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Burmese Security Forces and Personnel Implicated in Serious Human Rights Abuses and Accountability Options

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SUMMARY

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Burmese Security Forces and Personnel Implicated in Serious Human Rights Abuses and Accountability Options

At least 17 different reports by United Nations (U.N.) entities and independent human rights organizations have been released containing allegations that certain Burmese security force officers and units committed serious human rights violations dating back to 2011. These reports name nearly 40 individuals and over 100 security units as responsible for such gross human rights violations as murder, torture, rape and other forms of sexual violence, and forced labor. Some of these individuals, including Commander-in-Chief Senior General Min Aung Hlaing, were identified in four or more of the reports. Similarly, some of the security units, in particular Infantry Division 33 and Infantry Division 99, were cited by six or more of the reports. The reports suggest that the commission of human rights abuses by Burma's security forces is pervasive, systematic, and endemic. CRS did not independently verify the credibility of these reports.

The Trump Administration has labeled the alleged human rights violations as "ethnic cleansing" and has imposed "limited targeted sanctions" on five Burmese military officers and two military units it considers responsible for serious human rights violations against the Rohingya in Burma's Rakhine State. Some Members of Congress and other observers view this response as too limited, and have called on the Trump Administration to take stronger action given the severity of the human rights abuses. The Burma Unified through Rigorous Military Accountability (BURMA) Act of 2018 (H.R. 5819) and the Burma Human Rights and Freedom Act of 2018 (S. 2060) would impose greater restrictions on relations with Burma in part due to the serious human rights abuses allegedly committed by Burma's security forces. Congress has also placed restrictions and requirements on relations with Burma in previous appropriations legislation to address human rights issues.

Many of the reports advocate for some form of accountability for the reported human rights violations, including by calling for the U.N. Security Council to refer the alleged human rights violations in Burma to the International Criminal Court (ICC) or an ad hoc international criminal tribunal for investigation and possible prosecution. China and possibly Russia are likely to oppose an ICC referral, and recent statements by President Trump and National Security Advisor John Bolton suggest the United States may also oppose such a referral. The ICC's Pre-Trial Chamber had previously ruled that the ICC's Prosecutor can begin a preliminary investigation of the war crime of forced deportation of the country's Rohingya ethnic minority into neighboring Bangladesh.

In the interim, the United Nations Independent International Fact-Finding Mission on Myanmar (UNFFM) has recommended that an independent international mechanism (IIM) be established to collect and preserve evidence of alleged acts of genocide, crimes against humanity, and war crimes committed in Burma since 2011. The U.N. Human Rights Council has approved the formation of an IIM, and has urged U.N. Secretary-General Antonio Guterres to appoint "the staff of the mechanism as expeditiously as possible."

In addition to these measures to support some form of future criminal action against the alleged perpetrators, the UNFFM and others have expressed support for U.N. sanctions against the Burmese military and others considered responsible for the abuses. Some of the reports also call on individual nations to impose sanctions on Burma's military and its government.

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Introduction

Since the onset of the nation's civil war and ensuing military coup d'état in 1962, Burma's military, or Tatmadaw, and its associated security forces, such as the Border Guard Police and the Myanmar Police Force, have been repeatedly accused of committing murder, rape, and torture against the nation's various ethnic minorities. Between 1990 and 2008, Congress passed legislation imposing various sanctions on Burma in part due to the serious human rights violations committed by and/or authorized by the Tatmadaw.[1] Such allegations of intentional, pervasive, and systematic abuses arose again following the forced displacement of over 700,000 Rohingya from Burma's Rakhine State in late 2017, as well as the Tatmadaw's renewed offensive against ethnic armed groups in Kachin, Karen, and Shan States (see map in the **Appendix**).[2]

The Trump Administration has described that Tatmadaw's assault on the Rohingya as "ethnic cleansing" and has applied "limited targeted sanctions" on five Tatmadaw officers and two military units.[3] Some Members of Congress consider the attacks on the Rohingya genocide, and have called on the Trump Administration to implement stronger and/or broader sanctions on Burma. In addition, the Burma Unified through Rigorous Military Accountability (BURMA) Act of 2018 (H.R. 5819) and the Burma Human Rights and Freedom Act of 2018 (S. 2060) would impose greater restrictions on relations with Burma in part due to the serious human rights abuses allegedly committed by Burma's security forces.

Various organizations—including the United Nations Independent International Fact-Finding Mission in Myanmar (UNFFM), multiple human rights organizations, and the press—have conducted investigations into allegations that Burmese security forces committed serious human rights violations in Burma's seven ethnic states since the Tatmadaw transferred power to a mixed civilian/military government in 2011. These organizations have released at least 17 reports documenting evidence that appears to support some of these allegations, and implicates specific Burmese security personnel and units as being responsible for the abuses.

In addition to concluding that Burmese security forces were responsible for serious human rights violations, at least two of these reports maintain that the violations were intentional, premeditated, and systemic. Certain Burmese officers and units also appear in more than one report, and in some cases, are identified as being responsible for human rights violations in more than one ethnic state and/or at different times.

The reports vary in their conclusions on the severity of the abuses. Some conclude that certain violations may constitute genocide; in other cases, some describe possible war crimes or crimes against humanity.

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[1] For more about the history of the imposition of U.S. sanctions on Burma, see CRS Report R41336, *U.S. Sanctions on Burma*. For a summary of current restrictions on relations with Burma, see CRS Report R44570, *U.S. Restrictions on Relations with Burma*.

[2] For more about the forced displacement of the Rohingya and associated alleged human rights abuses, see CRS Report R45016, *The Rohingya Crises in Bangladesh and Burma*.

[3] On December 21, 2017, the Department of the Treasury placed Major General Maung Maung Soe, commander of Burma's Western Command during the assaults on the Rohingya, on its Specially Designated Nationals And Blocked Persons (SDN) List under the authority of the Global Magnitsky Act. On August 17, 2018, the Department of the Treasury added Lt. General Aung Kyaw Zaw, Major General Khin Hlaing, Major General Khin Maung Soe, and Brigadier General Thura San Lwin, as well as the 33rd Light Infantry Division and the 99th Light Infantry Division, to the SDN list for "their involvement in ethnic cleansing in Burma's Rakhine State and other widespread human rights abuses in Burma's Kachin and Shan States." (Department of the Treasury, "Treasury Sanctions Commanders and Units of the Burmese Security Forces for Serious Human Rights Abuses," press release, August 17, 2018).

This report compiles a list—in tabular form—of the Burmese security personnel and units that have been identified as responsible for serious human rights violations by one or more the following reports:

1. Amnesty International, "All the Civilians Suffer: Conflict, Displacement, and Abuse in Northern Myanmar," June 2017;
2. Amnesty International, "We Will Destroy Everything: Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar," June 2018;
3. Fortify Rights, "They Gave Them Long Swords: Preparations for Genocide and Crimes Against Humanity against Rohingya Muslims in Rakhine State, Myanmar," July 2018;
4. Human Rights Watch, "All My Body Was Pain: Sexual Violence against Rohingya Women and Girls in Burma," November 2017;
5. Human Rights Watch, "Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli," December 2017;
6. Kachin Women's Association in Thailand, "A Far Cry from Peace: Ongoing Burma Army Offensives and Abuses in Northern Burma under the NLD Government," November 2016;
7. Kachin Women's Association in Thailand, "State Terror in the Kachin Hills: Burma Army Attacks against Civilians in Northern Burma," November 16, 2017;
8. Karen Human Rights Group, "Ongoing Militarisation in Southeast Myanmar," October 2016;
9. Legal Aid Network and Kachin Women's Association in Thailand, "Justice Delayed, Justice Denied: Seeking Truth about Sexual Violence and War Crime Case in Burma," January 2016;
10. Network for Human Rights Documentation—Burma, "Report on the Human Rights Situation in Burma, January–December 2017," March 2018;
11. Physicians for Human Rights, "Please Tell the World What They Have Done to Us: The Chut Pyin Massacre: Forensic Evidence of Violence against the Rohingya in Myanmar," July 2018;
12. Refugees International, "Suffering in Shadows: Aid Restrictions and Reductions Endanger Displaced Persons in Northern Myanmar," December 2017;
13. Simon Lewis, Zeba Siddiqui, Clare Baldwin, and Andrew R.C. Marshall, "Tip of the Spear," Reuters, June 26, 2018;
14. Ta'ang Women's Organization, "Trained to Torture: Systematic War Crimes by the Burma Army in Ta'ang Areas of Northern Shan State (March 2011–March 2016)," June 2016;
15. United Nations Fact-Finding Mission on Myanmar, "Report of the Independent International Fact-Finding Mission on Myanmar" (Advanced Unedited Version), August 24, 2018;
16. Women's League of Burma, "If They Had Hope, They Would Speak: The Ongoing Use of State-Sponsored Sexual Violence in Burma's Ethnic Communities," November 2014; and
17. Women's League of Burma, "Long Way to Go: Continuing Violations of Human Rights and Discrimination Against Ethnic Women in Burma," July 2016.

CRS did not independently confirm the veracity of the findings in these reports.

The UNFFM report recommends that the United Nations Security Council (UNSC) refer the human rights abuse allegations to the International Criminal Court (ICC) for investigation and possible prosecution.[4] The report specifically identifies six Burmese military leaders—Commander-in-Chief Senior General Min Aung Hlaing; Deputy Commander-in-Chief Vice Senior General Soe Win; Commander, Bureau of Special Operations-3, Lieutenant General Aung Kyaw Zaw; Commander, Western Regional Military Command, Major General Maung Maung Soe; Commander, 33rd Light Infantry Division, Brigadier General Aung Aung; and Commander, 99th Light Infantry Division, Brigadier General Than Oo—as warranting investigation and possible prosecution by the ICC. The UNFFM also calls for the creation of

> an independent, impartial mechanism to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals.

In addition, the UNFFM recommends the UNSC "should adopt targeted individual sanctions, including travel bans and asset freezes, against those who appear most responsible for serious crimes under international law" and impose an arms embargo on Burma.

The Department of State has conducted its own preliminary investigation into alleged human rights abuses in Rakhine State. According to an article in *Politico*, there was sharp disagreement within the State Department on whether to categorize the Tatmadaw's attacks on the Rohingya as genocide or crimes against humanity.[5] On August 28, 2018, U.S. Ambassador to the United Nations Nikki Haley presented to the U.N Security Council some of the details of a then unreleased version of the State Department's report. She stated, "The results are consistent with the recently-released UN independent international fact-finding mission on Burma."[6] Among the details Haley mentioned were the following:

- The investigation involved interviews with 1,024 Rohingya refugees in camps in Bangladesh's Cox's Bazar region;
- 82% of the refugees witnessed the killing of a Rohingya; 51% witnessed sexual violence; and 20% witnessed violence against 100 or more people; and
- Burmese military and security forces were the perpetrators "of the overwhelming majority of these crimes."

On September 24, 2018, the State Department posted online a 20-page publication entitled *Documentation of Atrocities in Northern Rakhine State*.[7] The State Department issued no press release or statement regarding the release of the summary. The publication, which describes the Tatmadaw's operations in Rakhine State as "well-planned and coordinated," is generally consistent with Ambassador Haley's statement before the UNSC, but does not specifically identify any security officers or units responsible for the alleged atrocities. The publication also

[4] For more about the UNFFM report, see CRS In Focus IF10970, *U.N. Report Recommends Burmese Military Leaders Be Investigated and Prosecuted for Possible Genocide*, by Michael F. Martin, Matthew C. Weed, and Colin Willett.

[5] Nahal Toosi, "Leaked Pompeo Statement Shows Debate over 'Genocide' Label for Myanmar," *Politico*, August 13, 2018.

[6] United States Mission to the United Nations, "Remarks at a UN Security Council Briefing on the Situation in Burma," press release, August 28, 2018.

[7] State Department, *Documentation of Atrocities in Northern Rakhine State*, September 24, 2018, at https://www.state.gov/j/drl/rls/286063.htm.

does not indicate if the State Department considers the atrocities to be genocide, crimes against humanity, or war crimes.[8]

In addition, on July 30, 2018, President Win Myint appointed former Philippine Deputy Foreign Minister Rosario Manalo; former Japanese Ambassador to the U.N. Kenzo Oshima; the chief coordinator of the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine, Aung Tun Thet; and the former chair of Myanmar's Constitutional Tribunal, Mya Thein, to head the Independent Commission of Enquiry, which "will investigate the allegations of human rights violations and related issues, following the terrorist attacks by ARSA."[9] President Win Myint's announcement did not indicate any deadline for the commission to complete its investigation. Deputy Commander-in-Chief Vice Senior General Soe Win reportedly said, "the military is on standby to offer full cooperation with the commission."[10]

Burmese Security Force Officers and Units Allegedly Responsible for Human Rights Violations

The following tables list the names of Burmese security force officers (**Table 1**) and units (**Table 2**) that have been identified in one or more of the reports mentioned above as being responsible for human rights violations in Burma since 2011.[11] For purposes of this report, the "types of responsibility" include the following:

- **Authorization**—Authorized and/or ordered other security personnel to commit human rights abuses on Burmese civilians;
- **Commission**—Committed the human rights abuses and/or took no action to prevent the commission of human rights abuses; and
- **Cover-up**—Became aware of credible allegations that security personnel under their command had committed or were committing human rights violations, but took no action to stop the further commission of human rights violations; attempted to conceal alleged human rights violations by Burmese security personnel; and/or tried to prevent or undermine investigations or prosecutions of alleged human rights violations by Burmese personnel.

With regard to the type of human rights violation committed, this report classifies them into six categories:

- **Arbitrary arrest**—includes the arrest and/or detention of civilians without discernible evidence that the civilians had committed some crime;
- **Attacks on civilians**—includes intentional assaults of civilians and attacks conducted with a disregard for the potential of causing harm to civilians;
- **Extrajudicial killing**—includes the intentional killing of civilians and the killing of civilians during military attacks conducted with a disregard for the potential of causing harm to civilians;

[8] "U.S. Accuses Myanmar Military of 'Planned and Coordinated' Rohingya Atrocities," *Reuters*, September 24, 2018.

[9] Office of the President, "Government of the Republic of the Union of Myanmar Establishes the Independent Commission of Enquiry," press release, July 30, 2018, http://www.president-office.gov.mm/en/?q=briefing-room/news/2018/07/30/id-8913.

[10] "Military Pledges Cooperation with Commission of Inquiry on Rakhine," *Irrawaddy*, August 31, 2018.

[11] The inclusion of any person or security unit in any table in this report is not to be construed as the author of the report or Congressional Research Service confirms or supports the allegations made by the listed reports.

- **Forced labor**—includes forcing civilians to carry military equipment or supplies, to serve as "human shields" for military units, and/or to use civilians as human "landmine detectors";
- **Sexual violence**—includes rape, attempted rape, and other forms of sexual assault; and
- **Torture**—includes torture and/or the physical abuse of civilians.

While the military personnel and units listed in the tables have not been proven to be responsible for human rights abuses, their identification in one or more of the reports listed above may indicate that there is reason for further investigation of the allegations. Information in the tables suggests certain patterns about the human rights abuse allegations, including the following:

- **Pervasive and systemic abuse by Tatmadaw**—**Table 2** includes more than 100 military units, including 3 Regional Operations Commands, 6 infantry divisions, and more than 90 infantry battalions, indicating that alleged human rights abuse is not limited to a few "troubled" units;
- **Geographically pervasive**—The reports link certain military units with similar human rights abuses in all of Burma's ethnic minority states—Chin, Kachin, Karen (Kayin), Karenni (Kayah), Mon, Rakhine, and Shan;
- **"Troubled" units**—The reports repeatedly implicate certain units in abuses, including the following:
  - *Infantry Division 33*—This unit is identified in six reports, involving a variety of alleged abuses in the States of Kachin, Rakhine and Shan;
  - *Infantry Division 99*—This unit is also identified in six reports, involving a variety of alleged abuses in the States of Kachin, Rakhine, and Shan; and
  - *Infantry Battalions 324, 502, 503 and 567*—These units were identified in three different reports as committing a variety of human rights abuses.

Table 1. Burmese Security Officers Identified in Cited Reports as Responsible for Human Rights Violations

Listed by rank

Name	Rank	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Senior General Min Aung Hlaing	Commander-in-Chief	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"We Will Destroy Everything" (2)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"Tip of the Spear" (13)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Forced labor, Sexual violence, Torture	Authorization, Cover-up	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Vice-Senior General Soe Win	Deputy Commander-in-Chief	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"We Will Destroy Everything" (2)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Forced Labor, Sexual violence, Torture	Authorization, Cover-up	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)

Name	Rank	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
General Mya Tun Oo	Joint Chief of Staff	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Lt. General Aung Kyaw Zaw	Chief of Bureau of Special Operations	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Forced labor, Sexual violence, Torture	Authorization, Cover-up	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Lt. General Kyaw Swe	Minister of Home Affairs	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Major General Moe Myint Tun	Chief of Staff of the Army	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Major General Maung Maung Soe	Commander of Western Regional Command	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Forced labor, Sexual violence, Torture	Authorization, Cover-up	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Major General Khin Maung Soe	Commander of Military Operations Command 15	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"We Will Destroy Everything" (2)

Name	Rank	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Major General Aung Win Oo	Chief of Police	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Brigadier General Kyaw Swar Linn	General Staff Officer	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Brigadier General Sunny Ohn	Deputy Commander of Western Regional Command	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Brigadier General Hla Myint Soe	Commander of the Regional Operation Command	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Brigadier General Aung Aung	Commander of Light Infantry Division 33	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"We Will Destroy Everything" (2)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Forced labor, Sexual violence, Torture	Authorization, Cover-up	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)

Name	Rank	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Brigadier General Than Oo	Commander of Light Infantry Division 99	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Authorization, Cover-up	Rakhine State	"We Will Destroy Everything" (2)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Forced labor, Sexual violence, Torture	Authorization, Cover-up	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Brigadier General Aung Zeya	Commander of Military Operations Command 5	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Brigadier General Maung Maung Khin	Former Chief of Police	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Brigadier General Thura San Lwin	Former Chief of Police	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Colonel Aung Myat Moe	Commander of Rakhine Regional Police Force	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Colonel Phone Tint	Minister of Rakhine State Security and Border Affairs	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)

Name	Rank	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Colonel Sein Lwin	Chief of Rakhine State Police Force	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Colonel So Kyaw Htet	Commander of Tactical Operations Command 333	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They Gave Them Long Swords" (3)
Major Aung Myo Thu	Infantry Division 33	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
Major Aung Phyo Myint	Infantry Battalion 503	Sexual violence	Commission, Cover-up	Shan State	"Justice Delayed, Justice Denied" (9)
Major Kyaw Zay Ya	Commander of Infantry Battalion 551	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They gave Them Long Swords" (3)
Major Thant Za Win	Infantry Battalion 564	Arbitrary arrests, Attacks on civilians, Extrajudicial killing, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything (2)
Captain Lwin Maung Soe	Infantry Battalion 438	Sexual violence	Cover-up	Kachin State	"A Far Cry from Peace" (6)
Captain Mone Nawng	Infantry Battalion 277	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Captain Myo Jaw Maung	Infantry Battalion 325	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Lt. Sein Min	Infantry Battalion 512	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Second Lt. Tha Beh	Border Guard Force Battalion 1016	Forced labor, Torture	Commission	Karen State	"Ongoing Militarisation" (8)

Name	Rank	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Staff Sergeant Ba Kyaw	Infantry Battalion 564	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
		Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission`	Rakhine State	"They Gave Them Long Swords" (3)
Second Corporal Ye Min Tun	Army Artillery 315	Sexual violence	Commission	Mon State	"Long Way to Go" (17)
Corporal Kyaw Chay	Border Guard Police	Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
Lance Corporal Myint Thein	Infantry Battalion 513	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Commander Mo Hein (rank unknown)	Infantry Battalion 284	Torture	Commission	Karen State	"Ongoing Militarisation" (8)
Commander Tun Naing (rank unknown)	Commander of Taung Bazar Border Guard Police Base	Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)

Source: CRS compilation.

Note: Number in final column refers to list of reports provided in text above. Names in *italics* are on U.S. Treasury's Specially Designated Nationals and Blocked Persons (SDN) list. Names in **bold** are on the sanctions list of Canada and the European Union. Underlined names are of individuals the UNFFM recommended the U.N. Security Council refer to the International Criminal Court for investigation and possible prosecution for genocide, crimes against humanity, and war crimes.

Table 2. Burmese Military Units Identified in Cited Reports as Responsible for Human Rights Violations

Listed in alphabetical order

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Army 315th Artillery	Sexual violence	Commission	Mon State	"If They Had Hope" (16)
Army 315th Artillery	Sexual violence	Commission	Mon State	"Long Way to Go" (17)
Army 367th Artillery	Attacks on civilians, Extrajudicial killings	Commission	Kachin State	"State Terror in the Kachin Hills" (7)
Army 372nd Artillery	Attacks on civilians, Extrajudicial killings	Commission	Kachin State	"State Terror in the Kachin Hills" (7)
Border Guard Force Battalion 1013	Extrajudicial killing	Commission	Karen State	"Ongoing Militarisation" (8)
Border Guard Force Battalion 1014	Arbitrary arrest, Torture	Commission	Karen State	"Ongoing Militarisation" (8)
Border Guard Force Battalion 1015	Attacks on civilians	Commission	Karen State	"Ongoing Militarisation" (8)
Border Guard Police	Arbitrary arrests, Attacks on civilians, Extrajudicial killing, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual violence, Torture	Commission	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Infantry Battalion 4	Arbitrary arrest	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 9	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 11	Arbitrary arrest	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 13	Sexual violence	Commission	Kachin State	"State Terror in the Kachin Hills" (7)
Infantry Battalion 17	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 22	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 23	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Infantry Battalion 29	Arbitrary arrest, Forced labor	Commission	Kachin State	"Report on the Human Rights Situation in Burma" (10)
Infantry Battalion 33	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 37	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 41	Attacks on civilians, Forced labor	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 45	Arbitrary arrest, Attacks on civilians, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 71	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 77	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 86	Extrajudicial killings	Cover-up	Kachin State	"Report on the Human Rights Situation in Burma" (10)
Infantry Battalion 88	Attacks on civilians	Commission	Shan State	"Report on the Human Rights Situation in Burma" (10)
	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 95	Arbitrary arrest, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 106	Extrajudicial killing, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 107	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 115	Arbitrary arrest, Attacks on civilians, Forced labor, Sexual Violence, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 121	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 123	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 124	Extrajudicial killing	Commission	Karen State	"Ongoing Militarisation" (8)
Infantry Battalion 130	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual Violence, Torture	Commission	Shan State	"Trained to Torture" (14)
	Attacks on civilians, Extrajudicial killing, Torture	Commission	Shan State	"Trained to Torture" (14)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Infantry Battalion 131	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 139	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 141	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 142	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 144	Attacks on civilians, Forced labor, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 145	Extrajudicial killing	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 147	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 149	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 205	Forced labor	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 217	Attacks on civilians, Extrajudicial killings	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 223	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 237	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 240	Attacks on civilians, Extrajudicial killings	Commission	Kachin State	"State Terror in the Kachin Hills" (7)
Infantry Battalion 249	Sexual violence	Commission	Shan State	"Justice Delayed, Justice Denied" (9)
	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 269	Sexual violence	Commission	Chin State	"Long Way to Go" (17)
Infantry Battalion 286	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 291	Extrajudicial killing, Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 297	Extrajudicial killing	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 298	Sexual violence	Commission	Kachin State	"If They Had Hope" (16)
	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 317	Torture	Commission	Shan State	"Trained to Torture" (14)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Infantry Battalion 320	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 321	Sexual violence	Commission	Kachin State	"A Far Cry from Peace" (6)
	Sexual violence	Commission	Kachin State	"Justice Delayed, Justice Denied" (9)
	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 323	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 324	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing	Commission	Shan State	"Trained to Torture" (14)
	Attacks on civilians, Extrajudicial killing, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 325	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 333	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 336	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 345	Sexual violence	Commission	Rakhine State	"Report of the Independent International Fact-Finding Mission" (15)
Infantry Battalion 370	Arbitrary arrest	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 381	Extrajudicial killing	Commission	Kachin State	"A Far Cry from Peace" (6)
	Arbitrary arrest, Forced labor	Commission	Kachin State	"Report on the Human Rights Situation in Burma" (10)
Infantry Battalion 382	Arbitrary arrest, Forced labor	Commission	Kachin State	"Report on the Human Rights Situation in Burma" (10)
Infantry Battalion 389	Attacks on civilians, Extrajudicial killings	Commission	Kachin State	"Justice Delayed, Justice Denied" (9)
Infantry Battalion 402	Forced labor	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 417	Extrajudicial killing	Commission	Shan State	"A Far Cry from Peace" (6)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Infantry Battalion 423	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 424	Arbitrary arrest, Torture	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 426	Torture	Commission	Kachin State	"A Far Cry from Peace" (6)
	Sexual violence	Commission	Karenni State	"Long Way to Go" (17)
Infantry Battalion 427	Arbitrary arrest, Torture	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 437	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Battalion 438	Sexual violence	Commission, Cover-up	Kachin State	"A Far Cry from Peace" (6)
	Sexual violence	Commission	Kachin State	"Long Way to Go" (7)
Infantry Battalion 501	Attacks on civilians	Commission	Shan State	"Trained to Torture" (14)
	Arbitrary arrest, Attacks on civilians, Forced labor, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 502	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
	Arbitrary arrest, Torture	Commission	Shan State	"Report on the Human Right Situation in Burma" (10)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual violence, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 503	Sexual violence	Commission	Kachin State	"A Far Cry from Peace" (6)
	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
	Arbitrary arrest, Torture	Commission	Shan State	"Report on the Human Right Situation in Burma" (10)
Infantry Battalion 504	Sexual violence	Commission	Shan State	"Justice Delayed, Justice Denied" (9)
	Extrajudicial killing, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 505	Attacks on civilians, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 506	Arbitrary arrest, Torture	Commission	Shan State	"Trained to Torture" (14)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
Infantry Battalion 507	Sexual violence	Commission	Karen State	"Long Way to Go" (17)
	Extrajudicial killing, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 513	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 522	Forced labor	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 536	Arbitrary arrests, Attacks on civilians, Extrajudicial killing, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
Infantry Battalion 537	Arbitrary arrests, Attacks on civilians, Extrajudicial killing, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
Infantry Battalion 551	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission, Cover-up	Rakhine State	"They gave Them Long Swords" (3)
Infantry Battalion 552	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"Report of the Independent International Fact-Finding Mission" (15)
Infantry Battalion 564	Arbitrary arrests, Attacks on civilians, Extrajudicial killing, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
	Attacks on civilians, Extrajudicial killings, Sexual violence	Commission	Rakhine State	"Report of the Independent International Fact-Finding Mission" (15)
Infantry Battalion 567	Arbitrary arrest	Commission	Kachin State	"A Far Cry from Peace" (6)
	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
	Forced labor	Commission	Shan State	"Trained to Torture" (14)
Infantry Battalion 569	Sexual violence, Torture	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 574	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Battalion 602	Extrajudicial killing	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 727	Extrajudicial killing	Commission	Kachin State	"A Far Cry from Peace" (6)
Infantry Battalion 996	Sexual violence	Commission	Shan State	"Long Way to Go" (17)
Infantry Division 11	Arbitrary arrest	Commission	Shan State	"A Far Cry from Peace" (6)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
	Arbitrary arrest, Attacks on civilians, Torture	Commission	Shan State	"All the Civilians Suffer" (1)
	Arbitrary arrest, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Division 33	Forced labor	Commission	Shan State	"All the Civilians Suffer" (1)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"They gave Them Long Swords" (3)
	Attack on civilian, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"Please Tell the World" (11)
	Attack on civilian, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"Tip of the Spear" (13)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual violence, Torture	Commission	Shan State	"Trained to Torture" (14)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual violence, Torture	Commission	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Infantry Division 66	Arbitrary arrest, Forced labor, Torture	Commission	Shan State	"A Far Cry from Peace" (6)
	Arbitrary arrest	Commission	Shan State	"Trained to Torture" (14)
Infantry Division 77	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Division 88	Arbitrary arrest, Torture	Commission	Shan State	"A Far Cry from Peace" (6)
	Attacks on civilians, Forced labor, Torture	Commission	Shan State	"Trained to Torture" (14)
Infantry Division 99	Arbitrary arrest, Human shields, Torture	Commission	Shan State	"All the Civilians Suffer" (1)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"We Will Destroy Everything" (2)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"They gave Them Long Swords" (3)
	Arbitrary arrest, Torture	Commission	Kachin State, Shan State	"A Far Cry from Peace" (6)

Name	Type of Human Rights Violation	Type of Responsibility	Location of Violation	Reports Alleging Responsibility
	Attack on civilian, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"Tip of the Spear" (13)
	Arbitrary arrest, Attacks on civilians, Forced labor, Sexual violence, Torture	Commission	Shan State	"Trained to Torture" (14)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual violence, Torture	Commission	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Infantry Regiment 116	Sexual violence	Commission	Kachin State	"Long Way to Go" (17)
Infantry Regiment 323	Sexual violence	Commission	Kachin State	"If They Had Hope" (16)
Myanmar Police Force	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"They gave Them Long Swords" (3)
	Arbitrary arrest, Attacks on civilians, Extrajudicial killing, Forced labor, Sexual violence, Torture	Commission	Kachin State, Rakhine State, Shan State	"Report of the Independent International Fact-Finding Mission" (15)
Rakhine State Police Force	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"They gave Them Long Swords" (3)
Regional Operations Command 3	Torture	Commission	Kachin State	"A Far Cry from Peace" (6)
Regional Operations Command 6	Torture	Commission	Kachin State	"A Far Cry from Peace" (6)
Regional Operations Command 7	Arbitrary arrest, Torture	Commission	Kachin State	"A Far Cry from Peace" (6)
Tactical Operations Command 333	Arbitrary arrest, Attacks on civilians, Extrajudicial killings, Sexual violence, Torture	Commission	Rakhine State	"They gave Them Long Swords" (3)

Source: CRS compilation.

Notes: Number in final column refers to list of reports provided in text above. Some reports included the designation as a "light" unit (e.g., "light infantry battalion"); others did not. This table combines military units of the same type with the numerical designation under the assumption they refer to the same unit. Units in *italics* are on U.S. Treasury's Specially Designated Nationals And Blocked Persons (SDN) list.

Accountability Options

The growing list of reports alleging that Burma's security forces have committed genocide, crimes against humanity, and/or war crimes has reinforced calls for some form of accountability mechanism to investigate and possibly prosecute the perpetrators of the alleged abuses. Many of the reports and various human rights organizations have proposed various accountability mechanisms, including referral to the International Criminal Court (ICC), the creation of an *ad hoc* international criminal tribunal, the imposition of U.N. sanctions, and the enactment of bilateral restrictions on relations with the Burmese government and/or the Burmese military.

Referral to International Criminal Court (ICC)

The Rome Statute of the International Criminal Court, which entered into force on July 1, 2002, established the procedures by which cases can be referred to the ICC's Prosecutor for investigation and possible prosecution. Bangladesh (see below) is a party to the Rome Statute; Burma is not. Article 13(b) states the ICC may exercise jurisdiction if "one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations." To date, the Security Council has referred one case under Article 13(b), that of the situation in Darfur, Sudan, in 2005.

Under Article 27 of the U.N. Charter, nonprocedural decisions of the UNSC, including a referral of a case to the ICC, "shall be made by an affirmative vote of nine members including the concurring votes of the permanent members." The five permanent members of the UNSC are China, France, Russia, the United Kingdom, and the United States; the current 10 nonpermanent members are Bolivia, Cote d'Ivoire, Equatorial Guinea, Ethiopia, Kazakhstan, Kuwait, the Netherlands, Peru, Poland, and Sweden.

Many observers expect China, and possibly Russia, to veto any proposed referral to the ICC. When asked if the United Kingdom would support a referral to the ICC during his visit to Burma in late September 2018, the U.K.'s Foreign Secretary Jeremy Hunt indicated that his government was considering "a number of different options."[12] France has not issued any public statement on a possible UNSC resolution to refer the case to the ICC.

The Trump Administration's position on the possible referral to the ICC is uncertain. In her August 25, 2018, statement to the UNSC, Ambassador Haley said, "Here in the Security Council, we must hold those responsible for violence to account." She also commended Kuwait, the Netherlands, Peru, and the United Kingdom for working "to keep the Security Council's focus on the atrocities in Burma." National Security Advisor John Bolton, however, gave a speech on September 10, 2018, stating the Administration's policy toward the ICC, in which he said, "We will not cooperate with the ICC. We will provide no assistance to the ICC. We will not join the ICC. We will let the ICC die on its own. After all, for all intents and purposes, the ICC is already dead to us."[13] Bolton did not make any reference the Burma situation.

In April 2018, ICC Prosecutor Fatou Bensouda asked the ICC Pre-Trial Chamber to determine whether the Court may exercise jurisdiction over the forced deportation of Rohingya from Burma

[12] Simon Lewis and Shoon Naing, "UK's Hunt Says Pressed Suu Kyi on 'Justice and Accountability' for Rohingya," *Reuters*, September 20, 2018.

[13] The full text of Bolton's speech is available at https://www.aljazeera.com/news/2018/09/full-text-john-bolton-speech-federalist-society-180910172828633.html.

into Bangladesh, which the Prosecutor argued constituted a crime against humanity.[14] The Prosecutor argued that because forced deportation of Rohingya occurred partially on the territory of Bangladesh (a state party to the Rome Statute), the Court may exercise jurisdiction over the crimes. On September 6, 2018, the Pre-Trial Chamber agreed, deciding that the ICC Prosecutor can begin a preliminary investigation into the situation in Bangladesh, opening the possibility of prosecuting Burmese officials.[15] On September 18, 2018, ICC Prosecutor Bensouda announced that she was initiating the preliminary investigation, which will also take into account "a number of alleged coercive acts" that resulted in the forced displacement, including killings, sexual violence, enforced disappearances, and the destruction of property.[16] Her office is to also consider if other crimes under Article 7 of the Rome Statute ("Crimes Against Humanity") may be applicable.

Creation of Ad Hoc International Criminal Tribunal (ICT)

A possible alternative to the ICC could be the creation of an ad hoc International Criminal Tribunal (ICT) to investigate and potentially prosecute perpetrators of human rights abuses in Burma. Such a tribunal was established by the UNSC on May 25, 1993, "for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace."[17] The UNSC established another ICT on November 8, 1994, "for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994."[18] In addition, the UNSC previously has established Special Courts in Cambodia, East Timor, Lebanon, and Sierra Leone to adjudicate cases of alleged human rights violations in those four nations.

In general, the UNSC has stipulated the scope of the International Criminal Tribunal or Special Court, including the time period to be considered. The Special Courts were set up with the support of the government of the nation in question, whereas the two ICTs were created when the government of the nation in question was unable or unwilling to undertake the criminal proceedings.

Preservation of Evidence

On September 28, 2018, the U.N. Human Rights Council (UNHRC) approved a resolution that establishes an "ongoing independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in

[14] International Criminal Court, "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute," ICC-RoC46(3)-01/18-1, April 9, 2018.

[15] International Criminal Court, "Decision on the 'Prosecution's Request for a Ruling on Jurisdiction Under Article 19(3) of the Statute,'" ICC-RoC46(3)-01/18-37, September 6, 2018.

[16] International Criminal Court, "Statement of ICC Prosecutor, Mrs Fatou Bensouda, on Opening a Preliminary Examination Concerning the Alleged Deportation of the Rohingya People from Myanmar to Bangladesh," press release, September 18, 2018.

[17] United Nations Security Council, *Resolution 827*, S/RES/827, May 25, 1993.

[18] United Nations Security Council, *Resolution 955*, S/RES/955, November 8, 1994.

Myanmar since 2011" by a vote of 35 in favor, 3 opposed, and 7 abstentions.[19] The three nations voting against the proposal were Burundi, China, and the Philippines. Japan was one of the seven nations that abstained.

The UNHRC resolution instructs the mechanism to

> Prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.

The mechanism also is to have access to the information collected by the UNFFM, be able to continue to collect evidence, and be provided the capacity to document and verify relevant information and evidence. The UNHRC requested that U.N. Secretary-General Antonio Guterres appoint "the staff of the mechanism as expeditiously as possible" and "allocate the resources necessary for the implementation of the present resolution." The resolution also extended the mandate of the UNFFM "until the new mechanism is operational."

The UNFFM had recommended the creation of "an independent, impartial mechanism to collect, consolidate, preserve and analyze evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts or tribunals." It also stated the mechanism "could resemble the 'International, Impartial and Independent Mechanism [IIIM] to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011,' created by United Nations General Assembly resolution 71/248," which was adopted in December 2016. Various human rights organizations have also expressed support for the creation of such a mechanism.

The Trump Administration has not indicated its position on the establishment of an "independent, impartial mechanism" for Rakhine State, but it has demonstrated its support for the IIIM. In February 2018, Ambassador Haley stated the following:

> The United States has also announced that we will contribute to the International, Impartial, and Independent Mechanism on international crimes committed in Syria—the IIIM. The United States strongly supports the IIIM as a valuable tool to hold the Assad regime accountable for its atrocities, including its repeated and ongoing use of chemical weapons.[20]

In FY2018, the United States provided nearly $350,000 in support of the IIIM.

The 115th Congress has appropriated funds for investigation and documentation of alleged human rights violations in Burma, but not explicitly for an "independent, impartial mechanism." Section 7043(a) of the Consolidated Appropriations Act, 2018 (P.L. 115-141) included the following provisions:

> (1) Bilateral Economic Assistance.—…
>
> (B) USES.—Funds appropriated under title III of this Act for assistance for Burma—
> …

[19] U.N. Human Rights Council, *Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar*, A/HRC/39/Ll.22, September 28, 2018.

[20] United States Mission to the United Nations, "Remarks at a U.N. Security Council Briefing on the Situation in Syria," February 5, 2018.

> (vi) shall be made available for programs to investigate and document allegations of ethnic cleansing and other gross violations of human rights committed against the Rohingya people in Rakhine state at not less than the amount specified for such programs in the table under this subsection in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act): *Provided*, That such funds shall be made available for civil society organizations in Bangladesh and Burma for such purposes: *Provided further*, That prior to the obligation of such funds, the Assistant Secretary for Democracy, Human Rights, and Labor, Department of State, shall ensure the establishment of a standard documentation format and documentation procedures for use by such organizations, and shall identify an appropriate repository for such information: *Provided further*, That such sums shall be in addition to funds otherwise made available for such purposes;
>
> (vii) shall be made available for programs to investigate and document allegations of gross violations of human rights committed in Burma, particularly in areas of conflict: *Provided*, That such funds shall be made available for civil society and international organizations, including those in countries bordering Burma, at not less than the amount specified for such programs in the table under this subsection in the explanatory statement described in section 4 (in the matter preceding division A of this consolidated Act).

The "explanatory statement described in section 4" allocated $2.5 million out of the $82.7 million Economic Support Fund for Burma for "Documentation of human rights violations against Rohingya," including $0.5 million for "Documentation of human rights violations in Burma."[21]

U.N. Sanctions

The UNFFM and various human rights organizations have recommended that the UNSC impose sanctions on Burma independent of any ICC or ad hoc international tribunal prosecution. Among the possible U.N. sanctions proposed are a global arms embargo; travel bans and the freezing of assets of senior Burmese government and military officials; and a prohibition of trade and/or investment with businesses owned or controlled by the Burmese military, its senior officers, or their families.

The UNSC has imposed sanctions in response to human rights violations, among other factors, in other countries, including the Central African Republic, Haiti, Rwanda, South Africa, South Sudan, Sudan, and the former Yugoslavia. The UNSC sanctions have included, in some cases, arms embargoes, travel bans, and the freezing of assets.

Bilateral Sanctions on Burma

Another accountability option that has been suggested is for individual nations to impose appropriate sanctions on Burma. The United States currently has some restrictions on relations with Burma, and the Trump Administration has announced some additional restrictions in response to the alleged human rights abuses in Rakhine State, including the imposition of visa and economic restrictions on five Burmese military officers and two military units under the authority of the Global Magnitsky Act (see above). The Trump Administration could potentially sanction additional individuals and units it determines are responsible for serious human rights violations under the authority of the Global Magnitsky Act.

[21] U.S. Congress, House Committee on Appropriations, *Consolidated Appropriations Act, 2018*, committee print, 115th Cong., 2nd sess., 2018, 29-457.

If the Trump Administration were to determine that the alleged human rights abuses that occurred in Rakhine State or elsewhere in Burma constituted genocide, then the United States has the authority to prosecute alleged offenders under the provisions of the Human Rights Enforcement Act of 2009 (P.L. 111-122; 18 U.S.C. 1091). The act criminalizes the act of genocide and subjects the offender to a possible death sentence, life in prison, and a fine of "not more than $1,000,000." The act grants U.S. jurisdiction to the case under certain conditions, including if "the alleged offender is present in the United States," regardless of where the offense was committed.

The United States is a party to the Convention on the Prevention and Punishment of the Crime of Genocide.[22] Article V of the convention states the following:

> The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VII requires that "(t)he Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force." Bangladesh, Burma, and the United States are parties to the Convention.

Prior to the events in Rakhine State, the United States had maintained several types of restrictions on relations with Burma, including

- restrictions on the issuance of visas to Burmese government and military officials;
- limits on bilateral and multilateral economic assistance; and
- prohibition on the sale of U.S. military equipment.[23]

In addition, Section 7043(a)(1)(B) of the Consolidated Appropriations Act, 2018 (P.L. 115-141) stated that FY2018 bilateral economic assistance

> (ix) may not be made available to any individual or organization if the Secretary of State has credible information that such individual or organization has committed a gross violation of human rights, including against Rohingya and other minority groups, or that advocates violence against ethnic or religious groups or individuals in Burma; and
>
> (x) may not be made available to any organization or entity controlled by the armed forces of Burma.

Section 7043(a)(4)(A) prohibited the obligation of 15% of the Economic Support Fund for Burma "until the Secretary of State certifies and reports to the Committees on Appropriations that the Government of Burma—

> (i) has terminated military cooperation with North Korea;
>
> (ii) is respecting human rights and the rule of law, including the arrest and prosecution of journalists and two Kachin pastors in December 2016;
>
> (iii) is revising, updating, or repealing colonial-era and other oppressive laws that are used in such prosecutions, including the Unlawful Associations Act; and

[22] The "Convention on the Prevention and Punishment of the Crime of Genocide" was passed on December 9, 1948. The United States ratified the convention on November 4, 1988.

[23] For more details about the restrictions on U.S. relations with Burma, see CRS Report R44570, *U.S. Restrictions on Relations with Burma*, by Michael F. Martin.

(iv) is credibly investigating the murder of U Ko Ni, and is taking steps to protect and defend the security and safety of other activists."

Section 7043(a)(4)(B) allows the Secretary of State to waive the certification requirement if the Secretary determines that doing so is "in the national interest."

Other restrictions on relations are currently being waived under the authority of presidential executive orders or presidential determinations. These include

- a general ban on the import of goods from Burma;
- a ban on the import of Burmese jadeite and rubies, and products containing Burmese jadeite and rubies;
- a ban on the import of goods from certain Burmese companies;
- the "freezing" of the assets of certain Burmese nationals;
- a prohibition on providing financial services to certain Burmese nationals;
- restrictions on U.S. investments in Burma;
- restrictions on bilateral assistance to Burma; and
- restrictions on U.S. support for multilateral assistance to Burma.[24]

In addition, former President George H.W. Bush suspended Burma's benefits under the U.S. Generalized Systems of Preferences (GSP) program on April 13, 1989, as part of Presidential Proclamation 5955.[25] Former President Obama restored Burma's GSP benefits on September 14, 2016, via Presidential Proclamation 9492.[26] Any of these waived past restrictions, including the suspension of GSP benefits, could be reinstated by President Trump without the involvement of Congress.

Options for Congress

Congress has various options on how it may respond to the alleged human rights violations in Burma. Legislation has been introduced to modify U.S. policy in Burma, in part to address the alleged human rights abuses. In addition, several pending House and Senate resolutions express the views of each chamber on the allegations of genocide and crimes against humanity in Rakhine State, and how the Trump Administration should respond to those allegations. Over the last few years, Congress has also included Burma-related provisions in pending appropriation legislation to shape U.S. policy in Burma. Congress has also demonstrated its ongoing interest in Burma, and the importance of U.S. policy in Burma, by holding several hearings to learn more about developments in Burma and discuss policy options. Several congressional delegations have traveled to Bangladesh and Burma to directly investigate the situation and express to Burma's leaders the importance of the human rights violations allegations to Congress.

Whatever additional actions or measures, if any, Congress takes to address the alleged human rights violations in Burma will likely be influenced by other elements of bilateral relations, as well as regional concerns such as China's growing influence in Southeast Asia. Some Members

[24] Many of these restrictions are currently waived by Executive Order 13742, issued by former President Obama on October 7, 2016. The ban on investment in Burma was lifted on July 11, 2012, pursuant to Section 570(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997 (P.L. 104-208).

[25] Office of the President, "Proclamation 5955—Amending the Generalized System of Preferences," April 13, 1989.

[26] Office of the President, "Proclamation 9492—To Modify Duty-Free Treatment Under the Generalized System of Preferences," September 14, 2016.

of Congress and the Trump Administration view Burma as undergoing a fragile and difficult transition from an oppressive military dictatorship to a potentially democratic, civilian-run federated state, and are concerned that imposing additional restrictions on relations with Burma could undermine that transition. Other Members of Congress and Administration officials see the human rights abuses in Kachin, Karen, Rakhine, and Shan States as proof that the Tatmadaw's leaders have no intention of permitting such a transition to occur.

Legislation

In the 115th Congress, there are two active bills pertaining to U.S. policy in Burma with provisions related to the alleged human rights violations—the Burma Unified through Rigorous Military Accountability (BURMA) Act of 2018 (H.R. 5819) and the Burma Human Rights and Freedom Act of 2018 (S. 2060).[27] Both bills would impose a visa ban on senior military officers involved in human rights abuses in Burma, place new restrictions on security assistance and military cooperation, and require U.S. opposition to international financial institution (IFI) loans to Burma if the project involves an enterprise owned or directly or indirectly controlled by the military of Burma. S. 2060 also requires the President to review Burma's eligibility for the Generalized System of Preferences (GSP) program.

The House Committee on Foreign Affairs, on May 17, 2018, ordered H.R. 5819 to be reported favorably out of committee, with an amendment in the nature of a substitute, and agreed to seek consideration under suspension of the rules. The Senate Committee on Foreign Relations reported S. 2060 favorably out of committee on February 12, 2018, with an amendment in the nature of a substitute; it is awaiting floor action by the Senate.

Resolutions

Ten separate resolutions in the House or Senate pertaining to Burma have been introduced during the 115th Congress; to date one has passed.[28] H.Res. 1091 would call on the Burmese government to release Burmese journalists Kyaw Soe Oo and Wa Lone, who were sentenced to seven years in prison for possessing sensitive documents pertaining to the killing of Rohingya in Inn Din Village, and would urge "the Secretary of State to make a determination based on available evidence as to whether or not the actions by the Burmese military in northern Rakhine State in 2017 constitute crimes against humanity, genocide, or other crimes." The resolution would also call on the President "to impose additional sanctions on senior members of the Burmese military and security forces who are responsible for human rights abuses, including Tatmadaw Commander-In-Chief Min Aung Hliang," and call on the United States Ambassador to the United Nations "to work to refer the atrocities against the Rohingya to the appropriate international mechanisms for prosecution."

Appropriations Provisions

The 115th Congress has considered and, in some cases, included provisions pertaining to U.S. policy in various appropriations legislation. As noted above, the Consolidated Appropriations Act, 2017 (P.L. 115-31) and the Consolidated Appropriations Act, 2018 (P.L. 115-141) placed

[27] A third bill, the BURMA Act of 2017 (H.R. 4223) was effectively superseded by H.R. 5819.

[28] H.Res. 311, to commemorate 40 years of relations between the United States and the Association of Southeast Asian Nations (ASEAN), was approved by the House of Representatives on September 27, 2017.

restrictions on the provision of bilateral economic assistance, international security assistance, and multilateral assistance to Burma.

Both the House and Senate committee versions of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 would continue the practice of placing restrictions on relations with Burma. H.R. 6385 includes Section 7043(a) that would provide bilateral economic assistance funds for "programs to investigate and document allegations of ethnic cleansing and other gross violations of human rights committed against the Rohingya people in Rakhine state," and "programs to investigate and document allegations of gross violations of human rights committed in Burma, particularly in areas of conflict." The legislation would also limit the use of such funds, stating that they

- may not be made available to any individual or organization if the Secretary of State has credible information that such individual or organization has committed a gross violation of human rights, including against Rohingya and other minority groups, or that advocates violence against ethnic or religious groups or individuals in Burma;
- may not be made available to any organization or entity controlled by the armed forces of Burma; and
- may only be made available for programs to support the return of Rohingya, Karen, and other displaced persons to their locations of origin or preference in Burma if such returns are voluntary and consistent with international law.

H.R. 6385 would also prohibit the use of international security assistance funds for International Military Education and Training (IMET) and Foreign Military Financing (FMF) Program assistance to Burma.

S. 3108 has in its Section 7043(a) similar language to provide bilateral economic assistance to investigate and document alleged human rights violations against the Rohingya in Rakhine State, as well as to persons in other parts of Burma. The legislation contains the same limitations on bilateral economic assistance funds and international security funds as in H.R. 6385.

Hearings

Since September 2017, Congress has held several hearings on Burma, including the following:

- A House Committee on Foreign Affairs hearing on September 26, 2018, entitled, "Genocide Against the Burmese Rohingya."[29]
- A House Committee on Foreign Affairs hearing on October 4, 2017, entitled, "The Rohingya Crisis: U.S. Response to the Tragedy in Burma."[30]
- A House Committee on Foreign Affairs Subcommittee on Asia and the Pacific hearing on September 27, 2017, entitled, "Burma's Brutal Campaign Against the Rohingya."[31]

[29] U.S. Congress, House Committee on Foreign Affairs, *Genocide Against the Burmese Rohingya*, 115th Cong., 2nd sess., September 26, 2018.

[30] U.S. Congress, House Committee on Foreign Affairs, *The Rohingya Crisis: U.S. Response to the Tragedy in Burma*, 115th Cong., 1st sess., October 5, 2017.

[31] U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Asia and the Pacific, *Burma's Brutal Campaign Against the Rohingya*, 115th Cong., 1st sess., September 27, 2017.

- A Senate Committee on Foreign Relations hearing on October 24, 2017, entitled, "Assessing U.S. Policy Towards Burma: Geopolitical, Economic, and Humanitarian Considerations."[32]
- A Tom Lantos Human Rights Commission hearing on July 25, 2018, entitled, "Victims' Rights in Burma."[33]

At all of these hearings, most of the Members of Congress present indicated that they view the acts of Burma's security forces in Rakhine State and elsewhere in Burma as either genocide or crimes against humanity. Many also stated that the Trump Administration's response to date has been inadequate given the severity of the human rights abuses.

Congressional Delegations

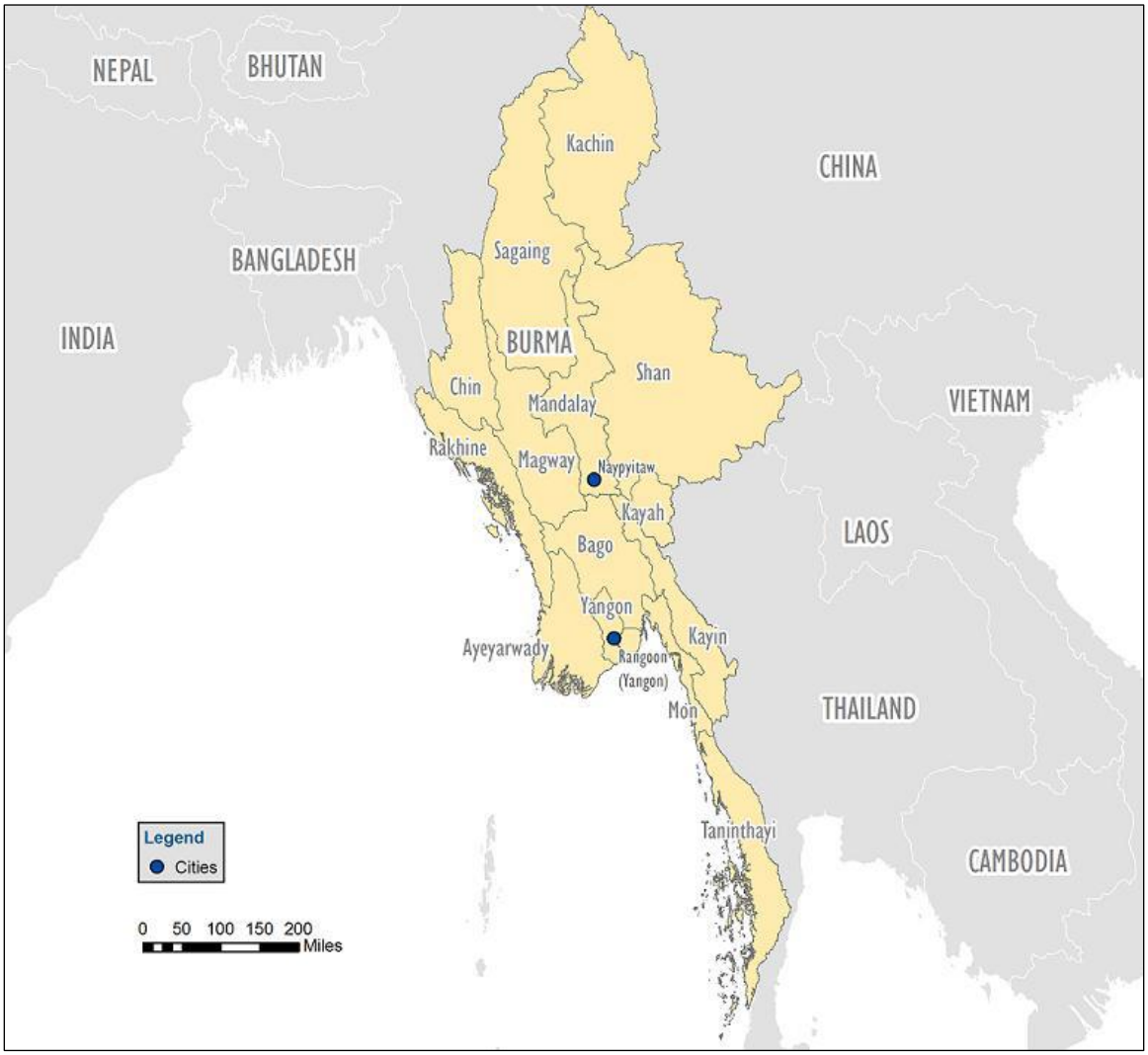
Congress may also consider sending congressional delegations and staff delegations to Bangladesh and Burma to investigate the alleged human rights violations and ascertain the views of the alleged victims on what forms of accountability should be pursued. These delegations could also meet with Burmese government officials and Burmese military leaders to hear their perspectives of the human rights allegations, and to express the delegation's opinion on what measures the Burmese government and military should make to investigate and possibly prosecute those individuals, military units, and organizations that have been accused of committing genocide, crimes against humanity, and war crimes in Burma.

[32] U.S. Congress, Senate Committee on Foreign Relations, *Assessing U.S. Policy Towards Burma: Geopolitical, Economic, and Humanitarian Considerations*, 115th Cong., 1st sess., October 24, 2017.

[33] U.S. Congress, Tom Lantos Human Rights Commission, *Victims' Rights in Burma*, 115th Cong., 2nd sess., July 25, 2018.

Appendix. Map of Burma

Figure A-1. Map of Burma (Myanmar)



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