welcome but it has a long way to go to meet the eligibility criteria. The US government, for its part, should help Burma make needed progress to meet—and even exceed—prevailing standards.

As American companies bid on oil and gas blocks in Burma, the US has a stake in pressing the government to improve management of the country's vast natural resource wealth to reduce the risk of involvement in human rights abuses and financial improprieties. Burma's state oil and gas company—Myanma Oil and Gas Enterprise or MOGE—is the Burmese government's main revenue earner and for years bankrolled the country's abusive military, which claimed the lion's share of Burma's budget as well

as benefiting from off-budget spending on a huge scale. Burma's petroleum proceeds will soar even higher as new oil and gas projects come on-line. Despite some notable improvements, including accounting for petroleum revenues in the country's budget, reforms remain inadequate. The military retains a disproportionately large budget, as well as access to off-budget income from a network of businesses and an unknown amount in a special slush fund established in 2011.

From its seat on the board of both the World Bank and International Monetary Fund (IMF), the US government can encourage needed change. It should insist that the Burmese government meet clear targets—including significant progress in transparency and accountability over public funds—before it will be eligible for loans from these institutions, which themselves should be subject to safeguards. [Burma should not expect loans before it has taken responsibility over its own finances by terminating all off-budget military funding and securing proper parliamentary oversight over the military's budget and spending. ]

The US also should encourage Burma to demonstrate its commitment to EITI's transparency requirements by meeting its criteria for civil society participation now, at the outset of engagement, even though these are not formally required until a later stage of EITI candidacy.

Open governance in Burma also must include open access to technology to freely engage in civic life. Internet censorship is down in Burma, amid broader media reforms, and the government has taken initial steps towards developing Burma's telecom market by announcing it will award two mobile telecom licenses this year. The opening of Burma's information and communications technology (ICT) sector presents a rare opportunity to press for an approach to Internet and telecommunications development that secures freedom of expression and privacy.

While development of Burma's ICT sector could help drive economic growth and civic participation, it could just as easily enhance the government's surveillance and monitoring capabilities if undertaken without safeguards. Foreign investors face a significant chance of becoming in complicit in serious human rights abuses should the government's commitment to human rights falter. In addition, corruption remains a considerable risk, with the former telecommunications minister Thein Tun now the subject of a corruption probe that may widen to involve other telecommunications officials.

Moreover, legal reforms in this area remain incomplete. For example, the Electronic Transactions Law remains in place, which has been used in the



past to target activists and journalists. Proposed reforms in the Draft Telecommunications Law preserve or introduce new mechanisms for surveillance and content restrictions, which could be used to violate the rights of Burmese citizens.

With internet freedom a cornerstone of its foreign policy, the Obama administration should press the Burmese government to live up to its pledges of openness by quickly enacting legal reforms necessary to protect freedom of expression, access to information, and privacy in the ICT sector. The US government should press any US companies entering Burma's ICT sector not only to report on policies and procedures to assess and address potential human rights risks, but to publish the terms of any licensing agreement and regularly report on requests received from the government that limit privacy and freedom of expression, and how the company responded to these requests.

### Rule of Law

If you go to Rangoon today, you will find many inspiring people who are starting newspapers, social service organizations, legal aid associations, academic institutes, and human rights groups, taking advantage of the climate of freedom that exists in Burma's capitol and other major cities. Much of what they are doing, however, remains illegal. Most of the laws that underpinned Burma's military dictatorship remain in place. It is still against the law to own an unregistered fax machine or modem, to "contribute to the diminishment of respect" for the military, to spread "false news," to post anything on the internet that the government might deem detrimental to the security of the country, or to commit any act whatsoever that it deems an "infringement of [Burma's] sovereignty and security" or a "threat to the peace of the people." The government is generally not enforcing these laws, but they continue to give security agencies virtually unlimited power, an important fact of life for Burmese, especially those living in the large parts of the country that reforms have barely reached. What is more, Burma's judiciary has no recent tradition of independence and has undergone no changes: the judges Burmese will be counting on to protect their rights are the same judges who just a few years ago were sentencing dissidents to decades in prison for political activism.

Even more important to the vast majority of Burmese who make a living from farming, the country's laws still do not allow them to own the land they farm. This makes them vulnerable to powerful business interests, who can exploit government connections to seize land without fairly compensating the people who live and work upon it. The lifting of

sanctions unfortunately exacerbates this problem, encouraging Burmese speculators to seize land in the expectation that foreign companies will want to buy it or build on it.

The law in Burma that is most in need of reform is its most basic law of all – the constitution. Burma's last military government promulgated one of the most honest constitutions any dictatorship has ever had – it plainly acknowledges that the military exercises power without limits. Under the constitution, the military is not subject to the authority of the parliament, the president, or the courts. The commander in chief of the military appoints the ministers in the government responsible for internal security, as well as the majority of members of the National Defense and Security Council, which makes all final decisions on security matters. The Military can declare a state of emergency and dismiss the president. It also appoints 25% of members of parliament. Since the constitution cannot be changed unless 75% of the parliament agrees, the military can veto any constitutional amendments, even if the democratic opposition eventually wins every single contested parliamentary seat.

This is one reason why Aung San Suu Kyi has been reluctant to criticize the army's ongoing human rights abuses in ethnic minority areas. Her primary objective appears to be to change Burma's constitution, so that a future elected government actually has the power to govern the country. And to achieve this goal, she feels she must win the army's trust, so that she can gain its consent to pursue constitutional reform. The risk that she and other opposition leaders run is that they must also maintain the trust of Burma's people, including its ethnic minority groups, if they wish to win a strong mandate in the 2015 elections to pursue the reforms they seek. These two goals may not be compatible.

None of this is meant to be a wholesale critique of the current reform effort in Burma, or of the Obama administration's decision to support it. Two years is an incredibly short time for a country to transform itself from dictatorship to democracy, especially if tries to do so through dialogue and compromise between rulers and the ruled, rather than a potentially bloody revolution. We should be patient with this process. But just as we should recognize that Burma needs time to complete its reforms, we in the international community should also take our time.

The United States has taken enormously significant steps to embrace and encourage President Thein Sein's reform agenda. It normalized diplomatic relations; it gave its consent to Burma's chairmanship of ASEAN; it suspended virtually all trade and investment sanctions; it is mobilizing support for Burma from the international financial institutions; it

has begun to resume contacts with the Burmese military; and recognized Burma's progress with a historic visit by President Obama, the first by a sitting American president in Burmese history.

The international community should continue to respond positively to positive actions by the Burmese government, but not move faster to transform our policies than they are moving to transform their country. We should begin to encourage investment and provide well-targeted assistance, but not open the floodgates to massive inflows of money that the country is not yet ready to absorb, and that could end up fueling corruption and reinforcing poor governance. We should be easing sanctions, but be wary of lifting them on a schedule that has more to do with a desire to declare a foreign policy success than with the actual pace of events on the ground. It may be true in principle that sanctions can always be re-imposed if there are setbacks in Burma. But we should remember that even in the darkest days when Burma's military regime was killing protestors and jailing monks, the US government never forced a single American company to leave the country – once in, US investors were always exempted from sanctions.

In practice, this means that the legal framework for sanctions, including the JADE Act and the various presidential executive orders on Burma, should be retained at least through Burma's first free, nationwide parliamentary elections in 2015, along with the provisions that give the administration flexibility to waive application of sanctions. The administration should also maintain, and strictly enforce, the human rights and anti-corruption reporting requirements it has imposed on U.S. companies investing in Burma. As one might expect, many companies would rather not have to file these reports. In fact, they will have a comparative advantage in Burma if they are seen by the Burmese people as living up to a higher standard. Rather than weakening these requirements, they should be lobbying the Burmese government to apply similar standards to all foreign companies, so that there is a level playing field. One measure of progress in Burma is that they will likely find allies in the government for that kind of strategy, officials who care about the rights of their people and the health of their country's environment, especially after 2015.

The administration should also use in a creative and dynamic way the targeted financial restrictions that it has maintained, through the Treasury Department's SDN list, against individuals who violate human rights and obstruct reform. The SDN list should not remain static, as it has for most of the last four years – it should be used to leverage change. The administration should drop names where a fundamental change in

behavior makes that appropriate. It should also be willing to add names as circumstances on the ground, and US law, require. For example, it is remarkable that the commanders of the Burmese army in Kachin State, who appear to have resisted their civilian government's efforts to effect a cease fire, and whose troops have committed serious and systematic human rights violations, have not been added to the SDN list. The JADE Act requires sanctions to be imposed on officials of the Burmese military involved in "gross violations of human rights in Burma or in the commission of other human rights abuses" and to update the SDN list as new information becomes available. The failure to list these commanders, given the amount of information available, appears to be a plain violation of the law.

A final point, Mr. Chairman: Some have said that the United States risks losing influence in Burma to China or other countries if it remains too tough with the Burmese government on issues like human rights or corruption. During the years when the United States maintained strict sanctions against Burma, a similar argument was made, and turned out to be flat wrong. The United States stuck to its principles, and the Burmese government eventually started to address U.S. concerns, in part because did not want to be entirely dependent on China.

In my last two trips to the country, I was struck by the extent to which the United States factors into the calculations of the people I met, in and out of government. Much of the recent progress we are discussing today came about because of pledges Burma's president made to the president of the United States. When the promised political prisoner mechanism was not established on schedule, the Burmese government reached out to the State Department for advice on how to do it. It has relied on quiet efforts by US diplomats to help facilitate peace talks with ethnic minority groups. It has eagerly sought contacts with the U.S. military. When I met with officials at the Ministry of Home Affairs recently, they said that Burma's police had recently received training from several regional countries, but that what they really wanted was training from the U.S. And so on and so on.

The important question is how should the United States use its influence at this critical, and delicate, transitional moment in Burma. I think the answer is this: The Burmese people didn't struggle for decades for their freedom, and we didn't support them for decades, to settle for a halfway house between democracy and dictatorship. We didn't do it so that Burma could become one of those countries that holds elections every few years, but where the same small group of people still hold most of the power and wealth. If that's what we had wanted, we could have settled

for it years ago. And we know there is a long way to go, with many tests to pass, including the 2015 election, before we can say that Burma's democratic dreams have been fulfilled. That's when America's relationship with Burma can and should reach its full potential. Until then, we should hold on to some of our cards, and keep our eyes on the prize.