



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **CONFLICTING REALITIES: REFORM, REPRESSION AND HUMAN RIGHTS IN BURMA**

## **Report of the Standing Committee on Foreign Affairs and International Development**

**Dean Allison  
Chair**

### **Subcommittee on International Human Rights**

**Scott Reid  
Chair**

**JUNE 2013**

**41st PARLIAMENT, 1st SESSION**

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# **THE STANDING COMMITTEE ON FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT**

has the honour to present its

## **TWELFTH REPORT**

Pursuant to its mandate under Standing Order 108(1) and (2) the Subcommittee on International Human Rights has studied the Human Rights Situation in Burma and has reported to the Committee.

Your Committee has adopted the report, which reads as follows:



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# CONFLICTING REALITIES: REFORM, REPRESSION AND HUMAN RIGHTS IN BURMA

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## EXECUTIVE SUMMARY

### A. The Challenge

Canada and the world have reacted to the changes that have occurred in Burma over the past year with cautious optimism. However, as the witnesses who appeared before the Subcommittee stressed, Burma is emerging from 60 years of repressive military rule, characterized by grave human rights violations, an absence of the rule of law, persistent internal armed conflicts, and low levels of human and economic development. Mr. Greg Giokas, Director General, South, Southeast Asia and Oceania at the Department of Foreign Affairs and International Trade (DFAIT), underlined the fact that progress on human rights in Burma was unlikely to be entirely smooth and cannot be expected to happen overnight.<sup>1</sup> Developing the capacity within Burma to implement proposed reforms remains a major challenge. The Subcommittee agrees with Mr. Giokas' assessment that, on the part of reformers within Burma's civilian government, "this is a very sincere attempt to open up the country to democratic institutions to ensure prosperity and stability" for the people of Burma.<sup>2</sup>

At the same time, the Subcommittee believes this optimism needs to be tempered by continued vigilance on human rights issues. As Daw Aung San Suu Kyi,<sup>3</sup> Burma's pro-democracy icon and leader of the National League for Democracy (NLD), stated in April, if one were to measure Burma's democratic development on a scale of 1 to 10, the country's recent reforms have put it "on the way to one."<sup>4</sup> At this point, the Subcommittee does not believe that Burma's modest steps toward democratization are irreversible. Whether these recent reforms become entrenched and whether the country's human rights record continues to improve in the coming years remain to be seen.

In this spirit, the Subcommittee's report is intended to recognize the important achievements brought about as part of Burma's reform process, in particular the election of Daw Aung San Suu Kyi and other candidates from the NLD as Members of Parliament (MP) this April. At the same time, we wish to warn against hasty or irresponsible optimism and to sound the alarm about the lack of civilian control over the Burmese military, which has very serious human rights and humanitarian consequences. Recent progress has not

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1 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas, Director General, South, Southeast Asia and Oceania, Department of Foreign Affairs and International Trade [DFAIT]).

2 Ibid.

3 "Daw" is a title of respect used in Burmese to precede a woman's name.

4 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din, Executive Director, U.S. Campaign for Burma), quoting Daw Aung San Suu Kyi. Daw Aung San Suu Kyi's quote is also reported in Zoya Phan, "[Aung San Suu Kyi's victory does not bring Burma freedom](#)," *The Guardian*, 2 April 2012.

yet extended to all parts of the country, nor to all of the people of Burma. Going forward, we believe that it is important for the international community to look beyond central Burma in assessing the depth and sincerity of the country's reforms. Respect by the Burmese government and military for human rights and international law in Burma's ethnic minority areas will be the real measure of change in the country and should inform any decision regarding the permanent removal of sanctions by Canada.

## **B. Positive Developments**

Since Burma's 2010 general election, the Burmese government has begun a program of democratic reform. A new, civilian president has taken the helm, and Burma's pro-democracy leader and most famous prisoner of conscience, Daw Aung San Suu Kyi, was released from house arrest shortly after the 2010 general election and has since been free to travel within Burma and abroad. Remarkably, in elections that appeared to be largely free of violence and intimidation, she was elected as a MP in April 2012 by-elections, along with 42 other members of the NLD. Critical legal reforms are underway or under consideration, many political prisoners have been released, restrictions on the media have been loosened, there is greater tolerance for protest and expressions of dissent, and the government is actively trying to reform its economy and seeking foreign cooperation to improve the lives of its people.<sup>5</sup>

Although these recent reforms in Burma should be approached with caution, the Subcommittee wishes to acknowledge the very real changes that have occurred in the central part of the country in the past two years. While these changes are relatively modest in terms of bringing Burma into compliance with international human rights norms, the Subcommittee recognizes that they are very significant when viewed in light of Burma's authoritarian past. We sincerely hope that the Government of Burma will continue down this path toward democratization and extend recent reforms to Burma's border regions.

## **C. Ongoing Concerns**

Despite the progress that has been made in Burma's major cities like Rangoon and Mandalay, Burma still has very a long way to go in terms of respect for human rights. Key problems identified by witnesses of particular concern to the Subcommittee include the following:

- a flawed constitution ensures that the civilian government has little or no control over the military;
- reforms in central Burma have not yet reached the country's border regions, in particular in areas such as Kachin State, where different ethnic groups have been at war with the central government for decades;

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5 *Evidence*, *ibid.* (Mr. Aung Din). 45 seats were contested in the April 2012 by-elections and the NLD won 43 out of the 44 ridings in which they ran candidates.



- a program to reform the judiciary and guarantee its independence is needed urgently;
- the rule of law and civilian institutions remain weak;
- restrictions persist on the exercise of individual human rights such as freedom of expression, association and assembly, and forced labour remains an ongoing problem;
- political prisoners are still being held in sub-standard conditions at prisons and labour camps around the country, and other individuals continue to be arbitrarily detained, subject to torture or ill-treatment;
- land-grabbing is a growing problem;
- Burma lacks the necessary regulatory framework to ensure economic development, including in the extractive resource sector, benefits the people of Burma, and corruption remains endemic.

Witnesses also drew the Subcommittee's attention to the role that industrial, mining and hydro power projects have played in fuelling human rights violations and abuses, as well as armed conflict in Burma's ethnic minority areas. These projects have generally been implemented without consulting local communities, on land confiscated from local people without just compensation. Moreover, these projects generally have failed to provide jobs or other social or economic benefits to local residents. Instead, benefits accrue almost exclusively to the military, or to certain powerful individuals with close connections to the central government. Much of the hydro power generated and many of the resources extracted in Burma are sent abroad, benefitting people in foreign countries such as China. In the long term, the Subcommittee believes that Burma's progress toward democracy and respect for universal human rights can only be secured if local communities and ethnic minority groups have significant input into the commencement and design of infrastructure and extractive resource projects.

Witnesses consistently told the Subcommittee that long-standing ethnic grievances in Burma, which have fuelled decades of internal armed conflict, are rooted in historic political disenfranchisement, perceptions of injustice, and widespread discrimination.<sup>6</sup> We are convinced that it is vital for the people of all ethnic and religious groups in Burma, including the Rohingya in Rakhine State, to be included in the democratic reform process.

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6 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries, Founder and Director, Project L.A.M.B.S. International); [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin, Chairman, Director General, Arakan Rohingya Union, The Burmese Rohingya Association of North America); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis, Director, Burma Project, Physicians for Human Rights); [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din, Executive Director, U.S. Campaign for Burma).

The Subcommittee has heard eye-witness accounts of serious human rights violations and abuses that continue in the country's border regions, as well as violations of the laws of war (known as international humanitarian law). Education services in these regions are woefully inadequate and are often provided in a manner that is discriminatory or violates other individual rights. We received compelling evidence about the situation in Kachin and Chin states to the northeast and northwest of the country, respectively, in regions populated by the Karen ethnic group in the east and south of Burma, and in Rakhine State to the southwest. In all of these regions, as well as in some other border areas dominated by other ethnic minority groups, people reportedly continue to face a program of religious and ethnic persecution undertaken by the Burmese military, which is characterized by war crimes and gross violations and abuses of individual human rights.

Witnesses also told the Subcommittee that thousands of people have been displaced in these regions and are now living in desperate conditions in internally displaced persons camps within Burma, or in refugee camps outside the country. Although these displaced persons are in desperate need of humanitarian assistance, sufficient humanitarian access has been denied to the United Nations and other international organizations.<sup>7</sup> This must change.

A negotiated political settlement, based on mutual respect and recognition of the aspirations of all of Burma's ethnic groups will be necessary to ensure that recent democratic reforms are not reversed by continuing armed conflict and violence. Ensuring that ethnic minority groups and local communities receive a fair share of the benefits from the country's economic development will be a critical challenge for the Burmese government as it moves to entrench democratic reforms and human rights protections.

The Subcommittee believes strongly that sustainable progress towards national reconciliation and democracy in Burma will only be achieved if there is an independent and impartial investigation of alleged past and continuing serious violations of international humanitarian law and gross violations and abuses of internationally recognized human rights. Victims have a right to know the truth about what has happened to them, and Burmese society as a whole must come to terms with the violence, discrimination and racism that have marred its past. In the Subcommittee's view, these investigations must be accompanied by a credible accountability process.

#### **D. Canada's Role**

The Subcommittee welcomes the reforms recently undertaken in Burma. As parliamentarians, we are keenly aware of the important role that the legislature plays in democratic governance, and we wish to express our support for Foreign Affairs Minister Baird's proposal for inter-parliamentary exchanges and capacity building efforts involving Canadian and Burmese parliamentarians.

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<sup>7</sup> [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

Witnesses told the Subcommittee that Canada's tough economic sanctions contributed to the Burmese military's decision to move towards democratic reform. We note with approval that Canada has expressed a willingness to reimpose sanctions if the promised reforms do not materialize. The 2015 elections will be a key test of the sincerity of these reforms, as will progress towards a negotiated political solution to armed conflicts with ethnic minority groups and the respect for and protection of the human rights of ethnic minority groups in Burma, including the Rohingya. Such progress should include a resolution of their citizenship status in accordance with international standards. We note that in order to achieve these goals, Burma will need to cease its long-standing practice of discriminating against its own people on the basis of their religion, ethnicity and political opinions. For democratic reforms to be successful in the longterm, the country must also develop and entrench the rule of law.

It is the opinion of the Subcommittee that the Government of Canada needs to continue to press the Burmese government to meet international human rights standards. We believe that Canada should ensure that its remaining economic sanctions are up-to-date and appropriate, and publicly communicate that Burma's progress on human rights issues will be taken into account in Canada's determination as to whether and when sanctions may be permanently lifted.

## INTRODUCTION

### A. The Subcommittee's Study in Context

For many years, the military junta that ruled Burma<sup>8</sup> was widely regarded as one of the world's worst human rights violators. However, since President Thein Sein took office in April 2011, a remarkable shift has occurred in the country. The Burmese government has embarked on an ambitious program of democratic reform, releasing many political prisoners, including pro-democracy icon Daw Aung San Suu Kyi, loosening restrictions on the media, and holding parliamentary by-elections in April 2012, which were won overwhelmingly by the opposition National League for Democracy (NLD).

In a motion of 31 January 2012, the Subcommittee agreed to study the human rights situation in Burma.<sup>9</sup> The Subcommittee heard from witnesses and received written submissions as part of this study. The Subcommittee invited the Ambassador of Burma to Canada to appear before it. While His Excellency declined to do so, the Chair of the Subcommittee was pleased to receive correspondence from him. Based on the evidence it received and on publicly available information, the Subcommittee agrees to report the following findings and recommendations to the House of Commons Standing Committee on Foreign Affairs and International Development.

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8 The Subcommittee has chosen to use the name "Burma," rather than "Myanmar" throughout this report, consistent with Government of Canada practice. The Subcommittee notes that Daw Aung San Suu Kyi also refers to her country as Burma. A discussion of some of the debates around the name change is included in the written submission of Prof. William Schabas, *Crimes Against Humanity in Western Burma: The Situation of the Rohingyas*, Irish Centre for Human Rights, National University of Ireland Galway, 2010, pp. 20-21.

9 [Extract from Minutes of Proceedings](#), Meeting No. 18, 31 January 2012.

This report reviews the progress that Burma has made in regards to democratic governance and human rights since the commencement of reforms following the 2010 general elections. The positive developments include clear steps toward improving democratic governance, the release of large numbers of political prisoners, greater respect for the rights of freedom of expression, association and assembly and clear moves toward reducing the prevalence of forced labour in the country. Some progress has also been made in relation to the resolution of long-running armed conflicts in the country.

The report then considers a number of human rights concerns brought to the Subcommittee's attention by witnesses. Civilian control of the military and democratic governance remains weak and protections for civil and political rights as well as economic, social and cultural rights remain tenuous. The continued detention of political prisoners and human rights violations in the context of large-scale development projects are among the Subcommittee's key concerns. Witnesses also stressed to the Subcommittee that reforms in central Burma have yet to benefit the ethnic minority groups who live in the country's border regions. According to witnesses, these peoples have been subject to massive, state-sponsored discrimination on the basis of ethnicity and religion for decades. In areas affected by internal armed conflicts, war crimes reportedly remain a grave and persistent problem. Communal violence in southwestern Burma has recently drawn attention to the plight of the Rohingya people, one of the most persecuted minorities on earth.

Finally, the report gives a short overview of Canadian human rights, aid and sanctions policy in respect of Burma.

The challenge for the Subcommittee in drafting this report has been to acknowledge, welcome and express support for the significant progress made by the Government of Burma in its transition to democracy. At the same time, the Subcommittee is deeply concerned by ongoing reports of serious violations of international law in the country. Left unaddressed, these violations may undermine Burma's reforms and prevent the government and the people of Burma from realizing their democratic and political aspirations in a country where human rights are fully respected and protected.

**Figure 1: Location of Burma in Southeast Asia**



Source: CIA World Factbook: [Burma](#).

## BURMA: A BRIEF OVERVIEW

During the Subcommittee's hearings, witnesses described how Burma's history, geography and ethnic makeup have had an impact on its governance and on respect for human rights in the country. Witnesses also stressed that the current reform process must be understood in light of Burma's authoritarian past and its ethnic and religious diversity. Mr. Giokas from DFAIT provided a short overview of some of these factors. He explained:

Burma is a country of some 60 million people, located at the crossroads of Asia, bordering India, China, and Thailand. The Burman majority<sup>10</sup> is predominantly Buddhist, but the government recognizes 135 national races, which generally fall under seven major ethnic groups. These ethnic groups predominate in Burma's rugged border areas and collectively constitute roughly 40% of the country's population, while occupying as much as 60% of its territory.

Burma is approximately the size of Alberta, but its territory includes almost 2,000 kilometres of coastline and numerous islands in the Andaman Sea. A British colony until the late 1940s, it is blessed with a wide range of natural resources, including timber, precious gems and minerals, and energy in the form of natural gas deposits and hydroelectricity potential.

Despite these riches, decades of conflict, mainly in the ethnic-dominated border regions, and oppressive military rule have left the Burmese people among the poorest in the region. According to the latest UNDP [United Nations Development Programme] data, Burma ranks 149 out of 187 countries on the Human Development Index. It is the least developed country in the Association of Southeast Asian Nations. The average life expectancy is just over 65 years.<sup>11</sup>

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10 The word "Burman" refers to members of the majority ethnic group in Burma. The term "Burman" should not be confused with the term "Burmese" which refers to persons from the country of Burma, regardless of ethnicity.

11 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

Figure 2: Map of Burma Showing Political Divisions



Base 803220A1 (G00261) 1-07

Source: United States Central Intelligence Agency (CIA), Maps: [Burma](#).

From 1962 until 2010, Burma was ruled by a military dictatorship. Over the last 25 years, its history has been particularly turbulent. Widespread pro-democracy protests that took place in 1988 were met by a violent military crackdown. On 8 August 1988, the military fired on unarmed demonstrators, killing more than 1,000 protestors. In September 1988, the military suppressed ongoing protests, killing thousands more and leading many to flee or leave the country. A new ruling junta called the State Law and Order Restoration Council (SLORC) was established, deposing the previous military government led by General Ne Win and suspending the constitution. The SLORC ruled by martial law until elections were held in May 1990. Daw Aung San Suu Kyi's NLD party won an overwhelming victory; however, the ruling junta refused to honour the results and embarked on a campaign of repression, imprisoning many political activists, including Daw Suu Kyi.<sup>12</sup>

In 2007, large public protests occurred in response to the government's decision to increase fuel prices without warning. The protests expanded in September 2007, with Buddhist monks taking a leading role. The protest movement became known as the "saffron revolution" after the colour of the monk's robes. The military government launched a brutal crackdown, attacking peaceful demonstrators and firing live rounds in crowds. Nighttime raids rounded up thousands of monks and civilians, many of whom were later imprisoned. Internet activity was shut down throughout the country.<sup>13</sup>

In May 2008, a massive cyclone, Nargis, struck the Burmese coast, leaving an estimated 140,000 people dead and many more displaced or otherwise affected. The Burmese military government, unwilling or unable to provide adequate relief itself, nevertheless initially refused to permit access by international humanitarian agencies and delayed the distribution of international relief supplies.<sup>14</sup> Also in 2008, the military government drafted a new constitution that provided for the creation of an elected civilian government, but also entrenched overall military control. The constitution was eventually "approved" in a 2008 referendum that was considered neither free nor fair by the international community.

In response to the massive human rights violations committed by the Burmese junta over the last two decades, Canada and several other Western countries imposed a range of measures, including diplomatic and economic sanctions. For example, Canada suspended development assistance following the 1988 crackdown on student protestors, excluded Burma from the least-developed country market access initiative, and, after

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12 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

13 Paulo Sérgio Pinheiro, [Report of the Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, mandated by resolution S-5/1 adopted by the Human Rights Council at its fifth Special Session](#), 7 December 2007, UN Doc. A/HRC/6/14.

14 See, e.g.: UN Office for the Coordination of Humanitarian Affairs [OCHA], Myanmar: Cyclone Nargis OCHA Situation Reports Nos. [1](#), [4](#), [7](#), [34](#) of 4, 7 and 10 May 2008 and 23 June 2008, respectively. The Government's response is discussed in International Crisis Group, [Burma/Myanmar After Nargis: Time to Normalise Aid Relations](#), 20 October 2008.



1997, banned virtually all exports to Burma.<sup>15</sup> In 2007, following the repression of the saffron revolution, Canada imposed a comprehensive ban on imports, exports and investment.<sup>16</sup> These sanctions cut off virtually all trade between Burma and Canada.<sup>17</sup>

## A. Applicable Human Rights Framework

The Subcommittee begins by observing that the [Charter of the United Nations](#) requires all states to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.<sup>18</sup> Given its authoritarian past, however, it is perhaps not surprising that Burma has ratified relatively few universal human rights conventions. The Subcommittee has, therefore, considered Burma's human rights record in relation to the international legal obligations contained in human rights treaties that both Burma and Canada have ratified. In addition, the Subcommittee has looked to the [Universal Declaration of Human Rights](#) as an important source of human rights standards applicable to Burma. The treaties discussed below and the [Universal Declaration of Human Rights](#) provide the benchmarks against which each country's overall human rights record is assessed as part of its Universal Periodic Review by the UN Human Rights Council, a process that aims to periodically review the human rights record of every state that is a member of the United Nations.

Burma has binding international human rights obligations under the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), the [Convention on the Rights of the Child](#) (CRC) and the [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#) (CRC-OP-SC), as well as the [Convention on the Prevention and Punishment of the Crime of Genocide](#).

In relation to human trafficking and human smuggling, Burma is also bound by obligations under the [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](#)<sup>19</sup> and the [Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime](#).

Finally, Burma has ratified two of the fundamental conventions of the International Labour Organization (ILO), a UN specialized agency with a mandate to draw up and oversee international labour standards, namely the [Forced Labour Convention](#) (No. 29) of 1930 and the [Freedom of Association and Protection of the Right to Organize Convention](#)

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15 Export controls were put in place when Burma was added to the [Area Control List](#), SOR/81-543 under the [Export and Import Permits Act](#), R.S.C., 1985, c. E-19. Burma was removed from the [Area Control List by Order](#) of the Governor in Council on 24 April 2012.

16 These measures were taken under the [Special Economic Measures Act](#), S.C. 1992, c. 17.

17 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

18 [Charter of the United Nations](#), art. 1.3.

19 Also known as the "Palermo Protocol," or the "Trafficking Protocol," this treaty is a protocol to the [United Nations Convention against Transnational Organized Crime](#), to which Burma is also a party.

(No. 87) of 1948. As a result, Burma must act in accordance with the obligations contained in these treaties.

Notably, Burma has not ratified either of the two most important universal human rights treaties, the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), nor has it ratified the [Convention on the Reduction of Statelessness](#).<sup>20</sup> The Subcommittee hopes that as Burma embarks on this new era of reform, its government and parliament will give serious consideration to ratifying these and other core international human rights treaties, the [Convention and Protocol relating to the status of refugees](#), the [Convention on the Reduction of Statelessness](#), as well as bringing its domestic legislation into compliance with the obligations contained therein.

## THE HUMAN RIGHTS SITUATION IN BURMA: POSITIVE DEVELOPMENTS

Since the general election in November 2010, the Burmese government has instituted a number of reforms that have led to improvements in the country's human rights situation. On 1 April 2011, the new, nominally civilian government led by President Thein Sein — who was appointed as the head of the Union Solidarity and Development Party (USDP) by the former leader of the military junta — took office and the 2008 constitution came into effect.<sup>21</sup> The Subcommittee was told that the reform process in Burma “is just getting started. Everything needs to be discussed, and the standards, phases, measurable aspects and so on need to be determined.”<sup>22</sup> That said, representatives from DFAIT stated that they believe “that this is a very sincere attempt to open up the country to democratic institutions to ensure prosperity and stability for their people.”<sup>23</sup>

Witnesses advised the Subcommittee to be hopeful but cautious about democracy and human rights in Burma. Mr. James Humphries, Founder and Director of Project L.A.M.B.S. International, told us that General Than Shwe, Burma's former military dictator, is still a power behind the scenes and the country's democratic reforms are not yet irreversible.<sup>24</sup>

Every witness who appeared before the Subcommittee recognized and described the progress made by the Government of Burma with respect to certain civil and political rights, and commented on the apparent political will to work towards improving respect for social, economic and cultural rights in Burma. Many praised Canada for playing a

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20 As part of the Universal Periodic Review Process, the [Convention on the Status of Stateless Persons](#) is considered for those states that have ratified it. Neither Canada nor Burma has ratified this treaty.

21 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

22 Ibid.

23 Ibid.

24 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

role in bringing about this positive transformation through the imposition of tough economic sanctions.<sup>25</sup>

In the Subcommittee's view, the challenge for the reformist elements within the Government of Burma is to ensure the effective and universal implementation of democratic, institutional, legal, administrative and policy reforms so that all people in the country can fully enjoy their human rights.

## **A. Progress in Civil and Political Rights**

### **1. Democratic Governance**

#### **a. Elections**

Burma has recently begun moving towards greater democracy and political pluralism. Witnesses consistently welcomed these positive advances in their testimony.<sup>26</sup> As parliamentarians, we are keenly aware that the only legitimate basis for the authority of government is the will of the people, freely expressed through free and fair elections in which all citizens have an equal vote.<sup>27</sup> The Subcommittee wishes to emphasize that this principle is considered to be so indispensable to the protection of individual human rights that it has been enshrined in the Universal Declaration of Human Rights.

Democratic participation in governance through free and fair elections is the cornerstone of democracy. Burma held by-elections for 45 seats in the Union Parliament on 1 April 2012. The opposition NLD contested 44 of the 45 open seats, winning in all but one riding. Daw Aung San Suu Kyi won her riding, and she, along with the other NLD MPs now hold 7% of the seats in the Burmese Parliament. Several countries, including Canada, sent small delegations to observe the by-elections.<sup>28</sup>

Given Burma's troubled history, the Subcommittee was concerned about the by-election process, in particular whether they were free and fair. In response, Mr. Giokas told the Subcommittee that the international observers were not given the full standard of access that a proper international election-monitoring mission normally would have, so it was not possible to certify whether the election was fully free and fair. On the other hand, he told members that although there were some concerns,

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25 Ibid.

26 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin).

27 [Universal Declaration of Human Rights](#) [UDHR], art. 21.

28 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

[i]f there was election rigging going on of any significant dimension by people who had a stake in rigging those elections, they certainly failed. We had monitors on the ground who reported that it looked fairly good, but they didn't have proper access; they were observers more than monitors. This was not a process that was really scrutinized in great detail by experts in the area of election monitoring.

I think the simple answer to the question is that the results speak for themselves.<sup>29</sup>

The ability of opposition candidates to freely contest these by-elections was seen by Canada and many other western nations as a key indicator of the genuineness of the reform process.<sup>30</sup> Following the election, the Honourable John Baird, Minister of Foreign Affairs, said in a statement that he was “pleased that early reports indicate voting was conducted without violence or overt intimidation” and he “strongly encourage[d] [Burma’s] officials to continue down this path.”<sup>31</sup>

The Subcommittee recalls that the right to participate in the governance of one’s country, either directly or through freely chosen representatives is a fundamental human right.<sup>32</sup> It also agrees with Daw Aung San Suu Kyi that democracy is the only political system worthy of an independent nation.<sup>33</sup> In our view, the April by-elections represent a major positive step for Burma on the path to democracy, but it must also be noted that the country still has a long way to go. The Subcommittee considers that Burma’s 2015 general elections will provide a critical test for the durability and sincerity of Burma’s reform process.

## **b. Democratic Institutions**

Political systems, institutions and practices have a significant impact on a country’s ability and willingness to respect, protect and ensure the human rights of all those within its jurisdiction. Hence, in the Subcommittee’s view, at the heart of reforms in Burma lies the restoration of strong and inclusive parliamentary institutions that can respond to the diverse aspirations of all people in the country.

A significant step toward reform came in May 2012, when Daw Aung San Suu Kyi and other members of the NLD took their seats in the Burmese Parliament after having been elected in the April “historic by-elections.”<sup>34</sup> However in doing so, these same members rightfully expressed reservations about the wording of the oath of office requiring them to safeguard the current Burmese constitution, which ensures the Burmese military’s

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29 [Ibid.](#)

30 DFAIT, “[Canada Welcomes Progress, Encourages Continued Reforms in Burma](#),” News release, 8 March 2012.

31 DFAIT, “[Minister Baird Makes Statement on Burma’s By-elections](#),” News release, 2 April 2012.

32 UDHR, art. 21(1).

33 British Broadcasting Corporation (BBC), “[Aung San Suu Kyi addresses Parliament](#),” 21 June 2012.

34 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

ultimate control over the country's government — a tenet of the constitution that the party wishes to see changed.<sup>35</sup>

The Subcommittee was told that there are encouraging signs that MPs from all parties in the Burmese Parliament are demonstrating a willingness to engage in debate and implement democratic legislation. Mr. Giokas explained that in Parliament “[f]or the first time ministers are answering questions on fundamental issues of poverty alleviation, principles of freedom and justice.”<sup>36</sup> After hearing from Mr. Giokas, the Subcommittee has followed developments in Burma's Parliament with interest and members are heartened by some of the progress they have seen. For example, media reports indicate that the Burmese Union Parliament has recently established a rule of law committee, chaired by Daw Aung San Suu Kyi.<sup>37</sup> The *New Light of Myanmar*, the official state newspaper, recently reported that MPs debated a proposal to make amendments to the country's 1988 non-governmental organization (NGO) registration law, with some MPs reportedly making statements in favour of civil society involvement in social, economic and democratic reforms. The Speaker reportedly ordered a parliamentary committee to consider the issue.<sup>38</sup> The Subcommittee is very encouraged by these signs that the Burmese Parliament is taking steps to address important issues related to democratic reform in the country.

As with any new institution, the Subcommittee recognizes that it may take some time before Burma's Parliament fully settles into its new democratic role. We welcome Minister Baird's suggestion to build ties between Canadian and Burmese parliamentarians. We believe that this type of exchange could provide valuable assistance to Burma's MPs as they grapple with the challenges of democratic governance and the role of elected representatives.

In the long term, the Subcommittee believes that Burma's democracy must rest not on the personal integrity of President Thein Sein, Daw Aung San Suu Kyi or any other individual, but on a strong institutional foundation that includes a functioning, democratic parliament. We hope that Burma's parliamentarians can build a culture of robust and transparent parliamentary debate to help move their country towards democracy. Between now and the Burmese general elections in 2015, the Subcommittee encourages the Government of Canada to continue to promote and support democratic development in Burma.

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35 Ibid.

36 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

37 Min Lwin, “[Suu Kyi to head 'rule of law' committee](#),” *Democratic Voice of Burma*, 8 August 2012; *Eleven Media*, “[Daw Suu's 'Rule of Law Committee' holds first meeting](#),” 14 August 2012.

38 *New Light of Myanmar*, “[Rules lack of practicality and flexibility are to be amended: Pyithu Hluttaw Speaker](#),” 17 August 2012; Nyein Nyein, “[NGO Registration Law to be Drafted](#),” *The Irrawaddy*, 17 August 2012.

## 2. Protection of Human Rights under Burmese Law

The Subcommittee believes that another positive development in Burma has been the extension of constitutional protection, for citizens of Burma, of certain human rights in the 2008 constitution.<sup>39</sup> Mrs. Humphries told the Subcommittee that

The constitution lists many positive rights for the people. For example, included are freedom of speech, freedom of the press, freedom of religion, freedom to travel anywhere in the country, and the enjoyment of equal rights between peoples, with no discrimination allowed. Women too are protected to the extent that they are to have the same rights and salaries as men.<sup>40</sup>

Mr. Giokas also testified that Burma's President, Thein Sein, created a national commission on human rights. In DFAIT's view, this initiative represents another positive step on Burma's road towards democratic reform.<sup>41</sup> The Commission is comprised of 15 members, including civilian academics and civil servants. It is chaired by U Win Mra, who was Burma's Ambassador to the United Nations under the former military junta. The Vice-Chair also formerly held the same position.<sup>42</sup>

The Subcommittee's work on human rights issues in different countries has led it to appreciate the important role that national human rights commissions may play in the protection of individual rights. Indeed, international human rights standards recognize that national human rights commissions have a "potentially crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights."<sup>43</sup> Therefore, the Subcommittee inquired further into the scope of the Human Rights Commission's mandate and the individuals appointed as commissioners. According to Mr. Tomás Ojea Quintana, the United Nations Special Rapporteur on the situation of human rights in Myanmar (Special Rapporteur on human rights in Myanmar), a Presidential Decree established Burma's National Human Rights Commission on 5 September 2011. The Commission has

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39 *Constitution of the Republic of the Union of Myanmar*, 2008 (unofficial English translation), Chapter VIII, Fundamental Rights and Duties of the Citizens (arts. 345-381, subject to revocation by law under art. 382), Chapter IX, Election (esp. arts. 391-395, which provide the right to vote and stand for office, but which also deny the right to vote to certain categories of people, including members of religious orders) and art. 296(a)(i), which guarantees the power of the Supreme Court of the Union to issue the writ of habeas corpus. This writ, at least in theory, allows a court to ascertain the location of an individual who is detained and verify the legality of the individual's detention. The power of the Supreme Court to issue a number of other common law writs that have traditionally been used to review and ensure the legality of government actions is also provided in the same article; however, there is no right to apply for these writs in areas where a state of emergency has been declared. An unofficial [English translation](#) of the Burmese constitution was provided to the Subcommittee by Mr. Humphries.

40 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries, Teacher, Project L.A.M.B.S. International). Concerns about the scope of limits on these rights are discussed in a subsequent section of this report.

41 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

42 Written submission of Inter Pares to the Subcommittee on International Human Rights, 5 September 2012, p. 5.

43 Committee on Economic, Social and Cultural Rights, [General Comment 10: The role of national human rights institutions in the protection of economic, social and cultural rights](#), 1998, UN Doc. E/C.12/1998/25.

a mandate to promote and safeguard the human rights of citizens set out in the 2008 constitution.<sup>44</sup>

The Commission has announced that it will receive and consider complaints from individual citizens, other than matters that are currently under consideration by a court or which have been subject to a judicial decision.<sup>45</sup> In addition, information provided to the United Nations Human Rights Council by the Government of Burma in April 2012 indicates that “with a view to improving prison conditions,” the National Human Rights Commission “not only inspects prisons, but also conducts interviews with prisoners. Its findings, together with appropriate advice and suggestions, are conveyed to the authorities concerned for their consideration.”<sup>46</sup> Given concerns voiced by a number of witnesses in respect of prison conditions in Burma (discussed later in this report) the Subcommittee was particularly pleased to learn of this aspect of the Commission’s mandate. It should be noted that in order to be effective in improving prison conditions, international standards require that the organizations undertaking prison monitoring visits be granted unrestricted access to all places of detention, their installations and facilities, as well as access to all relevant information. Monitoring bodies also must be able to conduct private interviews with persons deprived of their liberty and must be free to choose whom they interview.<sup>47</sup> We hope that Burma’s National Human Rights Commission will conduct its future prison inspections in accordance with such standards.

Although the establishment of the Commission reflects a willingness to protect and promote human rights in Burma, we were told that the Commission faced funding problems because it lacked a legislative or constitutional basis. Indeed, in March 2012, the Burmese Parliament refused the Government’s budget proposal for the Commission on the “grounds that its formation was unconstitutional.”<sup>48</sup> We note that as a result of this situation, the Special Rapporteur on human rights in Myanmar recommended in his March

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44 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 17.

45 Quintana, *ibid.*, para. 17.

46 Burma, [Note verbale dated 12 April 2012 from the Permanent Mission of Myanmar to the United Nations Office and other international organizations in Geneva addressed to the secretariat of the Human Rights Council](#), 18 April 2012, UN Doc. A/HRC/19/G/18, p. 2.

47 See Article 14 of the [Optional Protocol to the Convention Against Torture](#) and the Office of the High Commissioner for Human Rights, *Training Manual on Human Rights Monitoring*, New York, 2001, [Chapter IX](#), paras. 42 and following. When conducting prison monitoring visits, the International Committee of the Red Cross (ICRC) insists that its delegates be able to “tour the premises; talk in private with the detainees of their choice; repeat visits as often as deemed necessary; maintain constructive dialogue with the authorities”: ICRC, [“Visiting Detainees.”](#)

48 Charlie Campbell, “Empowering the Myanmar Human Rights Commission,” *The Irrawaddy*, 9 May 2012, submitted to the Subcommittee by Mr. Aung Din.

2012 report that the government codify the establishment of the Commission “either by a constitutional provision or by a law of Parliament.”<sup>49</sup>

The Subcommittee is heartened by the decision of President Thein Sein to create a national human rights commission and views his decision as a very positive step. As legislators, we also understand the importance of parliamentary scrutiny over the expenditure of public funds. The Subcommittee hopes that the Government of Burma will ensure, as soon as possible, that the commission be provided with an appropriate legal basis that is fully consistent with the UN’s Paris Principles, a set of international standards which aim to ensure that national human rights institutions can operate in an effective, independent and impartial manner.<sup>50</sup> Members note that the commission will need an adequate and appropriate operating budget in order to be effective.

### 3. Release of Political Prisoners

International human rights norms prohibit states from depriving individuals of their liberty for peacefully exercising their internationally protected human rights, including the rights to freedom of religion, expression, assembly or association, or their right to participate in the governance of their country, including through elections. Discriminatory arrest and detention for the purposes of ignoring or refusing to recognize the equal enjoyment of human rights, such as detention on the basis of a person’s ethnicity or political or religious beliefs, is also prohibited. Moreover, international human rights law guarantees to all persons the equal right to a fair and public hearing by an independent and impartial tribunal. In criminal trials, the defendant must be presumed innocent and be able to mount a defence against the charges.<sup>51</sup> The Burmese regime’s detention of large numbers of political dissidents and others imprisoned for political reasons, without a fair trial, has been a concern of Canada and the international community for many years.<sup>52</sup> In this context, witnesses before the Subcommittee highlighted the importance of the Burmese government’s recent releases of political prisoners as part of recent reforms.

On 13 November 2010, within days of the flawed general election, the Burmese government released from house arrest Daw Aung San Suu Kyi, who had spent the better part of the last 20 years in detention solely on the basis of her political beliefs and her exercise of her democratic rights. Members were also told that a small number of political

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49 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 19.

50 Adopted by the UN General Assembly in its resolution 48/134 on [National institutions for the promotion and protection of human rights](#) of 4 March 1994, UN. Doc A/Res/48/134. The Paris Principles are contained in the Annex to the resolution. Witnesses discussed the compliance of the Commission with the Paris Principles in their testimony before the Subcommittee.

51 UDHR, Arts. 9, 10, 11(1).

52 Working Group on the Universal Periodic Review, [Report of the Working Group on the Universal Periodic Review: Myanmar](#), presented to the UN Human Rights Council at its 17<sup>th</sup> Session, 24 March 2011, UN Doc. A/HRC/17/9, recommendations (see recommendations made by Canada); Michael F. Martin, [“Burma’s Political Prisoners and U.S. Sanctions,”](#) 5 July 2012, Congressional Research Service.



prisoners were released in the spring of 2011 as part of broader prisoner amnesties, followed by the release of over 200 political prisoners in October 2011 and a further 650 in January 2012, “including several high-profile dissidents and political figures.”<sup>53</sup> Reports indicate that additional political prisoners have been released since that time.<sup>54</sup> Those released included dissident monks involved in the saffron revolution, a number of leaders of the 1988 student protests, members of the NLD, comedian and pro-democracy activist Zarganar (also transliterated<sup>55</sup> into English as Zargana), a number of journalists and bloggers, a small number of ethnic minority leaders, as well as former Prime Minister Khin Nyunt and other former military intelligence officials.<sup>56</sup>

The Subcommittee agrees with Mr. Aung Din, Executive Director, U.S. Campaign for Burma, who characterized the recent progress towards the release of political prisoners as “remarkable.” It is our sincere hope that the Government of Burma will put into place a credible, independent and transparent process to ensure the identification and release of all remaining political prisoners as it continues to transition towards democracy.

#### 4. Freedom of Expression, Assembly and Association

The *Universal Declaration of Human Rights* protects freedom of opinion and expression, which includes the right to receive and impart information through the media and across national frontiers.<sup>57</sup> The right to freedom of peaceful assembly and association, which protects the right to peacefully protest as well as the right to form organizations such as political parties, labour unions and civil society organizations, is also protected under the *Universal Declaration of Human Rights*. These rights are similarly protected under the *Convention on the Elimination of All Forms of Discrimination Against Women* and the *Convention on the Rights of the Child*, which Burma has ratified. The right of employers and workers to freely form and join organizations to defend their interests is also protected under the *ILO Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87)*.

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53 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

54 Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 22<sup>nd</sup> Session of the UN Human Rights Council, 6 March 2013, UN Doc. A/HRC/22/58, paras 6-10; Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, paras 8, 11.

55 The *Oxford English Dictionary* defines “transliterate” as: “To replace (letters or characters of one language) by those of another used to represent the same sounds; to write (a word, etc.) in the characters of another alphabet.”

56 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); *Democratic Voice of Burma*, “Burma Prisoner Amnesty — 13 Jan releases,” 13 January 2012; Jason Burke, “[Burma Releases Political Prisoners](#),” *The Guardian*, 13 January 2012; Michael F. Martin, “[Burma’s Political Prisoners and U.S. Sanctions](#),” Congressional Research Service, 5 July 2012; U.S. Department of State, “Burma,” [2011 Human Rights Report](#).

57 UDHR, art. 19.

For decades, the Burmese military government imposed very severe restrictions on freedom of expression, association and assembly, including draconian pre-publication censorship. The Government also banned foreign publications, websites and social media platforms. The Subcommittee is encouraged that over the last 18 months, some of these restrictions have begun to be relaxed.

Since Burma's reform process began, the Subcommittee was told that Burma has unblocked at least 30,000 websites, as well as Twitter and Facebook, which have the potential to greatly enhance people-to-people communication. Some Burmese dissident media that publish outside Burma report that their websites have been unblocked inside the country and that they are experiencing an increase in web-traffic coming from within Burma. In central Burma, we were told that the government now permits the sale of international newspapers. Over 200 Burmese publications, mostly dealing with entertainment and sports, may now be published, although some censorship remains. The Subcommittee was told that President Thein Sein has announced that a new media law is expected to be implemented.<sup>58</sup>

Freedom of the media and freedom of expression, including the right to dissent, are critical to the development of a democratic society. The Subcommittee sincerely hopes that the Burmese government's first steps toward greater internet and media freedom will lead to full respect for the right to freedom of expression, including the right to receive and impart information. Denied their voice for so many decades, the people of Burma deserve nothing less than an end to media censorship and arbitrary restrictions on freedom of expression that do not meet the most exacting international human rights standards.

Restrictions on the freedom of expression of political opponents have also been significantly relaxed. Daw Aung San Suu Kyi has been able to travel and speak freely in Burma and in foreign countries. She was also able to campaign during the by-elections, when, in the words of Mr. Giokas, "the country was basically festooned with pictures of her."<sup>59</sup> Mr. William Davis, from the organization Physicians for Human Rights, told the Subcommittee that "[i]n Rangoon, for example, people are now allowed greater media freedoms, and iconic Aung San Suu Kyi T-shirts and memorabilia are no longer forbidden."<sup>60</sup>

In the Subcommittee's view, this example illustrates the close relationship of the rights to freedom of expression, assembly and association with democratic rights such as the right to vote and to participate in government. In a country just emerging from decades of repression such as Burma, a key benchmark for democratic progress will be the ability of individuals and communities to freely organize themselves in order to articulate their interests, seek representation in the legislature, and demand that their government and

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58 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas, and Mr. Jeff Nankivell, Acting Regional Director General, Asia, Canadian International Development Agency [CIDA]); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

59 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

60 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

elected representatives ensure their human rights. Likewise, the ability for interested groups and communities to organize themselves to voice concerns and demand that non-state actors respect their human rights will be a key indicator of the success of Burma's transition to democracy. In order to respond to these demands, political parties, candidates for office, civil society organizations, and labour unions must be able to receive and impart information from individuals, develop political platforms for change and articulate their demands.

The Subcommittee was therefore pleased to learn that the Special Rapporteur on human rights in Myanmar reported in March 2012 that the Burmese Parliament had passed new legislation related to freedom of association and assembly, including amending the Political Party Registration Law and passing the Peaceful Demonstration and Gathering Law, as well as the Labour Organizations Law.<sup>61</sup> Mr. Humphries noted that the Burmese people are beginning to take advantage of some of their newfound freedoms, staging protests in some areas.<sup>62</sup> These reforms represent progress by the Burmese government towards compliance with its obligations under international law as well as with the human rights guaranteed in the 2008 Burmese constitution.

In addition to political parties, local and international NGOs, civil society organizations as well as individual dissidents, activists and human rights defenders<sup>63</sup> can play a key role in ensuring transparency and accountability in governance. The Subcommittee was pleased to learn, therefore that the Government of Canada currently supports, through its development funding, programs to improve the capacity of civil society organizations that “access, document, and disseminate information on human rights, including women’s rights, and on environmental sustainability.”<sup>64</sup>

Representatives from the Canadian International Development Agency (CIDA) told the Subcommittee that they have received anecdotal information from some NGOs that work in conflict areas along the Thai-Burmese border indicate that these groups have seen a degree of improvement in their ability to operate.<sup>65</sup> The Subcommittee believes that the skills and capacity developed by organizations based outside Burma and in its border regions will provide an important springboard for the development of such capacity

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61 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19th Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 8.

62 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012, (Mr. James Humphries). See also: Altsean, “[Electricity Protests Map, May 2012](#)”; *Mizzima News*, “[Burma Lifts Suspension on two newspapers after protests](#),” 7 August 2012; Nyein Nyein, “[Journalists Call for More Freedom as Censorship Lifted](#),” *The Irrawaddy*, 20 August 2012.

63 Human rights defenders are people who act peacefully to defend and protect human rights, alone or with others, in a manner that is consistent with international human rights law and the [Charter of the United Nations](#). Human rights defenders may work to document and expose violations, support victims, and/or advocate for change.

64 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Jeff Nankivell)

65 *Ibid.*

throughout the country. Increased freedom of action for such NGOs shows that Burma is starting to move in the right direction. This momentum needs to be sustained.

The Subcommittee is hopeful about these reforms and encourages the Government of Burma to continue expanding these freedoms. We believe strongly that freedom of opinion and expression are two key building blocks in the creation of a democratic society. Freedom of expression, including a free and uncensored media, provides individuals with the ability to peacefully express, develop, and exchange opinions. The free exchange of opinions and the ability to communicate with non-governmental and inter-governmental organizations is closely connected with the rights of individuals to organize themselves into political associations, labour unions and trade associations, civil society organizations and other groups to advocate for the recognition and respect for their interests and rights. We also wish to highlight the importance of the right to defend human rights<sup>66</sup> and the tireless effort of individuals and groups around the world who do such work, often at considerable personal risk.

It is the Subcommittee's view that full enjoyment of these fundamental freedoms for all people in Burma is essential to ensure transparency and accountability in democratic governance, and ultimately, the protection and promotion of all human rights. The Government of Canada has provided important support for civil society organizations working in Burma and on its borders in the past, and we believe that Canadian engagement and support can continue to play an important role as the country moves toward a democratic future.

## 5. Forced Labour

Burma is notorious for using forced or compulsory labour in violation of its obligations under the ILO's 1930 *Forced Labour Convention (No. 29)*.<sup>67</sup> Under this ILO treaty, forced labour is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily," other than work of a purely military nature during compulsory military service required by law, work during situations of emergency, work or service exacted as a result of a conviction in a court of law under the supervision and control of a public authority (and not for the benefit of a private person or entity), and "normal civic obligations," including minor community service.<sup>68</sup>

In a 2011 observation, the ILO's Committee of Experts on the Application of Conventions and Recommendations, an expert body that supervises the implementation of ILO conventions,<sup>69</sup> described the history of the use of forced labour in Burma as

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66 UN General Assembly Resolution No. 53/144, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#), 8 March 1999, UN Doc. A/Res/53/144.

67 Written submission of Inter Pares, p. 7; [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); written submission of Prof. William Schabas.

68 Forced Labour Convention (No. 29), art. 2 (ILO).

69 See: ILO, "[Supervision](#)."

“extremely serious.”<sup>70</sup> In 1998, an ILO Commission of Inquiry concluded that the “Government’s gross, long-standing and persistent non-observance of the Convention” had led to a practice of “widespread and systematic” use of forced labour in the country.<sup>71</sup> Forced labour by the military has been a particular problem.<sup>72</sup> Aware of Burma’s historical record on forced labour, the Subcommittee inquired of witnesses whether recent reforms had reduced its prevalence.

The Subcommittee was informed that forced labour remains a problem in Burma.<sup>73</sup> That said, the involvement of the ILO has improved the situation in some regions, for example in Chin State, where there was a decrease in the number of incidents of forced labour involving the Burmese military in 2012.<sup>74</sup> The Special Rapporteur on human rights in Myanmar reports that the ILO continues to work with the Government of Burma on issues related to forced labour, including underage military recruitment and forced child labour, in the context of an individual complaints mechanism agreed to by the ILO and the Burmese Government under a “Supplementary Understanding” reached in 2007.<sup>75</sup> In recent comments on the issue, the ILO welcomed positive changes with respect to forced labour in Burma as part of an agreement in principle between the ILO and the Government of Burma “on the development of a full joint strategy for the elimination of all forms of forced labour by 2015.”<sup>76</sup> The ILO’s Governing Body has noted that the Government of Burma recently adopted national legislation repealing the *Villages and Towns Act of 1907*, which had legalized problematic practices, setting out a legislative definition of forced labour, and criminalizing forced labour in the country.<sup>77</sup> These initiatives

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70 Committee of Experts on the Application of Conventions and Recommendations, Observation (CEACR): [Follow-up to the recommendations made by the Commission of Inquiry \(complaint made under article 26 of the Constitution of the ILO\)](#), 2011. The written submission of Prof. William Schabas, p. 37, refers to the conclusions of this Commission of Inquiry and the ILO’s subsequent action in Burma.

71 Ibid.

72 Ibid.

73 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012, 1310 (Mr. Greg Giokas); Written submission of Inter Pares, p. 7 and attachments.

74 Written Submission of Inter Pares, attachment from the Chin Human Rights Organization, p. 3.

75 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 80. Information from the ILO indicates that the complaints mechanism is available to “Myanmar resident citizens”: ILO, [“Forced Labour Complaints Mechanism.”](#) The [Supplementary Understanding between the Government of the Union of Myanmar and the International Labour Office \(2007\)](#) has been extended annually, most recently in [February 2012](#). It builds on an original [Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the appointment of an ILO Liaison Officer in Myanmar \(2002\)](#).

76 Quintana, *ibid.*, para. 80. The agreement was concluded on 16 March 2012 and is contained in Appendix II to the Conference Paper submitted to the ILO’s Governing Body on [Developments Concerning the Question of Observance by the Government of Myanmar of the Forced Labour Convention, 1930 \(No. 29\)](#), 19 March 2012, ILO Doc. GB.313/INS/6(Add.) and discussed in ILO, [Decision on the sixth item on the agenda: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 \(No. 29\) Governing Body conclusions](#), 30 March 2012.

77 ILO, [Decision on the sixth item on the agenda: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 \(No. 29\) Governing Body conclusions](#), 30 March 2012.

complement awareness raising activities in ethnic minority areas and engagement with the Burmese military undertaken by the ILO in 2010-2011.<sup>78</sup>

The Subcommittee was very pleased to learn of these positive developments. We note, however, that concern about forced labour in Burma remains high.<sup>79</sup> The next step for the Government of Burma is to ensure that the new law is effectively implemented throughout the country's entire territory, including by ensuring that national laws prohibiting forced labour are interpreted in accordance with international standards, that violations are strictly prosecuted, and that perpetrators are appropriately punished. We believe that the effective implementation of the strategy to eradicate forced labour by 2015, throughout Burmese territory and in respect to all persons regardless of ethnicity or religion, should be factored into Canada's assessment of the sincerity and durability of the country's reforms.

## **B. Progress on Social, Economic and Cultural Rights**

In their testimony before the Subcommittee, witnesses did not discuss progress made in Burma on economic, social and cultural rights in sufficient detail for the Subcommittee to form any conclusions. In the interest of presenting a fair picture of the human rights situation in the country, however, the Subcommittee has included along with its discussion of concerns regarding economic, social and cultural rights later in this report, information regarding positive aspects of Burma's record contained in the most recent report of the Special Rapporteur on human rights in Myanmar.

## **C. Progress Related to Ethnic Armed Conflicts**

During our study, the Subcommittee came to understand that achieving a peaceful resolution of the internal armed conflicts between the Burmese military and armed ethnic minority groups, which have plagued the country since 1948 — shortly after it gained independence from Britain — will be a key challenge that Burma will need to overcome in order to cement democratic reforms and ensure respect for human rights.<sup>80</sup>

In his testimony, Mr. Humphries stressed that the roots of Burma's ethnic conflicts run deep. During World War II, nationalists from the majority Burman ethnic group initially sided with invading Japanese forces to fight the colonial power. On the other hand, most ethnic minority groups remained loyal to the British and to the Allies and formed armies to support the Allied war effort, partly because they believed that the British would guarantee them some measure of independence after the war. As a consequence, for a time during the Second World War there was conflict between Burman and ethnic minority forces, and

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78 ILO, [Follow-up to the recommendations made by the Commission of Inquiry \(complaint made under article 26 of the Constitution of the ILO\)](#), 2011; Written submission of Inter Pares, attachment from the Chin Human Rights Organization, p. 2.

79 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); Written submission of Inter Pares and attachments; Foreign Affairs Minister John Baird and Minister of International Trade and Minister for the Asia-Pacific Gateway Ed Fast, "[Open Letter on Doing Business in Burma](#)," 31 August 2012.

80 Human Rights Watch, "[Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State](#)," March 2012.

in this context, Burman militias were accused by the other ethnic armies of various abuses. Although the Burman nationalist forces led by General Aung San eventually came to support the Allies, this history of conflict created significant tensions between ethnic minorities and the Burman leadership in the period immediately following the end of the war.<sup>81</sup>

In the post-War period, Burma gained independence from Britain under a constitution that contained certain power-sharing guarantees for some ethnic minority groups. However, these arrangements were uneven and in practice, were never fully implemented; leading to the outbreak of armed rebellion by Burma's various ethnic armies between the early 1950s and the mid-1960s. Decades of brutal, low-intensity fighting ensued. The history of Burma's ethnic conflicts is discussed in more detail in a later section of this report dealing with the Subcommittee's concerns about respect for the human rights of individuals from ethnic minority communities.

Following the crackdown on student protestors in 1988 and through until the mid-1990s, the Burmese military negotiated a number of ceasefire agreements with most of the major ethnic armed groups, although notably not with the principal Karen army, the Karen National Union. Nevertheless, brutal, low-level fighting has continued in some areas.<sup>82</sup> The Subcommittee was told that there was a flare-up in violence between ethnic armies in 2010, after the Burmese military unexpectedly ordered them to transform into "Border Guard Forces" under partial Burmese command.<sup>83</sup>

In tandem with Burma's recent political reforms, the Subcommittee was informed that progress has been made with regards to reaching ceasefires with many of the ethnic armies that have been fighting the Burmese military on and off since the 1950s and 1960s.

Mr. Giokas told members that the inking of a number of ceasefire agreements was a very positive first step.<sup>84</sup> The Special Rapporteur on human rights in Myanmar noted in his March 2012 report that he had been informed of a three-step 'roadmap' set out by President Thein Sein: "the conclusion of a ceasefire agreement; political negotiations and dialogue; and, eventually, discussion in Parliament where all agreements would be formalized and outstanding issues settled."<sup>85</sup> Mr. Giokas summed the situation up succinctly, stating that "[t]hese ceasefires must be followed by more comprehensive peace

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81 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); International Crisis Group (ICG), *Myanmar: A New Peace Initiative*, Asia Report No. 214, 30 November 2011 [ICG, *A New Peace Initiative*].

82 ICG, *A New Peace Initiative*; Ashley South, [Burma's Longest War: Anatomy of the Karen Conflict](#), Amsterdam, Transnational Institute and Burma Centre Netherlands, 2011.

83 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); ICG, *A New Peace Initiative*.

84 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

85 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 67.

and reconciliation talks and agreements, but we are encouraged that the government appears to be willing to engage in dialogue.”<sup>86</sup>

The Subcommittee is convinced that the recent ceasefire negotiations with ethnic minority groups represent an important initial move towards a durable, political settlement of the grievances of ethnic minority peoples in Burma. We believe, however, that the negotiation of ceasefire agreements is only the first step in a long process. As Mr. Humphries explained, true peace and reconciliation in Burma will require that the government and the military come to understand that their country’s ethnic and religious diversity is a strength to be drawn upon in building a democratic nation, rather than a weakness to be ruthlessly suppressed by dictators. The Subcommittee hopes that Canada will take appropriate steps to support this peace and reconciliation process over the long term.

Overall, the Subcommittee acknowledges the reforms Burma has made so far, and believes that these first steps toward democracy must be part of an ongoing process. There remains much work to do. We encourage Burma’s leaders and parliamentarians to maintain the political will to continue on this path of democratization, political liberalization and national reconciliation and believe that Canada should continue to support these efforts.

## **THE HUMAN RIGHTS SITUATION IN BURMA: CONCERNS**

While the Subcommittee welcomes recent political reforms in Burma, we believe that we must remain realistic about the rate and extent of change. There are still many obstacles to democracy in Burma and the political situation remains fragile. As Mr. Din stated on behalf of the U.S. Campaign for Burma, “[t]o be sure, there have been significant changes in Burma over the past nine months, but it would be a mistake to assume that they are irreversible or that all things are pointing in a positive direction.”<sup>87</sup> Similarly, Mr. Davis told the Subcommittee: “[w]hile these changes are important, the same problems that have plagued the people of Burma for decades, including rampant forced labour, attacks on civilians, the use of land mines, and lasting impunity for those who commit heinous human rights violations, continue to this day.”<sup>88</sup>

The Subcommittee, therefore, wishes to draw attention to a number of very serious concerns about the lack of respect for universal human rights in the country, in particular in ethnic minority areas.

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86 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

87 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

88 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).



## A. Concerns with Respect to Civil and Political Rights

### 1. Persistent Weakness in Governance Structures

In February 2008, a committee appointed by the military junta completed the drafting of a new constitution, which was adopted in May 2008 in a widely criticized national referendum. The constitution entrenches military control over government in Burma and has been critiqued by international human rights organizations for failing to protect key human rights.<sup>89</sup>

#### a. The Need for Constitutional Reform

##### (i) Lack of Civilian Control of the Military

Witnesses told the Subcommittee that at least 25% of seats in both houses of Parliament are reserved for active service members appointed by the Commander-in-Chief of the Defence Services. Key cabinet portfolios such as defence, home, and border affairs are also reserved for active service military personnel. Members were dismayed to learn that appointments to these three powerful ministerial portfolios are controlled not by the civilian President, but by the Commander-in-Chief of the Burmese military.<sup>90</sup> In addition to these formal guarantees of military representation in parliament, Mr. Humphries pointed out that in the Burmese Union legislature, “out of the 600 seats, probably 550 of those seats are maintained by previous military or military.”<sup>91</sup>

Witnesses stressed that the 2008 constitution contains a number of provisions that limit democratic governance in Burma. For example, the constitution entrenches the leadership role of the military in national political affairs, assigns the military the responsibility for safeguarding the constitution, and explicitly permits the Commander-in-Chief of the Defence Services to take all sovereign power in order to counter violence or insurgency, as well as other threats to national disintegration or disintegration of national solidarity.<sup>92</sup> Although the President holds the formal power to declare a state of emergency under the constitution, this may only be done following “coordination” with the military-controlled National Defence and Security Council. A nation-wide state of emergency can only come to an end once the Commander-in-Chief reports to the President that he has accomplished his duty to counter the threats that led to the declaration of the state of

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89 Amnesty International, “[Myanmar: Constitutional Referendum Flouts Human Rights](#),” 9 May 2008; Human Rights Watch, [Vote to Nowhere: The May 2008 Constitutional Referendum in Burma](#), 1 May 2008, p. 5-6.

90 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries). See the *Constitution of the Union of Myanmar*, 2008, articles: 17(b), 74, 109(b), 141(b).

91 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

92 Constitution of the Union of Myanmar, 2008, articles 6(f), 40(c).

emergency. The constitution also gives the military the power to manage the transition back to civilian rule.<sup>93</sup>

Thus, the President's power to determine whether a state of emergency ought to be declared and when it ought to end appears to be subject to a high degree of military influence. Moreover, there is no possibility for effective parliamentary or judicial scrutiny of the declaration of a nation-wide state of emergency or the actions taken by the military while a state of emergency is in force.<sup>94</sup> Indeed, witnesses consistently told us that the real power to declare a national state of emergency, which transfers sovereign power to the military, lies with the Commander-in-Chief.<sup>95</sup>

We were also told that the constitution does not contain any provision for the removal from office of the Commander-in-Chief,<sup>96</sup> in contrast to the situation of the President and members of the judiciary.<sup>97</sup>

Witnesses consistently testified that these provisions, taken together, "grant supreme power into the hands of the military."<sup>98</sup> Thus, as Mr. Giokas told us, "the civilian government doesn't necessarily control the military."<sup>99</sup> The persistent refusal of the Commander-in-Chief of the armed forces, Vice Senior General Min Aung Hlaing, to obey the President's order to halt the military offensive in Kachin State, was cited by a number of witnesses as clear evidence of this lack of civilian control.<sup>100</sup>

International human rights bodies have emphasized that in countries transitioning to democracy, it is essential to have a clear legal framework limiting and specifying the role of the armed forces and providing for effective political and civilian control over them.<sup>101</sup> The Subcommittee believes that civilian control over the military is critically important if the Burmese government's current democratic reforms are to be sustained, expanded and entrenched. In our view, promoting effective civilian control of the military ought to be a key priority for Canada in its bilateral relations with Burma.

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93 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); *Constitution of the Union of Myanmar*, 2008, articles: 340, 410, 412, 415, 417, 418, 419, 421, 422, 427-429.

94 *Constitution of the Union of Myanmar*, 2008, articles: 414, 420, 421, 432, 296, 382.

95 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

96 [Evidence](#), *ibid.* (Mr. Aung Din); *Constitution of the Union of Myanmar*, 2008, Chapter VII, Defence Services, contrasting with arts. 61 (term of office) and 71 (impeachment) regarding the President and arts. 302 (impeachment) and 303 (term of office) relating to the judiciary.

97 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

98 [Evidence](#), *ibid.* See the *Constitution of the Union of Myanmar*, 2008, articles: 20(b),(f), 60(b)(iii), (c), 71(a)(v), (b), (c).

99 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

100 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

101 See, for example, UN Human Rights Committee, [Concluding Observations on Lesotho](#), 1999, UN Doc. CCPR/C/79/Add.106, para. 14 and [Concluding Observations on Romania](#), 1999, UN Doc. CCPR/C/79/Add.111, para. 9.

## (ii) Undue Restrictions on Political and Democratic Rights

In addition to the formal entrenchment of military power under the 2008 Burmese constitution, witnesses drew our attention to significant limitations on political participation and democratic rights contained in the document that undermine genuine democratic governance. The constitution, according to Mr. Humphries,

gives a lot of freedoms and rights in words, but none of this is carried out. ... For example, they say they have freedom of religion, but my wife as a minister and my friend as a pastor cannot vote. How is that a democracy when you can't vote?

In addition to being denied their right to vote, religious leaders cannot be part of a local political party, and cannot apply for government office.<sup>102</sup> The right to run for office is also denied to individuals who are members of organizations that obtain or directly or indirectly use funds, land, housing, or other property from a religious organization, government or other organization of a foreign country, potentially disqualifying any individual affiliated with a religious community or secular civil society organization that receives foreign support — which would include many groups working to improve human rights conditions in Burma. Individuals who have been convicted of “an offence relating to disqualification” for election are also barred from running for office, potentially disqualifying former political prisoners.<sup>103</sup>

The formation of political parties is also restricted by the constitution. All political parties are required to be loyal to the state and to hold the objective of maintaining national sovereignty and the Union of Burma.<sup>104</sup> The potential significance of such a provision is illustrated by the previous military junta’s reported justification of the detention of Daw Aung San Suu Kyi partly on the basis that she had acted with the intention of weakening the integrity of the nation.<sup>105</sup> The constitution also disallows political parties that have been declared “unlawful associations” under existing law, as well as those “directly or indirectly” involved with insurgent groups or unlawful associations, and any political parties that receive assistance from religious associations.<sup>106</sup>

It is in this context that Mrs. Humphries told the Subcommittee that the 2008 Burmese constitution is built to suit the needs of the military and to protect them.<sup>107</sup> The Subcommittee notes that opposition to oppressive military rule in Burma has traditionally been led by student dissidents, monks, ethnic leaders, and ethnic minority religious communities, as well as by organizations based abroad that advocate and work

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102 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries); *Constitution of the Union of Myanmar, 2008*, arts. 121(i), 392(a).

103 *Constitution of the Union of Myanmar, 2008*, arts. 121, 152, 169.

104 *Constitution of the Union of Myanmar, 2008*, art. 404.

105 Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the General Assembly, 5 September 2008, UN Doc. A/63/341, para. 92 and see also para. 33.

106 *Constitution of the Union of Myanmar, 2008*, art. 407.

107 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries).

for human rights in Burma, supported by foreign funding. We observe also that over the last 60 years, Burma has enacted multiple laws aimed at crushing political dissent and the formation of civil society groups, making any prohibition on political parties that have been declared unlawful under present legislation extremely suspect. In addition, many of the largest ethnic minority groups have been at war with the central government for decades over issues related to autonomy and power-sharing, during which time they have created political parties to advocate in favour of their collective aspirations.

We were told that only those ethnic leaders who were perceived as favourable to the ruling party and the military were allowed to form political parties to contest elections. Mr. Davis explained that during

the 2010 election most of [the Kachin] political parties were banned from running, and even in the election in April, two Kachin political parties were not allowed to contest. They're pushing for fundamental changes to the 2008 constitution so that they can have more representation, and the Burmese are not agreeing to this at all right now.<sup>108</sup>

In the end, the by-elections held in April 2012 were cancelled in Kachin State due to armed hostilities commenced by the Burmese military against the Kachin Independence Army, which continued despite the President's repeated orders to cease the fighting.<sup>109</sup> Mr. Humphries summed up the situation in these words:

They say in the constitution that anyone can put together a party, but when [the political representatives of the Kachin people] put up parties to be part of the government system, they disallow them. They say you have the freedom to vote, but then they turn around whenever it's convenient and remove that freedom. The constitution allows them to do that.

In the Subcommittee's view, the constitutional provisions discussed above restrict democratic rights and freedoms in a manner that is inconsistent with international human rights standards. The Subcommittee is particularly concerned that the Burmese constitution formally discriminates against religious leaders in the exercise of their democratic rights and, in practice, does not permit equal access to democratic and political rights for many ethnic minority groups.<sup>110</sup> We believe that this situation is likely to impede Burma's successful transition to democracy in the long-term and we hope that all parties in the Burmese legislature will come to see the importance of undertaking a process of constitutional change.

### **(iii) Challenges to Constitutional Reform**

As a result of the flaws in the Burmese constitution, Daw Aung San Suu Kyi and the NLD have identified constitutional change as a key plank in their political platform. However, a proposal to amend the Burmese constitution requires that 20% of legislators

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108 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

109 Written submission to the Subcommittee on International Human Rights of Mr. James and Mrs. Hkaw Win Humphries, May 2012, p. 2.

110 UDHR, arts. 2, 21.

submit a bill for consideration to a joint session of both houses of the Union of Myanmar Parliament. The Subcommittee was very concerned to learn that approval of any constitutional change requires approval by more than 75% of the members of both houses of Parliament, which means in practice that even if all of the elected, civilian MPs vote for constitutional change, the military can still block any reform.<sup>111</sup>

Mr. Davis told members that it was unrealistic to expect constitutional change to come quickly to Burma, stressing that it will likely take some time to persuade some appointed military legislators that voting for constitutional change will bring important, positive effects.<sup>112</sup> Mr. Humphries, however, told us that people in Burma are generally positive about the prospects for constitutional change in the long term.<sup>113</sup> Mr. Giokas told the Subcommittee that constitutional change in Burma is primarily a domestic issue, “but if they’re going to develop a functioning democracy, they’re going to have to deal with these things in a democratic fashion.”<sup>114</sup> The Subcommittee agrees with this assessment.

## 2. Absence of the Rule of Law

Achieving the constitutional reforms necessary to entrench and sustain democratic governance in Burma will be a long-term project. In the shorter-term, however, there is significant work to be done to establish the rule of law in the country. At the outset, the Subcommittee wishes to acknowledge that the Burmese government has expressed a desire to improve the rule of law in Burma and is taking steps towards this goal, including through the establishment of a parliamentary committee on the rule of law. Nevertheless, the Subcommittee wishes to highlight its concerns regarding the near absence of the rule of law in Burma at the present time. Progress towards reforming legislation that does not conform to international human rights standards, towards establishing both substantive and procedural legal, judicial, and administrative guarantees of due process and accountability, and towards reforming the police force ought to be included in discussions by Canada and other countries in assessing whether to permanently lift remaining sanctions in the future.

### a. The Urgent Need for Legal Reform

Mr. Giokas emphasized that Canada remains concerned about the consistency of certain Burmese laws with international human rights standards. He referred us to the reports of the Special Rapporteur on human rights in Myanmar, who has expressed the view that a number of Burmese laws enacted under the military dictatorship still impermissibly limit the enjoyment of human rights.<sup>115</sup> In particular, Mr. Quintana has

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111 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis), referring to articles 434, 435 and 436 of the *Constitution of the Republic of the Union of Myanmar*, 2008.

112 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

113 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

114 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

115 [Ibid.](#)

stressed that international human rights standards require any legal limitations on human rights to be clearly defined by law, imposed for a specific and legitimate purpose, and be necessary and proportionate in the context of achieving such purposes in a democratic society. Vague, broad and sweeping formulas for limiting human rights, in his view, “contravene the principle of legality and international human rights law.”<sup>116</sup> In his March 2012 report, the Special Rapporteur stated that Burma needs to accelerate its legal reform process and recommended that the government establish clear, time-bound target dates for the conclusion of the legislative review.<sup>117</sup>

## **b. Inadequate Institutions**

Witnesses consistently told the Subcommittee that key institutions necessary to the maintenance of the rule of law in Burma were exceptionally weak, lacking the professional capacity and legal framework to perform their functions.

### **(i) The Judiciary**

Witnesses flagged reform of the judiciary as another significant challenge that Burma needs to address in order to establish the rule of law in the country.<sup>118</sup> In practice, the Subcommittee heard that individuals do not have the opportunity to defend themselves fully against criminal charges in a court of law or to seek judicial redress when their property is taken from them unlawfully.<sup>119</sup> Mr. Din told the Subcommittee that “[c]orrupt judges run the courts without due process and make rulings as instructed by their superiors, or in favour of those who pay the most.”<sup>120</sup> Mr. Davis reiterated this view, telling us that the Burmese judiciary is not independent from the rest of government and that institutional change will be a long-term project, requiring significant support and judicial education.<sup>121</sup>

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116 Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 63<sup>rd</sup> Session of the UN General Assembly, 5 September 2008, UN Doc. A/63/341, para. 92 and see also para. 93.

117 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, paras. 10-11. Specific suggestions are included in Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383.

118 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012, 1315 (Mr. James Humphries). The need for judicial reform is discussed by the Special Rapporteur (Tomás Ojea Quintana), [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 13 and in his [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, paras. 23, 94.

119 Written submission of Mr. James and Mrs. Hkaw Win Humphries.

120 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

121 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

In addition, the Subcommittee was particularly dismayed to learn that the Burmese military “is not subject to any institutional accountability mechanism that could be used to punish or deter crimes.”<sup>122</sup> Indeed, the Commander-in-Chief administers the military justice system free from any civilian oversight and acts as the final appellate authority.<sup>123</sup>

The Subcommittee wishes to stress that international human rights standards place a high value on judicial impartiality and independence, which are necessary to ensure the right to equality before the law, the right to a fair hearing before a court of law, the right to judicial review of the legality of detention, and the fair trial rights of defendants in criminal cases such as the presumption of innocence and the right to make full answer and defence. An independent and impartial judiciary is also a crucial check on the abusive use of power by other branches of government and organs of the state, including the military.<sup>124</sup> Effective access to competent, independent and impartial justice is necessary to ensure that those whose rights have been violated receive redress, and is vital to combating impunity.<sup>125</sup> The Subcommittee notes that effective access to justice is fundamentally compromised when the military chain of command has final, unfettered discretionary authority over the disposition of any complaints or legal charges.

Mr. Davis identified the establishment of an independent judiciary as a crucial step to ensure that the economic benefits of reform reach the population of Burma.<sup>126</sup> As Burma opens its economy and adopts market reforms, it can be expected that there will be an increase in business-related disputes. If economic reforms are to succeed, the Subcommittee believes that these disputes eventually will need to be adjudicated within a

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122 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis). See also the sweeping powers to restrict rights during states of emergency administered by the military in *Constitution of the Union of Myanmar, 2008*, articles: 381, 382, 414(b) and 420, as well as art. 379, removing the ability of an individual to make an application for the enforcement of constitutional rights during times of war, foreign invasion or insurrection. The UN’s Special Rapporteur on Human Rights in Myanmar also has raised particular concerns about the lack of civilian control over the military in Burma: Tomás Ojea Quintana, [Situation of Human Rights in Myanmar](#), Report of the Special Rapporteur on the situation of human rights in Myanmar, Presented at the 66th Session of the UN General Assembly, 16 September 2011, UN Doc. A/66/365, para. 24.

123 *Constitution of the Union of Myanmar, 2008*, articles: 20(b) and (f), 296, 343, 432.

124 The preamble of the UDHR requires states to “strive” “to secure the universal and effective recognition and observance, both among the peoples of Member states themselves and among the peoples of territories under their jurisdiction” and art. 8 states that everyone has the right to an effective remedy by a competent national tribunal for violations of fundamental rights. See also: Human Rights Committee, [General Comment No. 31: Nature of the General Legal Obligations on States Parties to the Covenant](#), 2004, U.N. Doc. CCPR/C/21/Rev.1/Add.13, paras. 15-19. Although the obligations under Article 2 of the ICCPR are not legally binding on Burma, the expert opinion of the Human Rights Committee is a persuasive source of international standards and best practice in relation to the right to a remedy for human rights violations.

125 These rights are recognized under the UDHR and are guaranteed under the CRC, arts. 37, 40 as well as other international treaties and human rights standards such as the UN’s [Basic Principles on the Independence of the Judiciary](#), adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders in 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. See also CEDAW, art. 16, guaranteeing women equality before the law.

126 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

sound legal framework by an independent and impartial judiciary in which both foreign investors and domestic actors can have confidence.

The Subcommittee stresses that the establishment and preservation of an independent and impartial judiciary in Burma must extend to states of emergency.<sup>127</sup> We wish to highlight our deep concern over the provisions of the Burmese constitution that permit, during a state of national emergency, the transfer of all judicial powers to the Commander-in-Chief and the suspension of important procedural guarantees that Burma is bound to respect under international law.<sup>128</sup> The Subcommittee hopes that as Burma proceeds along the path to democratic reform, it will address these critical weaknesses in its constitutional structure and judicial institutions.

## (ii) The Security Sector

The evidence that the Subcommittee received has also convinced us that securing the rule of law in Burma will require the wholesale reform of the entire security apparatus in Burma. We recognize that reforming the military and improving its adherence to international human rights and humanitarian law obligations and standards will be a slow process extending over many years. However, we wish to draw particular attention to the urgent need to begin reforming the Burmese police forces. Witnesses from DFAIT emphasized that the treatment of prisoners is an ongoing concern in Burma.<sup>129</sup> Mr. Din stated that “[I]aw enforcement officials are brutal and dangerous, and arbitrary detention and torture are their only tools to get confessions from the accused.”<sup>130</sup> He also

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127 See the persuasive but non-binding opinion of the Human Rights Committee, [General Comment No. 29, States of Emergency \(article 4\)](#), 2001, UN Doc. CCPR/C/21/Rev.1/Add.11, paras. 11, 16 and the legally binding provisions of [Article 3\(d\)](#) common to the four Geneva Conventions of 1949, cited below in note 133 and applicable in situations of internal armed conflict in Burma, which provide:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:...

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

The meaning of common Article 3(d) and its relationship to the procedural guarantees during times of emergency is discussed in: International Committee of the Red Cross, [“Rule 100: Fair Trial Guarantees,” Customary International Humanitarian Law Database](#).

128 *Constitution of the Union of Myanmar*, 2008, chapters VII, Citizen, Fundamental Rights and Duties of the Citizens and XI, Provisions on State of Emergency. Basic procedural guarantees in judicial processes, including the right to be tried before an independent and impartial decision-maker, are found in the following treaties that Burma has ratified: CRC, art. 40(2)(b) sets out minimal judicial guarantees. The presumption of innocence and the right to a trial before an independent and impartial tribunal are guaranteed in articles 40(2)(b)(i) and (iii), and in the context of Burma’s internal armed conflicts, under Common Article 3 of the Geneva Conventions of 1949, cited below in note 133. Judicial independence and fundamental procedural guarantees relating to a fair trial are also reflected in articles 10, 11 of the UDHR.

129 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas). Mr. Giokas referred in his testimony to the reports of the Special Rapporteur for Human Rights in Myanmar, Tomás Ojea Quintana.

130 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012, (Mr. Aung Din).



emphasized that civilian governments did not necessarily have effective control over the police.<sup>131</sup>

The Subcommittee would like to stress that international law absolutely prohibits any form of torture, as well as all inhuman and degrading treatment.<sup>132</sup> This prohibition extends to treatment inflicted on detainees by security forces or prison officials in the context of interrogations or as a form of punishment of persons under any form of detention or imprisonment.<sup>133</sup> We also note that international human rights standards prohibit the police from using disproportionate or unnecessary force in the exercise of their duties,<sup>134</sup> prohibit corporal punishment, and provide useful guidance relating to humane conditions of detention aimed at preventing cruel, inhuman or degrading treatment.<sup>135</sup>

The Subcommittee believes that a principled, effective, and accountable police force is a cornerstone of democracy. Law enforcement officials play a vital role in the protection of the rights to life, liberty and security of the person guaranteed under the *Universal Declaration of Human Rights*. In our view, a police force serves its community

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131 Ibid. Similar concerns were raised in the "[Statement of Tomás Ojea Quintana](#)," 4 August 2012.

132 The internationally accepted definition of torture is found in the [Convention Against Torture](#), which Burma has not ratified. Article 1 of the Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." Where the pain or suffering inflicted is not "severe" or where pain and suffering are inflicted without intent the conduct will generally be considered to fall into the category of "cruel, inhuman or degrading treatment or punishment," which is also prohibited by international human rights law and standards.

133 International Court of Justice, [Questions Relating to the Obligation to Prosecute or Extradite \(Belgium v. Senegal\)](#), judgement of 20 July 2012, para. 99 (prohibition on torture); International Criminal Tribunal for the Former Yugoslavia, [Prosecutor v Furundzija](#), Case No. IT-95-17/1-A, judgement of 21 July 2000, para. 111 (Appeals Chamber) (prohibition on torture); International Court of Justice, [Ahmadou Sadio Diallo \(Republic of Guinea v. Democratic Republic of the Congo\)](#), judgment of 30 November 2010, para. 87 (prohibition on inhuman and degrading treatment). The prohibition on torture is found in the following international instruments applicable to Burma: UDHR, art. 5; CRC, art. 37; and the four Geneva Conventions of 1949: [Convention \(I\) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field](#), Geneva, 12 August 1949, arts. 3, 12; [Convention \(II\) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea](#), Geneva, 12 August 1949, arts. 3, 12; [Convention \(III\) relative to the Treatment of Prisoners of War](#), Geneva, 12 August 1949, arts. 3, 17, 87, 89; [Convention \(IV\) relative to the Protection of Civilian Persons in Time of War](#), Geneva, 12 August 1949, arts. 3, 32.

134 UDHR, art. 3, 5; [Code of Conduct for Law Enforcement Officials](#), adopted by General Assembly Resolution 34/169 of 17 December 1979; [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

135 [Standard Minimum Rules for the Treatment of Prisoners](#), Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#), Adopted by General Assembly resolution 43/173 of 9 December 1988; [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#), Adopted by General Assembly resolution 45/113 of 14 December 1990; [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(the Bangkok Rules\)](#), adopted by General Assembly resolution 65/229 of 16 March, 2011.

most effectively when it respects the human rights and human dignity of both the victims of crime and alleged perpetrators. Likewise, a humane prison system staffed by well-trained officials is critical to the successful re-integration of offenders into society and to the maintenance of public trust in the state's ability to fairly enforce the law. We hope that the Burmese government will proceed with reforms to its national police and security forces and prison system as quickly as possible, including taking steps to ensure that these forces are subject to effective civilian control, oversight and accountability. The Subcommittee also believes that the International Committee of the Red Cross (ICRC) can play a useful role in monitoring conditions of detention. In our view, the eradication of torture and ill-treatment by those with a duty to protect the people of Burma should be a particular focus of reform efforts in the country.

### (iii) The National Human Rights Commission

Earlier in this report, the Subcommittee recognized that the establishment of a national human rights commission by the President of Burma represented a significant step on the path to reform, but noted our concern that it currently lacked an appropriate legislative basis. Although witnesses welcomed the establishment of the Commission, they also expressed concern about its lack of independence from the government and the possible involvement of some members of the Commission in past human rights abuses and violations of international humanitarian law.<sup>136</sup> Witnesses also expressed disappointment with the Commission's activities to date. Mr. Davis and Inter Pares indicated that the Commission had refused to investigate human rights violations in Kachin State or to accept cases related to alleged human rights violations in the region, where an armed conflict is ongoing.<sup>137</sup> In his March 2012 report, the Special Rapporteur on human rights in Myanmar set out the Commission's reasons for refusal, as explained by the Commission's Chairman:

- “the essentially political nature of the reconciliation process;”
- “investigations in conflict zones were not appropriate at this time;” and,
- “with the establishment of peace, ‘other problems, such as human rights violations and atrocities allegedly committed against ethnic groups, will also recede into the background’.”<sup>138</sup>

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136 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); Charlie Campbell, “Empowering the Myanmar Human Rights Commission,” *The Irrawaddy*, 9 May 2012, submitted to the Subcommittee by Mr. Aung Din. Mr. Davis also referred the Subcommittee to the report of Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, paras. 19-20, 59.

137 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); written submission of Inter Pares, p. 5.

138 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 59.

However, the Commission appears to have changed its position. The Special Rapporteur on Myanmar reported that by July of 2012, the Commission had begun to undertake some work in Kachin State.<sup>139</sup>

The Subcommittee believes that national human rights institutions can play a useful role in ensuring that universal human rights principles are effectively disseminated and applied, especially in countries emerging from periods of repression or armed conflict. In order to be effective, however, these institutions need to be able to carry out their tasks independently and effectively. Witnesses referred the Subcommittee to the internationally recognized Paris Principles, which set out key standards to help national human rights institutions meet these goals. In particular, national human rights commissions need to have the independence to determine which cases and issues they will address and the capacity, resources and will to effectively assess alleged human rights violations and abuses.<sup>140</sup> In light of the information before it, the Subcommittee is concerned that Burma's Human Rights Commission is still far from meeting these standards.

The Subcommittee was pleased to learn that the Commission has reversed its previous position on human rights investigations in Kachin State. We sincerely hope that the Commission will take a proactive approach to these investigations in the future. In particular, we believe that the Commission needs to strengthen both its capacity and its will to undertake effective and independent investigations into alleged human rights violations by the Burmese military and other state security forces, as well as investigating the actions of non-state armed groups.

### **3. Lack of Respect and Protection for Other Civil and Political Rights**

Witnesses told the Subcommittee that many human rights protections in Burma either were not enforced, or were subject to significant limitations permitted by the Constitution. For example, we were told that in practice, freedom of movement is limited and travellers must regularly clear check-points and register wherever they go — even for such minor journeys as an overnight stay at the home of a friend or relative.<sup>141</sup> Arbitrary detention and arbitrary deprivation of property, a lack of respect for minority cultural, linguistic and religious rights, and violations of the right to freedom of association continue.<sup>142</sup> The Subcommittee heard that despite the Burmese government's ratification of the *Palermo Protocol*, human trafficking remains a significant problem, particularly in

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139 Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, para. 52.

140 [Principles relating to the Status of National Institutions \(The Paris Principles\)](#), adopted by General Assembly resolution 48/134 of 20 December 1993.

141 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries).

142 Written Submission of Mr. James and Mrs. Hkaw Win Humphries.

areas affected by armed conflict and major development projects.<sup>143</sup> Forced labour remains common in some ethnic minority areas, where local authorities and the military order villagers to assist with road construction, for-profit agricultural projects and other forms of manual labour without compensation.<sup>144</sup> Further, the 2008 constitution contains a provision that could be interpreted to permit forced labour.<sup>145</sup>

Although there is now greater respect for freedom of expression and freedom of the press, and pre-publication censorship of the press has been abolished, it is nonetheless true that the Press Scrutiny and Registration Division, the government's media censorship body, now will review media articles post-publication. Publication of offensive articles has the potential to subject journalists to harsh punishments, including "fines, imprisonment, suspension, or forced closure."<sup>146</sup> The Subcommittee agrees with the submission that the new law has the potential to entrench self-censorship in the media by preventing journalists from pushing the limits of permissible speech and instead ensuring that they will stay "well short of them."<sup>147</sup> We reiterate our strongly held view that freedom of expression, including an uncensored, rigorous and professional media, is critical to ensuring that democracy takes root in Burma and that the human rights of all individuals in the country are protected and respected.

In the view of one witness, the vagueness and over-breadth of many provisions in the Constitution permit and facilitate arbitrary, improper and abusive decisions and restrictions on human rights.<sup>148</sup> In addition, although the 2008 Constitution enshrines certain human rights, the vast majority of these rights are guaranteed only to Burmese citizens.<sup>149</sup> Burma's persistent refusal to recognize the Rohingya ethnic minority as citizens makes the restriction of human rights protections only to "citizens" particularly significant. The Subcommittee notes that the Universal Declaration of Human Rights and international human rights treaties, in contrast, require states to protect and respect the rights of all people under their jurisdiction.

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143 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); Written submission of Inter Pares, attachment entitled "Harsh Lessons of Kachin 'Development'." See also Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 16<sup>th</sup> session of the Human Rights Council, 7 March 2011, UN Doc. A/HRC/16/59, para. 43.

144 Written submission of Inter Pares, attachment from the Chin Human Rights Organization, p. 2; Written Submission of Prof. William Schabas, p. 40.

145 Written Submission of Prof. William Schabas, p. 39, referring to the *Constitution of the Union of Myanmar*, 2008, art. 359.

146 Written Submission of Inter Pares, p. 4.

147 Ibid.

148 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

149 Constitution of the Union of Myanmar, 2008, Chapter VIII.

### a. Political Prisoners and Arbitrary Detention

The Subcommittee is deeply concerned at the continued detention of political prisoners in Burma and over recent arrests of individuals for the peaceful exercise of their human rights.

Mr. Din informed the Subcommittee that the Burmese regime has consistently denied the existence of political prisoners in the country, instead insisting that all prisoners had been convicted for violations of law.<sup>150</sup> This raises an important challenge in assessing Burma's progress in relation to the release of political prisoners: there is no international standard to determine which individuals are "political prisoners" and which individuals are "criminal convicts." Although the term "political prisoner" is popularly understood to refer to those who are imprisoned primarily on the basis of their political beliefs, rather than for the commission of a crime, there is no agreed definition of the term under international law.<sup>151</sup>

The Subcommittee notes that around the world, individuals may be detained, tried and imprisoned for alleged criminal activity based on their political opinions, perceived political motivations, because of the political nature of their acts, or because of the political motivations of the authorities. Moreover, the Subcommittee notes that in Burma, as in other countries, individuals may be targeted for arbitrary detention out of religious, ethnic or other discriminatory motives.

In the Subcommittee's view, it is important to distinguish between individuals who have actually committed acts of violence and those who hold or express opinions or beliefs peacefully. We believe that all those imprisoned, in Burma or any other country, for peacefully exercising their internationally recognized human rights, in particular their rights to freedom of opinion, expression, association, assembly, religion or belief, ought to be immediately and unconditionally released.

The Subcommittee also acknowledges that some individuals imprisoned in Burma may have committed or advocated acts of violence as a means of achieving their political goals, or they may have committed other types of crimes that are defined in a manner that meets international human rights standards, such as crimes involving corruption. We stress that all such individuals must benefit from the full range of fair trial rights under international law, including trial before an independent and impartial tribunal for the commission of crimes defined in accordance with international human rights standards, and on charges that are sufficiently well defined to afford the individual their right to full answer and defence. We do not consider that mere association with an ethnic armed

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150 *Evidence*, Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012.

151 For an illustration of different perspectives, see: Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 30; Assistance Association for Political Prisoners (Burma), "[Criteria for AAPP's Definition of a Political Prisoner](#)," September 30, 2011; Michael F. Martin, "[Burma's Political Prisoners and U.S. Sanctions](#)," Congressional Research Service, 5 July 2012; Amnesty International, "[The History of Amnesty International](#)." The Government of Canada has not officially adopted a definition of the term "political prisoner": Communication from DFAIT, 14 September 2012.

group or its political wing, in the context of Burma's decades of internal conflict, should automatically disentitle an individual from being considered a "political prisoner." However, whether such individuals ought to be considered "political prisoners" would need to be considered on a case-by-case basis taking account of the circumstances of each case. Overall, we believe that the situation of imprisoned members of ethnic armed groups ought to be considered in the context of a comprehensive national reconciliation process that stresses the right to truth for victims, as well as accountability for perpetrators of serious violations of international humanitarian law and gross violations or abuses of internationally protected human rights.

Witnesses pointed out that despite the recent releases of political prisoners, most of the laws under which those individuals were detained, charged, and convicted remain in force.<sup>152</sup> Moreover, many of the political prisoners who have been released to date have been freed under subsection 401(1) of the Code of Criminal Procedure, a provision that temporarily suspends a prison sentence. These individuals can be re-arrested without a warrant to serve the remainder of their term, and possibly an additional sentence.<sup>153</sup> Mr. Din told the Subcommittee in May of 2012 that these individuals were not yet truly free and illustrated this point by referring to the case of Zargana, "the most famous comedian of Burma." According to the information the Subcommittee received, Zargana "was sentenced to 59 years imprisonment in June 2008. His sentence was later commuted to 35 years. Upon his release, he had served 3 years and 3 months in prison; however he still owes 31 years and 9 months to President U Thein Sein. It is a very heavy weight sitting on his shoulders at all times."<sup>154</sup>

Estimates of the number of political prisoners who remain in detention vary, but there are thought to be a significant number remaining.<sup>155</sup>

The Subcommittee is extremely disturbed by allegations that the Burmese government continues to detain and imprison new individuals on the basis of their political beliefs or for the peaceful exercise of their human rights, despite its stated commitment to reform. Mr. Davis told us that "March [2012] saw the highest number of arrests in two years, including 43 people who have been jailed in relation to development projects for things like refusing forced relocation orders, and for distributing T-shirts protesting a gas pipeline."<sup>156</sup> Similarly, six locally engaged staff members of the United Nations and a number of staff members of international NGOs working to address humanitarian needs arising out of communal violence that occurred in Rakhine State in June 2012 were

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152 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

153 Ibid.; Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, para. 9.

154 Written submission of the US Campaign for Burma to the Subcommittee on International Human Rights, 8 May 2012.

155 "[Burma Political Prisoners 'Freed' After EU Sanctions Move](#)," 23 April 2013; Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 22<sup>nd</sup> Session of the UN Human Rights Council, 6 March 2013, UN Doc. A/HRC/22/58, para. 7.

156 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

arrested and detained. The Special Rapporteur for human rights in Myanmar, indicated at the end of a fact-finding visit in early August 2012 that he had “serious concerns about the treatment of these individuals during detention” and expressed his view that “the charges against them are unfounded and that their due process rights have been denied,” a situation similar to that of other political prisoners. The Special Rapporteur has called for the immediate release of these individuals and a review of their cases. While some of these individuals have since been released, including the UN staff members, others remain in detention.<sup>157</sup>

The Subcommittee wishes to express its firm conviction that the Government of Canada ought to continue to call for the immediate and unconditional release of all political prisoners in Burma.

## **B. Concerns with Respect to Economic, Social and Cultural Rights**

### **1. Setting the Stage: Economic, Social and Cultural Rights in Burma**

The ultimate goal of international human rights law is the creation of free societies where individuals can live in dignity, free of fear and want. Different states may choose different means to reach this goal. Nevertheless, one of the fundamental functions and obligations of any government is to create, through national effort and international co-operation and in accordance with the resources of each society, the social conditions under which all people within its jurisdiction may fully enjoy their social, economic and cultural rights. Some key social, economic and cultural rights include, for all persons without discrimination:

- the right to work in employment of their choice and receiving just remuneration sufficient to ensure an existence worthy of human dignity;
- the right to form and join trade unions;
- the right to rest and leisure, including holidays and limits on working hours;
- the right to an adequate standard of living, including equitable access to basic healthcare, food and shelter;
- the right to an education; and,
- the right to participate in the cultural life of the community.<sup>158</sup>

Burma is an impoverished country that has been subject to decades of military misrule. As Burma begins its democratic transition, the Subcommittee was told that

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157 Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 22<sup>nd</sup> Session of the UN Human Rights Council, 6 March 2013, UN Doc. A/HRC/22/58, para. 9.

158 UDHR, arts. 22-29.

significant development challenges will need to be overcome in order to set the people of Burma on the path towards the progressive realization and enjoyment of their economic, social and cultural rights.<sup>159</sup> Mr. Jeff Nankivell, from CIDA, summarized the situation this way:

According to the 2011 UN Human Development Report, Burma ranked 149<sup>th</sup> out of 187 countries on a composite measure of income per-capita, life expectancy and education levels. In the border regions where fighting continues between the national army and armed non-state ethnic groups, there is evidence that the depth of poverty is considerably greater than the national average for Burma. In addition to impeding long-term social and economic development in the affected regions, these long-standing conflicts have resulted in widespread displacement within Burma and migration across borders.<sup>160</sup>

Illustrating some of the challenges Burma faces in building the capacity to implement necessary reforms, the 2011 United Nations Development Program (UNDP) Human Development report indicates that the mean number of years of schooling in Burma is 4.0. In contrast, the mean in the Asia-Pacific region as a whole is 7.2 years.<sup>161</sup> Only 18% of adult women and 17.6% of adult men in Burma have completed schooling to the secondary level or higher.<sup>162</sup> In addition, the country lacks infrastructure and communications are difficult, especially since there is little mobile telephone capacity.<sup>163</sup>

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159 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012. A 2011 UN Country Team report provides more information, noting that sub-national inequalities in development remain substantial (United Nations Country Team in Myanmar, [Thematic Analysis 2011, Achieving the Millennium Development Goals in Myanmar](#), 2011).

While the UDHR requires all states to refrain from violating civil and political rights regardless of their state of development, this instrument and other international treaties recognize that the full realization of social, economic and cultural rights will often be constrained by the availability of resources. Therefore, international human rights norms require that states guarantee that economic, social and cultural rights may be exercised without discrimination and that states take steps with a view to achieving the full realization of these rights. The UDHR and international human rights standards do not, however, require that the world's least developed countries provide to their people the same level of enjoyment of social, economic and cultural rights as do the world's most developed countries: Committee on Economic, Social and Cultural Rights, [General Comment 3: The Nature of States Parties Obligations](#), 1990, UN Doc. E/1991/23, annex III, p. 86 (1991).

160 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012. A 2011 UN Country Team report provides more information, noting that sub-national inequalities in development remain substantial (United Nations Country Team in Myanmar, [Thematic Analysis 2011, Achieving the Millennium Development Goals in Myanmar](#), 2011).

161 For the purposes of the Human Development Index, the Asia-Pacific region includes the following countries: Cambodia, China, Fiji, Indonesia, Kiribati, Democratic People's Republic of Korea, Lao People's Democratic Republic, Malaysia, Marshall Islands, Federated states of Micronesia, Mongolia, Myanmar, Nauru' Palau' Papua New Guinea, Philippines, Samoa, Solomon Islands, Thailand, Timor-Leste, Tonga, Tuvalu' Vanuatu, and Viet Nam. It does not include Australia or New Zealand: United Nations Development Program (UNDP), *Human Development Report 2011*, "Technical notes," p. 174.

162 UNDP, [Myanmar: Explanatory note on 2011 HDR Composite Indices](#), 2011, p. 3. Burma's mean number of years of education compares with a mean of 4.2 years for countries categorized as having a "low" human development index score.

163 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).



Witnesses before the Subcommittee stressed that economic development in Burma is an important goal, necessary to both the realization of economic, social and cultural rights for Burma's people and for the entrenchment of recent democratic reforms.<sup>164</sup> Mr. Giokas told the Subcommittee that Burma will need to attract international investment in order to provide jobs and economic activity for the people of the country. "Without that," he said, "everything else will likely become problematic."<sup>165</sup> He stressed that in order for democratic development to succeed, Burma needs its people to be "gainfully employed or feeling that there are prospects, hope and a future for them and their families."<sup>166</sup>

The Subcommittee agrees with Mr. Nankivell's assessment that for economic development to be successful in Burma, the country will need to ensure sufficient focus on grass roots economic development. We were encouraged to learn that World Bank has recently reached an agreement with the Government of Burma to set up a country office. The Bank is preparing a package of grants of up to US\$85 million to fund "community-driven development programs" under which community members will select the development projects that they most need, including in border and conflict areas.<sup>167</sup>

## 2. Reports of Positive Developments

The Subcommittee did not receive evidence from witnesses regarding positive developments in the field of economic, social and cultural rights in Burma. We wish to note, however, in the interest of presenting a fair picture of economic, social and cultural rights in Burma, that the Special Rapporteur for human rights in Myanmar has reported that a variety of economic reforms have been introduced by the Burmese government to pave the way towards the introduction of a market economy, to encourage foreign investment, and promote economic growth.<sup>168</sup> The Special Rapporteur, whose reports were referred to as a reliable source of information by a number of witnesses, indicated in March 2012 that President Thein Sein's reform agenda contains a number of commitments in relation to economic, social and cultural rights, including: "the safeguarding of farmers' and labour rights, the creation of jobs, the overhauling of public health care and social security, raising education and health standards and the promotion of environmental conservation."<sup>169</sup>

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164 [Ibid.](#) (Mr. Greg Giokas); [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

165 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

166 [Ibid.](#)

167 The World Bank, "[World Bank Group Prepares First Grants to Support Myanmar's Reforms](#)," News Release, 1 August 2012.

168 Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, paras 31-33; Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 46.

169 Quintana, March 2012, [ibid.](#), para. 46; Quintana, September 2012, [ibid.](#), paras 34-35.

The President also ordered a halt to construction of the controversial Myitsone Dam, located in Kachin State, in September 2011 in response to popular protests. These protests resulted from local concerns about the negative social and environmental impacts of the project. Similarly, in January 2012, the President also suspended the construction of a coal power plan in the Dawei special economic zone, also following popular protests over negative social and environmental impacts.<sup>170</sup>

### **3. Current Concerns: Human Rights Violations and Abuses Prevent “Development” Projects from Benefitting the Burmese People**

The evidence presented to the Subcommittee underscored that respect for civil and political rights in Burma is closely linked to the Burmese people’s enjoyment of the social and economic benefits of development.

In terms of economic liberalization, Mr. Giokas told the Subcommittee that Burma is “charging ahead with reforms that they don’t really have the capacity to implement properly.”<sup>171</sup> He stressed that Burma currently provides a very difficult investment environment.<sup>172</sup> Inter Pares submitted that “Burma has no regulatory framework whatsoever to oversee the sustainability of development projects or extractive industry, or to protect local people from the negative impacts of projects.”<sup>173</sup> Mr. Davis shared this view.<sup>174</sup> Mr. Din identified the crux of the issue when he asked how Burma could develop “when you don’t have the rule of law, you don’t have proper business guidelines, and you don’t have a governance system that grants equal opportunity for all the people inside the country?”<sup>175</sup>

To demonstrate their concerns about the lack of an adequate political, legal and regulatory framework within which development projects could be expected to contribute to the welfare of the Burmese people, witnesses highlighted problems created by existing projects, undertaken, in light of Western sanctions, primarily by investors from China, India and Thailand. We were informed that Burmese state-owned and private companies behaved no better.<sup>176</sup>

Mr. Din explained that decisions about infrastructure and resource development projects are routinely made without consulting the affected communities and without proper environmental or social impact assessments. A similar point was also made by the

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170 Quintana, March 2012, *ibid.*, para. 56. The Myitsone Dam is a Chinese investment project and the Dawei special economic zone involves principally Thai and Burmese investors.

171 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

172 *Ibid.*

173 Written submission of Inter Pares, p. 4.

174 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

175 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

176 Written submission of Inter Pares, attachment entitled “Harsh Lessons of Kachin ‘development’,” Tsa Ji, 3 May 2012.

Karen Human Rights Group, which stated that villagers often have no opportunity to express their concerns about the ways in which development projects may affect their agricultural land or livelihoods, nor do they have an opportunity to negotiate what they believe to be “fair” compensation for anticipated losses to property or their ability to earn a living.<sup>177</sup> Inter Pares submitted that “[w]ell-documented practice to date illustrates a pattern of resource extraction development projects accompanied by massive militarization of the area and widespread human rights abuses.”<sup>178</sup>

To make matters worse, many of the benefits of resource, infrastructure and development projects do not reach local people, but are instead funnelled out of the country. Mr. Humphries informed the Subcommittee, for example, that nearly all of the power generated from a series of massive hydroelectric projects in Burma goes to China, while the Burmese live with widespread electricity shortages.<sup>179</sup>

Witnesses also highlighted the links between Burma’s large-scale infrastructure projects and its internal armed conflicts with ethnic minorities. We were told that the 17-year ceasefire in Kachin State ended in 2011, when fighting broke out in a strategically important area at the headwaters of the Irrawaddy River where a major hydroelectric project — the Myitsone Dam — was being constructed by Chinese investors.<sup>180</sup>

In the words of Inter Pares, as a result of large-scale development projects undertaken in Kachin State since the ceasefire,

the Kachin people saw their forests destroyed, and their land confiscated for plantation agriculture or destroyed by mine tailings. During the first 10 years of the ceasefire [between the Kachin Independence Army and the Burmese military],<sup>181</sup> the number of Burma Army battalions more than doubled to support these projects, resulting in increased forced labour, sexual violence,<sup>182</sup> increased drug trafficking and addiction, extortion and other abuses with impunity.

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177 Written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, compiled for the Canadian Parliamentary Committee on Human Rights, August 2012” by the Karen Human Rights Group.

178 Written submission of Inter Pares, p. 4 and attachment entitled “Human Rights Situation in eastern Burma, compiled for the Canadian Parliamentary Committee on Human Rights, August 2012” by the Karen Human Rights Group.

179 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012; written submission of Mr. James and Mrs. Hkaw Win Humphries.

180 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

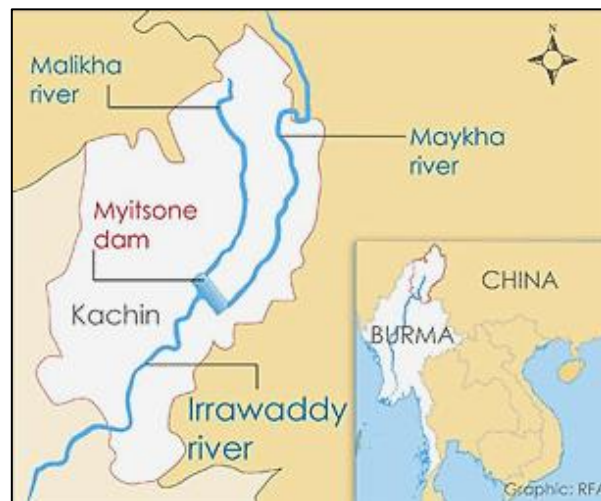
181 The Kachin Independence Organization reached a ceasefire with the Burmese military in 1994: written submission of Inter Pares, p. 6 and attachment entitled, “Harsh Lessons of Kachin ‘Development’” by Tsa Ji.

182 *Ibid.*; Mr. and Mrs. Humphries made the same point in their testimony and written submission to the Subcommittee: [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012.

Mr. Humphries also stressed that the persecution of the Kachin people by the Burmese military, discussed in detail later in this report, is based partly on the military's desire to control the resource wealth in the area.<sup>183</sup>

We were told that this history of human rights violations and exploitation under the guise of “economic development” was an important factor in the breakdown of the ceasefire, following an influx of Burmese troops to support the construction of the Myitsone Dam in Kachin State. In Mr. Davis' view, the Kachin Independence Organization<sup>184</sup> also sees the Myitsone Dam project as a strategic threat that will undermine Kachin military positions and increase the number of Burmese troops in previously Kachin-controlled areas.<sup>185</sup> The Kachin Independence Organization, said Inter Pares, has “refused to negotiate a ceasefire based on ‘development’ unless there is a clear mechanism to resolve political issues.”<sup>186</sup>

**Figure 3: Map of the Myitsone Dam in Kachin State, Burma**



Source: © [Radio Free Asia](#)<sup>187</sup>

Reports of forced labour in connection with large-scale economic development projects continue to be widespread throughout the country, especially in ethnic minority areas. In some Karen areas, the Burmese military units assigned to provide security for development projects are reported to extort arbitrary fees from villagers before allowing

183 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012.

184 The Kachin Independence Organization is affiliated with the Kachin Independence Army. More information about ethnic armed groups in Burma is provided later in this report.

185 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

186 Ibid.

187 Copyright © 1998-2011, RFA. Used with the permission of Radio Free Asia, 2025 M St. NW, Suite 300, Washington DC 20036, <http://www.rfa.org>.

them to travel and transport goods.<sup>188</sup> Overall, we were told that instead of improving the lives of the people of Burma, “[t]hese projects have driven the people into deep poverty, landlessness, and displacement.”<sup>189</sup>

Based on concerns stemming from current development practices in Burma, witnesses stressed the critical importance of putting into place national laws and regulations to protect people, the environment and society in accordance with international human rights standards and standards on corporate social and environmental responsibility. Without such a framework, we were told that the people of Burma will not see the positive effects of development.<sup>190</sup>

### a. Land Rights

Witnesses highlighted the critical importance of the protection of land, housing and property rights for villagers and ordinary people in Burma, in light of recent reforms expected to lead to an increase in foreign investment. They noted that in Burma, development projects are often accompanied by land confiscation without just compensation, causing people to lose their homes, their villages and their status.<sup>191</sup> We were informed that the Burmese military has traditionally attempted to consolidate its control of areas where ceasefire agreements have been reached by handing out land and business concessions that usually result in the confiscation of villagers’ homes and property without compensation, and ultimately, in forced displacement of populations.<sup>192</sup> In fact, Mr. Din identified land confiscation as the most pressing development issue facing Burma today. He told the Subcommittee that in ethnic minority areas, “there are more and more violations of land and housing rights caused by infrastructure and development projects, natural resources exploitation, and land confiscation.”<sup>193</sup>

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188 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); written submission of Inter Pares, p. 4 and attachment entitled “Human Rights Situation in eastern Burma, compiled for the Canadian Parliamentary Committee on Human Rights, August 2012” by the Karen Human Rights Group. The Government of Canada recently expressed concern regarding the use of forced labour in the context of economic activity in Burma: Foreign Affairs Minister John Baird and Minister of International Trade and Minister for the Asia-Pacific Gateway Ed Fast, “[Open Letter on Doing Business in Burma](#),” 31 August 2012.

189 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din). A similar point was made by [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); written submission of Inter Pares, attachment entitled “Benchmarks for Investment in Energy, Extractive and Land Sectors in Burma” by the Burma Environmental Working Group.

190 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012, (Mr. Aung Din); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries). See also Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 53-57.

191 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, compiled for the Canadian Parliamentary Committee on Human Rights, August 2012” by the Karen Human Rights Group. See also Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19<sup>th</sup> Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, paras. 53-57.

192 Ibid.

193 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

Members queried witnesses about this pressing issue, and about the possibility that recent reforms could actually be used to legitimize or facilitate land grabbing. The Subcommittee learned that although the 2008 constitution guarantees the right to land and private property ownership,<sup>194</sup> this protection is largely ineffective in practice.<sup>195</sup> We were also informed that a new land law has not dispelled fears of land grabbing because it permits land confiscation in matters of “national interest.”<sup>196</sup> Discussing the controversial Myitsone Dam project in Kachin State, now suspended by order of the President, Mr. Humphries illustrated the problem:

When [the Burmese authorities] want to build a power dam, as they did up north of Myitkyina [the capital city of Kachin state], they just said they were building the power dam. It's the fifteenth largest power dam in the world, and they just started moving out the Kachin by the thousands. The commitments and the things that [the Government] said they would do, such as giving [the displaced Kachin] a new farm or new property, they never did. They just took it. Then they brought in about 10,000 migrant workers from China — I was living there at that time. So [the Kachin] don't even get the benefit of helping to make money by building these things. ...<sup>197</sup>

Similarly, we were told that lands are being confiscated to build a pipeline that will transport natural gas found in the Bay of Bengal, off the coast of Rakhine State in western Burma, through the middle of country and across Shan State in the east, for sale to China, where the pipeline will terminate. We were informed that people who are displaced by these infrastructure and development projects, and those whose land is confiscated without fair compensation have no recourse. There is nowhere to turn for justice. As Mr. Humphries eloquently stated, “[y]ou just lose it; it's gone. And if you complain too much, you're gone.”<sup>198</sup>

The Subcommittee notes that “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (forced evictions) are incompatible with the right to adequate housing guaranteed under the *Universal Declaration of Human Rights*.<sup>199</sup> Forced evictions violate Burma's international obligation under the *Convention on the Elimination of All Forms of*

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194 Constitution of the Union of Myanmar, 2008, articles 356, 357, 372.

195 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

196 Written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, compiled for the Canadian Parliamentary Committee on Human Rights, August 2012” by the Karen Human Rights Group.

197 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); written submission of Inter Pares, p. 6.

198 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries). The written submission of Inter Pares, attachment entitled “Benchmarks for Investment in Energy, Extractive and Land Sectors in Burma” by the Burma Environmental Working Group made a similar point.

199 UDHR, art. 25. See discussion in: Committee on Economic, Social and Cultural Rights, [General Comment 7: Forced Evictions and the Right to Adequate Housing](#), 1997, UN Doc. E/1998/22, annex IV.

*Discrimination Against Women*, as well as its obligation under the *Convention on the Rights of the Child*.<sup>200</sup>

As witnesses pointed out, forced evictions often lead to the violation or abuse of other human rights — for example, the loss of community, culture and status. Forced evictions cause internal displacement and refugee movements and can lead to forcible population transfer, especially in situations of armed conflict. In Burma and elsewhere, such evictions are often accompanied by violence, including armed conflict and communal violence. Women and children are especially vulnerable following such forced evictions and face a heightened risk of sexual abuse and violence when they are left homeless.<sup>201</sup>

The Subcommittee stresses that international human rights standards require that people be protected by law from unfair eviction from their homes and land. International standards mandate a number of procedural protections that Burma should apply before undertaking any eviction:

- consultations with affected communities need to occur prior to any proposed eviction;
- people need to receive adequate notice and information about the eviction;
- government representatives should be present during the eviction — such actions should not be left to private actors;
- persons carrying out evictions should be properly identified; and,
- evictions generally should not occur at night or in particularly bad weather.<sup>202</sup>

In a country like Burma with extreme inequalities of wealth and deep social divisions, where individuals and communities affected by evictions are unable to care for themselves, international human rights standards require the state to take all appropriate measures consistent with the resources available to it, in order to ensure that the affected people have access to a resettlement process, productive land or alternative housing.<sup>203</sup>

The Subcommittee believes that Burma urgently needs to revise its proposed draft land legislation in order to clearly prevent and punish forced evictions by private persons and public actors. Individuals need to have access to independent and impartial legal

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200 CEDAW, art. 14; CRC, art. 27.

201 Written Submission of Inter Pares, p. 5, and attachment entitled “Human Rights Situation in eastern Burma, compiled for the Canadian Parliamentary Committee on Human Rights, August 2012” by the Karen Human Rights Group, and attachment entitled “Harsh Lessons of Kachin ‘Development’” by Tsa Ji; CESCR General Comment 7, para. 11.

202 CESCR General Comment 7, paras. 14-16.

203 Ibid, para. 17.

recourse, including appropriate procedural protections, where just compensation has not been paid for their property or damage caused to it. To ensure that people have access to justice, including legal remedies for eviction, Burma should also aspire to provide legal aid for individuals to challenge their evictions in court. The Subcommittee believes that the Government of Canada should continue to stress the importance of implementing these human rights protections in its relationship with the Government of Burma, as well as in its advice to private corporations considering doing business in the country.

#### **4. Current Concerns: Pervasive Corruption and the Need for Responsible Investment**

Mr. Giokas informed the Subcommittee that the personal links between members of the military and the country's major infrastructure and development projects pose a major challenge for would-be investors from countries like Canada.<sup>204</sup> Mr. Din explained that these personal relationships enabled corruption in Burma, preventing the country's natural resource wealth from benefitting the people.<sup>205</sup> Indeed, the Special Rapporteur on human rights in Myanmar noted in March 2012 that:

[T]he multi-billion-dollar profits from natural gas sales to Thailand have not been used to improve the educational infrastructure in the country. According to reliable sources, these revenues appear to be stored in offshore bank accounts, outside the national budget. ... The funds from the sale of natural gas are estimated to account for 70 per cent of the country's total foreign exchange reserves, with sales totalling around \$3 billion annually. If these funds had been included in the State budget, they would have accounted for 57 per cent of the total budget revenue. Instead, they contributed less than 1 per cent of total budget revenue, with much of this revenue reportedly never entering Myanmar. These funds need to be included in the Government's budget and managed transparently with proper checks and balances.<sup>206</sup>

The Subcommittee wishes to underline the fact that corruption and poor governance have a negative effect on the enjoyment and protection of individual rights. Corruption prevents states from delivering social services necessary for the progressive realization of economic, social and cultural rights and creates disparities in access to public goods between those with or without influence on the authorities. The economically and politically disadvantaged inevitably suffer greater marginalization in societies like Burma where corruption is prevalent. Corruption also weakens democratic governance and the rule of law. Important public policy decisions are not taken with the interests of the people in mind, but rather to advance certain personal interests, which can lead to a loss of support for democratic institutions in the long run.

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204 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

205 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din). A similar point was made in the written submission of Inter Pares, attachment entitled "Benchmarks for Investment in Energy, Extractive and Land Sectors in Burma" by the Burma Environmental Working Group.

206 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the Situation of human rights in Myanmar](#), Presented to the 16<sup>th</sup> Session of the Human Rights Council, 7 March 2011, UN Doc. A/HRC/16/59, para. 78.



In Burma, the Subcommittee was told that judicial independence is compromised and corrupt justice-sector officials impede reform. Such practices weaken the right to a fair trial and compromise the accountability structures that are necessary to combat impunity because laws are not consistently applied and violators are not consistently punished.<sup>207</sup> The Subcommittee believes that Burma needs to address swiftly and decisively the problem of systemic corruption and in particular, corruption in its major infrastructure, resource and development projects, if it hopes to entrench democratic reforms.

We were told that Canadian companies should not invest in mining operations or the extractive resources sector until and unless there are regulations put in place that are consistent with internationally recognized social responsibility and environmental standards. Mr. Din advocated the adoption by Canada of “binding principles” requiring corporations investing in Burma to respect labour rights and to ensure that their activities do not cause undue negative social and environmental impacts for local communities.<sup>208</sup>

In the long run, the Subcommittee believes that improving transparency, accountability and resource governance in Burma will be critical to ensuring that infrastructure, resource extraction, hydro power and other development projects in Burma contribute to poverty reduction and create a business environment in which foreign investors can operate responsibly. The duty to enact an appropriate legal, institutional and budgetary framework that will ensure that the benefits of Burma’s wealth reach its people lies primarily with the Government of Burma. In particular, this is the task of the civilian MPs and the executive who will need to take steps to meet the economic, social and cultural aspirations of their constituents if they hope to remain in office following free and fair elections in 2015.

The Subcommittee agrees with witnesses who urged foreign investors to proceed with great caution before venturing into dealings involving the extraction of natural resources, infrastructure, and other large-scale economic development projects. We note that Canadians remain barred from doing business with certain individuals in Burma and that Canada’s *Corruption of Foreign Public Officials Act* imposes criminal penalties, including imprisonment, for bribery of foreign public officials.<sup>209</sup> In addition, the Subcommittee expects that any Canadian company considering investing in Burma will ensure that its operations are compliant with internationally recognized corporate social responsibility standards supported by the Government of Canada, including the following:

- The [Guiding Principles on Business and Human Rights](#), which require business to respect human rights in areas in which they operate and

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207 Office of the High Commissioner for Human Rights, “[Development – Good Governance](#).”

208 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

209 [Special Economic Measures \(Burma\) Regulations](#), SOR/2007-285; [Corruption of Foreign Public Officials Act](#), S.C. 1998, c. 34. Legislation is being considered by Parliament to permit Canadian courts to prosecute Canadian companies, citizens and permanent residents present in Canada who have committed offences under the Act: [Bill S-14, An Act to amend the Corruption of Foreign Public Officials Act](#), 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, Robin MacKay, [Legislative Summary of Bill S-14: An Act to amend the Corruption of Foreign Public Officials Act](#), No. 41-1-S14-E, Ottawa, Library of Parliament of Canada.

governments to protect human rights and provide remedies for violations and abuses. The UN Human Rights Council endorsed the Guiding Principles in July 2011.<sup>210</sup>

- The Organization for Economic Cooperation and Development (OECD) [Guidelines for Multinational Enterprises](#), which were recently updated to include a chapter on human rights designed to reflect the [Guiding Principles on Business and Human Rights](#). The OECD has also prepared a [Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones](#), which contains recommendations for conducting business in regions where the state has not effectively assumed its responsibility to regulate business conduct.
- The [Voluntary Principles on Security and Human Rights](#), for projects involving private or public security forces.
- The World Bank Group [International Finance Corporation \(IFC\) Performance Standards](#), which deal with a variety of topics including the assessment and management of environmental risks and impacts, labour and working conditions, community health, safety and security, land acquisition and involuntary resettlement, biodiversity conservation and sustainable management of living natural resources, indigenous people, and cultural heritage. Projects receiving support from the IFC must adhere to these performance standards.
- The [Equator Principles](#) provide a risk management framework for financial institutions aimed at determining, assessing and managing social and environmental risk in project finance transactions where the total capital costs exceed US\$10 million. Financial institutions that adhere to the principles will not provide loans for projects where the borrower is unwilling or unable to conform to the Equator Principles.<sup>211</sup>
- The [Extractive Industries Transparency Initiative \(EITI\)](#), which set out standards aimed at increasing revenue transparency in the extractive sector in order to strengthen accountability and good governance. Burma has recently expressed its intention to implement the EITI standards.<sup>212</sup>
- The [Global Reporting Initiative](#) that aims to enhance transparency in Corporate Social Responsibility reporting by companies that work in the extractive sector.

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210 UN Human Rights Council, [Human rights and transnational corporations and other business enterprises](#), Resolution 17/4, 6 July 2011, UN Doc. A/HRC/RES/17/4. In the same resolution, the Human Rights Council established a working group to study and promote the implementation of these non-binding standards.

211 Equator Principles, "[About the Equator Principles](#)."

212 Extractive Industries Transparency Initiative, "[Myanmar reaffirms intention to implement EITI](#)," 18 July 2012.

The Subcommittee also wishes to draw attention to the fact that the Office of the Extractive Sector Social Responsibility Counsellor is available to assist stakeholders to mediate disputes, under certain conditions, involving the activities of Canadian extractive resources companies abroad.<sup>213</sup>

The Subcommittee believes strongly that the people of Burma, without discrimination, must be able to benefit from economic development within the country, earn their livelihoods successfully in a fair work environment, provide for their families, and be assured of adequate access to health care and education during this time of transition. We agree with Mr. Giokas that Burma will need to work on building the “institutions and architecture to attract the type of investment they will require to create prosperity in their country.”<sup>214</sup> Given Canada’s expertise in the extractive resources sector, the Subcommittee observes that there may be a useful role for Canada and Canadians to play in providing capacity-building assistance in this regard.

## **C. Specific Concerns Regarding the Situation of Ethnic Minority Groups**

### **1. Introduction**

Throughout our study, witnesses stressed that the democratic and human rights progress that has occurred in central Burma has not yet reached the country’s border regions. These areas are populated by different ethnic minority groups, many of whom have been at war with the Burmese government for decades. According to Mr. Davis,

Burma's ethnic minorities make up a third of the country's population, and they continue to bear the brunt of the military's crimes. Minority groups remain extremely sceptical of the changes in Burma, and for good reason. Ethnic people have faced abuse and oppression by the Burmese government for more than 60 years, and they're understandably reluctant to embrace the announced changes coming from their government. They do not trust the government, and so far, they have not benefited from the changes in Burma.<sup>215</sup>

Echoing this sentiment, Mr. Humphries told us that in ethnic minority areas, the lack of civilian control over the military has created a great deal of confusion about the constitution and the role of Parliament. Despite recent changes in central Burma, the Commander-in-Chief and local military commanders still appear to have complete authority in these regions.<sup>216</sup> Mrs. Humphries added that as a result, “in practice, there is a very real policy of fear and intimidation at all levels” in these parts of the country.<sup>217</sup>

The Subcommittee is gravely concerned about the credible reports, including eye-witness testimony, which we have received regarding the continued commission of war

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213 See the [website of the Corporate Social Responsibility Counsellor](#).

214 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

215 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

216 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

217 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries).

crimes, crimes against humanity and grave human rights violations and abuses in Burma's border regions. We believe that a negotiated political settlement with ethnic minority groups, recognition and acknowledgement of crimes that have been committed, some genuine form of accountability for perpetrators, and effective remedies for victims will be needed to establish a peaceful, free and democratic Burma.

### **a. Principal Ethnic Groups and Ethnic Armies**

Burma is home to a large number of different ethnic groups. Among these are the Kachin (northeast Burma), Chin (northwest Burma), Shan (eastern and northeastern Burma), Wa (eastern and northeastern Burma), Konkang (eastern and northeastern Burma), Karen (eastern Burma), Karenni (eastern and southeastern Burma), Kayan (eastern and southeastern Burma), and Mon (southeastern Burma), all of whom have a history of organized, armed rebellion against the Burmese State since the end of the colonial period in 1948. Although many ethnic armed groups reached ceasefire agreements with the Burmese junta during the 1990s, the Karen National Union, the Karenni National Progressive Party, the Shan State Army — South, and the Chin National Front did not reach lasting agreements and brutal, low-level fighting in the states dominated by these ethnic groups continued. With the exception of the Kokang, whose ethnic army was transformed into a border guard force under Burmese control following a Burmese military offensive in 2010, all of these groups continue to maintain standing armies,<sup>218</sup> and many have negotiated new ceasefire agreements in the last two years.<sup>219</sup> Witnesses stressed that despite the existence of ceasefire agreements, the political

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218 These groups include the: Kachin Independence Army, Chin National Front, United Wa State Army, Shan State Army — North, Shan State Army — South, Karen National Union, New Mon State Party, and the Karenni National Progressive Party. In addition to the Karen National Union, an armed group which represents predominantly Christian Karen, a rival armed group, the Democratic Karen Buddhist Army (DKBA) also exists. The 5th Brigade of the DKBA split away from the main group and is now known as Golden Drum. The Kayan New Land Party, and the National Democratic Alliance Army (Mongla or NDAA-ESS) also continue to exist as ethnically-based armed groups. Two other significant ethnic armed groups, the Pao National Organization and the Palaung State Liberation Party, signed ceasefire agreements in 1991 and became government-backed militias. Ethnic minority organizations that reportedly may control a small number of troops include the Lahu Democratic Front, the National Unity Party of Arakan, the Pao National Liberation Organization, the Palaung State Liberation Force and the Wa National Organization: ICG, [Myanmar: A New Peace Initiative](#). Other ethnic armed groups also exist.

219 With the exception of the Karen National Union, the armed groups affiliated with these ethnic minority populations signed ceasefire agreements with the junta in the early-to-mid 1990s. These negotiations were led by General Khin Nyunt, who was later purged, imprisoned and then released in January 2012 as part of a broader release of political prisoners. More details on these ceasefire agreements can be found in: Zaw Oo and Win Min, *Assessing Burma's Ceasefire Accords*, Policy Studies 39 (Southeast Asia), Washington, East-West Centre, 2007. Media and other reports indicate that the following major ethnic armies, among others, have negotiated new ceasefire agreements since 2010, although these agreements are fragile and sporadic fighting continues in some areas: Chin National Front, Karenni National Progressive Party, Democratic Karen Buddhist Army, Golden Drum, New Mon State Party, United Wa State Army and the National Democratic Alliance Army (Mongla). Information from the Karen Human Rights Group provided to the Subcommittee indicates that a preliminary ceasefire agreement was reached in Karen areas in January 2012.

grievances underlying these armed conflicts have remained unaddressed and unresolved.<sup>220</sup>

In addition to these groups, the Rakhine and Rohingya ethnic groups live in Rakhine State, in western Burma, where there is little recent history of armed conflict. The Rohingya are concentrated in three northwestern townships of the state.<sup>221</sup> A number of smaller ethnic groups also exist throughout the country, primarily in the mountainous border regions.

Complementing Burma's ethnic diversity, a variety of different religions are practiced by ethnic minority groups. While members of ethnic minority groups share the majority Buddhist faith, a number of ethnic minority groups are predominantly Christian, particularly the Kachin and the Chin. The Rohingya in western Burma are generally Muslim, while the Rakhine are predominantly Buddhist. There are also Muslim, Hindu and animist populations of various minority ethnicities living in various regions of the country.

### **b. A History of Political Marginalization and Armed Conflict**

Several witnesses before the Subcommittee highlighted the deep historical roots of ethnic grievances and armed conflicts in the country and stressed that understanding this history was relevant to reaching a durable political settlement.

From 1824 until shortly after the Second World War, Burma was a British colony. During this period, the British employed a divide and conquer strategy, essentially pitting the aspirations and military capability of the ethnic groups living in what are now the border regions of Burma against those of the Burman majority.<sup>222</sup> Large-scale immigration from British India as well as China also occurred during this period.<sup>223</sup>

In the immediate post-war period, the Rohingya leadership expressed both a desire for independence and a desire to be incorporated into what was then east Pakistan (now Bangladesh). A report submitted to the Subcommittee by prominent international lawyer, Professor William Schabas, argues that the influx of immigration from British India during the colonial period, coupled with this threat to secede from the Union of Burma "on the eve of independence" forms part of the basis for the insistence of successive Burmese

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220 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din); written submission of Inter Pares, attachment entitled "Harsh Lessons of Kachin 'Development' by Tsa Ji.

221 Written Submission of Prof. William Schabas, p. 24.

222 Zaw Oo and Win Min, *Assessing Burma's Ceasefire Accords*, Policy Studies 39 (Southeast Asia), Washington, East-West Centre, 2007, p. 5.

223 Written submission of Prof. William Schabas, p. 24; Maureen Aung-Thwin & Thant Myint-U, "The Burmese Way to Socialism," *Third World Quarterly*, vol. 13, No. 1, 1992.

governments that the Rohingya represent a foreign threat to the territorial integrity of the country.<sup>224</sup>

Mr. Humphries told the Subcommittee about the importance of a conference held in February 1947, called the Panglong Conference. It was at the Panglong Conference that representatives of the Kachin, Chin and Shan ethnic groups met with the Burmese political leader General Aung San and agreed to join a future, independent Union of Burma on the understanding that their regions would retain internal autonomy, receive a guaranteed level of political representation at the national level, and a guaranteed share of the country's wealth (this agreement is referred to as the Panglong Agreement).<sup>225</sup> Karen leaders wished to establish an independent state and so declined to attend the conference. Mon and other ethnic leaders were not invited.<sup>226</sup> As a result, power-sharing arrangements in respect of different ethnic groups remained uneven and unequal.

In July 1947, General Aung San was assassinated, along with most of his cabinet. In January 1948, Burma became independent under a constitution that recognized the country's ethnic and cultural diversity and which provided various special rights for certain ethnic groups,<sup>227</sup> however, the various ethnic minority groups were not given the option of forming independent states, as they had expected. Almost immediately, a number of ethnic minority groups who had not signed the Panglong Agreement rebelled, including the Karen in eastern Burma, and groups with close ethnic ties to China and political links to the Chinese communist party. During the late 1950s and early 1960s, increasing political centralization and marginalization increased ethnic dissatisfaction and eventually the Shan, Kachin and Chin also rebelled.<sup>228</sup> Following Burmese independence, the Rohingya, like other ethnic minorities, became citizens of Burma. In 1961, a ceasefire agreement with Rohingya armed groups was reached, establishing a separate administrative area that gave some autonomy to Rohingya-dominated areas of Rakhine State.<sup>229</sup>

In 1962, in the name of ensuring national unity and preventing the break-up of the country, General Ne Win led a *coup d'état*, replacing the elected government with the "Revolutionary Council," a military dictatorship.<sup>230</sup> Under the dictatorship of General Ne Win, the Burmese junta instituted radical social and economic policies designed to isolate Burma from the outside world and to create a socialist state. The central government refused to accommodate ethnic aspirations, instead embarking on a

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224 Written submission of Prof. William Schabas, p. 25.

225 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); written submissions of Mr. James and Mrs. Hkaw Win Humphries.

226 Zaw Oo and Win Min, *Assessing Burma's Ceasefire Accords*, p. 6.

227 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012, (Mr. James Humphries); written submissions of Mr. James and Mrs. Hkaw Win Humphries.

228 ICG, *A New Peace Initiative*; Ardeth Maung Thawngmung, *Beyond Armed Resistance: Ethnonational Politics in Burma (Myanmar)*, East-West Centre, 2011, pp. 3-7.

229 Written submission of Prof. William Schabas, p. 25.

230 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); ICG, *A New Peace Initiative*.

campaign of “burmanization” of ethnic minorities, with the goal of creating a single, uniform nationality throughout the country that was Burman and Buddhist in character. In effect, we were told that this amounted to a campaign of forced assimilation designed to destroy the distinct cultural, linguistic and religious identities of Burma’s ethnic minority groups. In 1974, a new constitution creating a unitary state was promulgated.<sup>231</sup>

Witnesses told the Subcommittee that this period was characterized by protracted armed conflicts involving various ethnic minority groups, which fought each other as well as the Burmese military, and by flagrant violations of international law perpetrated by Burmese troops in ethnic areas as they tried to cut off any assistance to armed groups from the local population.<sup>232</sup> Under General Ne Win, Burma also expelled thousands of ethnic South Asians who had controlled large portions of the colonial-era economy, as well as ethnic Chinese entrepreneurs. It also commenced a concerted campaign of racial persecution against the Rohingya ethnic minority in western Burma, including the promulgation of a new citizenship law in 1982 that effectively made it impossible for Rohingya to claim Burmese citizenship.<sup>233</sup>

Ceasefire agreements were reached with a number of ethnic groups in the 1990s, although notably not with the Karen or the Karenni. Armed conflict intensified again in 2009 after the Burmese military government unexpectedly issued an instruction requiring ethnic armies to transform into “Border Guard Forces” under the partial command of the Burmese military.<sup>234</sup> Mr. Humphries told us that the ethnic armies objected strongly to this plan, which would have given the Burmese military significant authority over their troops without granting ethnic commanders senior positions within the Burmese military. For example, he said that the Kachin Independence Organization believed this initiative failed to recognize their right to autonomy within the Union of Burma, and that it would have removed their power and ability to help their people move forward.<sup>235</sup>

## **2. Ongoing Discrimination, Violations of the Right to Freedom of Religion and Children’s Right to Education**

Witnesses told us that ethnic minority groups still suffer disproportionately from human rights violations by the Burmese government and military. The Subcommittee learned that many of these violations stem from discriminatory state policies that continue

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231 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin).

232 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); ICG, *A New Peace Initiative*, p. 3.

233 Written submission of Professor William Schabas, pp. 25-26; [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012, (Dr. Wakar Uddin). See also: ICG, *A New Peace Initiative*; ICG, [Myanmar Backgrounder: Ethnic Minority Politics](#), Asia Report No. 52, 7 May 2003; Maung Thawngmung, *Beyond Armed Resistance*.

234 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis). The initiative is discussed in detail in: ICG, *A New Peace Initiative*.

235 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

to be enforced in border regions. The Subcommittee's attention was also drawn, in particular, to serious violations of ethnic minority groups' right to freedom of thought, conscience and religion. Mr. Davis told us that although the discriminatory "Burmanization" policy is no longer officially in force, it still informs the thinking of many senior generals.<sup>236</sup>

The Subcommittee recalls that international human rights law and standards prohibit discrimination, which comes in multiple forms. Discrimination has been defined as

any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination [such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of internationally recognized human rights.<sup>237</sup>

We note also that the right to freedom of thought, conscience and religion has been described as "far-reaching and profound," including "freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others."<sup>238</sup> This right also protects the freedom to manifest one's religious beliefs "in worship, observance, practice and teaching" individually or as part of a religious community, including through building places of worship, and displaying religious symbols.<sup>239</sup> The practice and teaching of religious beliefs include "acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications."<sup>240</sup> However, international human rights standards do not protect or permit manifestations of religious belief that constitute advocacy of religious, racial or national hatred, or which incite discrimination, violence or hostility.<sup>241</sup>

Mr. Giokas confirmed that the Government of Canada has serious concerns about respect for freedom of religion in Burma, in particular in areas of armed conflict, such as Kachin State.<sup>242</sup> Mrs. Humphries echoed this sentiment, telling the Subcommittee that

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236 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis). Dr. Uddin made the same point: [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin).

237 Human Rights Committee, [General Comment No. 18: Non-discrimination](#), 1989, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), para. 6; Committee on Economic, Social and Cultural Rights, [General Comment No. 20, Non-discrimination in economic, social and cultural rights \(Article 2, paragraph 2 of the International Covenant on Economic Social and Cultural Rights\)](#), 2009, UN Doc. E/C.12/GC/20. The right is protected in the UDHR, art. 2, as well under the CEDAW, art. 1 and the CRC, art. 2.

238 Human Rights Committee, [General Comment No. 22: The right to freedom of thought, conscience and religion \(Art. 18\)](#), 30 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4, para. 1. The UDHR protects this right in art. 18.

239 *Ibid.*, para. 4.

240 *Ibid.*

241 *Ibid.*, para. 7.

242 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).



“[s]o-called freedom of religion is greatly controlled by the government.”<sup>243</sup> Professor William Schabas, in his written submission to the Subcommittee, provided documentation indicating that in northwestern Rakhine State, Rohingya are prohibited from building mosques or establishing madrassas to educate their children. Rohingya also have reportedly been forced to destroy mosques and build Buddhist pagodas in their place.<sup>244</sup> Dr. Uddin told us that Muslims in Burma face pressure from the state to convert to Buddhism,<sup>245</sup> saying

a great religion has been hijacked by these extremists in the Burmese military and government. We all know the theology of Buddha says that you cannot kill one ant or insect. A great religion of peace has been hijacked and used like many other religions. We have seen that in our own religion too [Islam]. So it's been hijacked and this religious preference is an ongoing thing ....<sup>246</sup>

The Subcommittee learned that discrimination against ethnic minority groups on the basis of religion is closely connected to other forms of discrimination on the basis of ethnicity, language and culture in Burma. In her home of Kachin State, Mrs. Humphries told us that in practice, even today, the Kachin people’s “ethnic language, culture, and tradition are all being stripped away by force.”<sup>247</sup>

Similarly, we were told that the Chin people “have suffered deep-rooted, institutionalized discrimination on the dual basis of their ethnicity (Chin) and religion (Christian).”<sup>248</sup> Illustrating this problem, Mr. Davis informed us that when the state governments were reorganized by the military dictatorship in 2008, the junta failed to create ministries of education or health in Chin State.<sup>249</sup> The chronic underfunding of the state education system in that region requires families to pay annual school fees and the cost of school supplies, as well as supplementing teachers’ salaries. Many Chin families cannot afford these costs. As a result, the only option for many Chin is to send their children to the free or lower cost “Border Areas National Races Youth Development Training Schools,” run by the Education and Training Department within the Ministry for Border Affairs — which is dominated by the military.<sup>250</sup> We were informed that although these schools exist throughout Burma, Chin children are specifically targeted for recruitment, where they are “prevented from practising Christianity and face coercion to

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243 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries).

244 Written submission of Prof. William Schabas, pp.132-33.

245 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin). The written submission of Prof. William Schabas documented a number of restrictions on freedom of religion.

246 Ibid.

247 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries).

248 Written submission of Inter Pares, attachment from the Chin Human Rights Organization, p. 1.

249 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

250 Written submission of Inter Pares, attachment from the Chin Human Rights Organization, p. 1.

convert to Buddhism.”<sup>251</sup> Informal community primary schools set up to teach Chin children in the Chin language have reportedly been banned since 1998.<sup>252</sup> In commercial relations, Christian Chin also face pressure to convert to Buddhism from business associates who do not wish to deal with Christians.<sup>253</sup>

Discriminatory practices in education do not appear to be confined to Chin State. The Special Rapporteur on human rights in Myanmar reported in his March 2011 that “[d]espite official acknowledgement of 135 ethnic minority groups with almost 100 local languages, it is not legal to teach in any language except the Myanmar language.”<sup>254</sup> This practice poses a barrier to education for children who speak a minority language and in some places prevents them from learning to read and write in their own language, which means that these children “lose access to part of their culture and traditions.”<sup>255</sup>

This information leads the Subcommittee to conclude that despite recent reforms, the Burmese government continues to pursue policies that violate the human rights of minority ethnic groups, in particular the right of all people to freedom of thought, conscience and religion, the right to freedom from discrimination, and the right to education of some ethnic minority children.<sup>256</sup> In particular, forced conversion in an educational setting constitutes a clear violation of the right to freedom of religion. We note further that the Burmese government appears to be failing to protect individuals from discrimination from private persons, creating an environment where people are not free to enjoy their human rights.

The Subcommittee observes that Burma has ratified the *Convention on the Rights of the Child*, which enshrines children’s right to freedom from discrimination and freedom of religion and requires Burma to ensure that childhood education aims at developing respect for the child’s own “cultural identity, language and values.”<sup>257</sup> The Convention provides special protection to children belonging to minority ethnic, religious and linguistic groups, who are explicitly guaranteed the right to enjoy their own culture, to practise their own religion and to use their own language.<sup>258</sup> The reports received by the Subcommittee

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251 Ibid., pp. 1-2; [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis). Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the Situation of human rights in Myanmar](#), Presented to the 16<sup>th</sup> Session of the Human Rights Council, 7 March 2011, UN Doc. A/HRC/16/59, para. 70, observing that the Special Rapporteur had received “disturbing reports” about such practices.

252 Tomás Ojea Quintana, *ibid.*, para. 68.

253 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

254 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the Situation of human rights in Myanmar](#), Presented to the 16<sup>th</sup> Session of the Human Rights Council, 7 March 2011, UN Doc. A/HRC/16/59, para. 68.

255 *Ibid.*

256 UDHR, arts. 18, 2.

257 CRC, arts. 2, 14, 29.

258 CRC, art. 30.

indicate that the Burmese government is violating its obligations in this regard in parts of Chin State.

Dr. Uddin spoke of a lack of religious tolerance in Burma at the present time, which in his opinion had led to “serious clashes” between state forces and religious or ethnic minorities, and between different religious and ethnic groups. He believes, however, that fostering democracy and human rights more broadly will allow religious tolerance to grow in the country. Dr. Uddin told us that he was optimistic that Burma’s democratic transition “will hopefully guarantee some coexistence of religion, and a multi-religion based society could be possible in Burma.”<sup>259</sup>

The Subcommittee agrees with the submissions of witnesses who told us that durable peace and prosperity in Burma requires that the Burmese people, their government, and the military come to see the country’s great ethnic and religious diversity as a strength, rather than a weakness. If the government of Burma is sincere about its desire to embrace democratic reform and human rights, it must cease the practices described above, stop discriminatory and other human-rights violating conduct, and prevent harassment and discrimination by non-state actors, including individuals. We urge the Government of Canada to continue to stress the importance of the principles of non-discrimination and religious freedom, without which no democratic society can thrive. The Subcommittee observes that Canada’s Office of Religious Freedom may be able to contribute to the development of greater religious tolerance and respect for diversity in Burma.

### 3. Armed Conflict and Humanitarian Crisis in Kachin State

Figure 4: Map of Kachin State, Burma<sup>260</sup>



259 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012.

260 Source: [http://d-maps.com/pays.php?num\\_pay=73&lang=en](http://d-maps.com/pays.php?num_pay=73&lang=en)

Witnesses told the Subcommittee about an ongoing crisis in Kachin State, where huge numbers of civilians are suffering the terrible effects of conflict between the Burmese military, or *Tatmadaw*, and the Kachin Independence Army.

Although new ceasefire agreements were reached with other ethnic armed groups between 2010 and 2012, the Burmese military launched an offensive in Kachin State in June 2011, breaking a 17-year ceasefire between the Kachin Independence Organization (the political organization affiliated with the Kachin Independence Army) and the Burmese government.<sup>261</sup>

Fighting continued even though President Thein Sein has ordered the Burmese army to stop combat activities in Kachin State on more than one occasion.<sup>262</sup> The Subcommittee was informed that the conflict escalated, in particular, as Burmese troops attempted to take control of lucrative jade mining areas.<sup>263</sup> The armed conflict had displaced over 75,000 civilians by November 2012.

We were also informed that sporadic fighting also continues in other ethnic minority regions and that the *Tatmadaw* retains a large presence in Chin state. In particular, conflict continues to affect some Karen, Karenni and Shan areas.

The Subcommittee notes that most of the information that we received concerned alleged violations of international law in Kachin State and other conflict zones in Burma by the *Tatmadaw*. However, we were informed of credible allegations suggesting that insurgent groups also violate the laws of war and commit human rights abuses.<sup>264</sup>

### **a. Applicable International Law**

This section of the report chronicles alleged violations of the laws of armed conflict and international crimes, as well as human rights violations.<sup>265</sup> At the outset, the

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261 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

262 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries); Myanmar Information Management Unit, Special Report, "[Humanitarian Situation in Kachin & Rakhine States](#)," 5 November 2012.

263 Kachin Women's Association of Thailand, "[From persecution to deprivation: International donors neglect 60,000 displaced Kachin on China-Burma Border](#)," 2 October 2012.

264 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis). Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, para. 49; Leila Zerrougui, [Report of the Special Representative of the Secretary-General for Children and Armed Conflict](#), Submitted to the UN General Assembly, 6 August 2012, UN Doc. A/67/256, para. 36; Human Rights Watch, [Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State](#), March 2012, pp. 60-63.

265 Although international human rights law continues to apply during armed conflicts, the specialized rules of international humanitarian law provide the most relevant framework for considering the lawfulness of state action: International Court of Justice, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), advisory opinion of 9 July 2004, ICJ Reports 2004, p. 136 and Separate [Declaration](#) of Judge Buergenthal, para. 2.

Subcommittee recalls that unlike human rights law, the laws of armed conflict (known as international humanitarian law) impose binding obligations on all parties to a conflict — including state military forces and non-state armed groups.<sup>266</sup> Overall, international humanitarian law sets out rules that require the parties to a conflict to adhere to basic standards of humanity and proportionality designed to mitigate, to the extent possible, the human suffering that is inevitably caused by war. International humanitarian law achieves these goals by restricting the manner in which parties may wage war and the weapons that they may use; it also aims to protect those who are not participating in the conflict.

Moreover, under international law, individuals may also be held criminally responsible for war crimes,<sup>267</sup> as well as other international crimes such as crimes against humanity.<sup>268</sup> Unlike crimes under national law, international crimes generally may be prosecuted and punished by any country that chooses to do so, and in certain situations,

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266 In respect of Burma, the primary sources of these obligations are Common Article 3 to the Geneva Conventions of 1949 and customary international law.

267 A list of acts that constitute war crimes can be found in article 8 of the [Rome Statute of the International Criminal Court](#) (Rome Statute). The acts listed in article 8(a) and 8(c) constitute criminal offences if committed during non-international (internal) armed conflicts, including grave breaches of the Geneva Conventions of 1949:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

In addition, serious violations of Common Article 3 to the Geneva Conventions of 1949 are also prohibited, meaning any of the following acts committed against persons taking no active part in hostilities:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

These international crimes are recognized under Canadian law in the [Crimes Against Humanity and War Crimes Act](#), S.C. 2000, c. 24, ss. 4, 6. A legal description of these crimes can be found in the [Elements of Crimes](#) of the International Criminal Court.

268 See note 315 for an explanation of the types of acts that constitute crimes against humanity under international law.

by international courts. International crimes are not subject to any limitation period (i.e., they can be prosecuted at any point in time, no matter how far in the future).<sup>269</sup>

### **b. Serious Violations of International Humanitarian Law and Gross Violations of International Human Rights Law**

Witnesses told the Subcommittee that the conditions for civilians in Kachin State are dire. Summing up the situation, Mr. Humphries testified that despite recent reforms elsewhere in Burma, in Kachin areas, “killing, maltreatment, and raping ... has gone unchecked.”<sup>270</sup> Forced displacement, indiscriminate or deliberate targeting of civilians and civilian objects for attack, pillage, excessive, wanton destruction and appropriation of private property, the use of detainees as porters for the armed forces (forced portering) and other forms of forced labour, cruel treatment and/or torture, sexual violence, the use of child soldiers, and the emplacement of land mines were all reported.

Inter Pares informed us that under the previous junta, “the military attempted to depopulate any region it could not fully control, by ordering villages to relocate into garrisoned forced labour camps, then burning villages and food supplies and hunting out the displaced.”<sup>271</sup> We were told that the military continues to deliberately or indiscriminately shell and burn villages in Kachin State and in Karen districts of eastern Burma.<sup>272</sup> In a report submitted to the Subcommittee, Physicians for Human Rights documented at least one case of the Burmese military intentionally firing into a Kachin village that was a purely civilian target.<sup>273</sup> According to Mr. and Mrs. Humphries, churches and schools in Kachin State have also reportedly been burned to the ground as part of the military’s recent offensive, and many churches that have not been razed have been turned into military bases.<sup>274</sup> Food and supplies also have reportedly been pillaged from Kachin civilians, who

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269 Burma is not party to the *Rome Statute of the International Criminal Court*. Therefore, no war crimes, crimes against humanity or other crimes under the jurisdiction of the International Criminal Court (ICC) may be investigated, prosecuted or tried by the ICC in the absence of a UN Security Council Resolution or a referral of a situation by the government of Burma itself: Rome Statute, articles 12, 13. Many countries have enacted domestic legislation that permits them to try international crimes committed abroad in their domestic courts under certain conditions. In Canada, such powers are found in the *Crimes Against Humanity and War Crimes Act*, if the accused is physically present in Canada after the offence is committed or in certain other situations: s. 8. Any prosecution under the Act also requires the consent of the Attorney General of Canada: s. 9(3).

270 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

271 Written submission of Inter Pares, p. 6. Physicians for Human Rights reported that the same tactics were used against the Kachin during the 1970s and 1980s; written submission of Mr. Davis, p. 9.

272 Written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, August 2012” by the Karen Human Rights Group; written submission of Mr. James and Mrs. Hkaw Win Humphries; Human Rights Action Group (Northern Myanmar), *Dignity Uprooted*, Submission of the Kachin Canadian Association; Kachin Women’s Association of Thailand, [Ongoing Impunity: Continued Burma Army Atrocities Against the Kachin People](#), June 2012.

273 Written submission of Mr. Davis, p. 9.

274 Written submission of Mr. James and Mrs. Hkaw Win Humphries. Tomás Ojea Quintana, in his [Progress report of the Special Rapporteur on the Situation of human rights in Myanmar](#), Presented to the 16<sup>th</sup> Session of the Human Rights Council, 7 March 2011, UN Doc. A/HRC/16/59, reported similar allegations.

already face a dire humanitarian situation. Food and property that is not stolen has reportedly been destroyed.<sup>275</sup>

The deliberate targeting of civilian structures and objects, of places of worship and schools that do not constitute military objectives, and efforts made to forcibly displace civilian populations for reasons not related to the armed conflict are, like the other acts described above, clearly prohibited by international law. While international humanitarian law permits the requisition of supplies from civilian populations, extensive, wanton destruction or appropriation of civilian property, unjustified by military necessity, is not allowed, nor is the pillage of property for personal use.<sup>276</sup>

Witnesses told the Subcommittee that since 1962, the Burmese military has practised a policy of “self-reliance” in border regions, which meant that troops were not supplied by the central government but were instead instructed to secure their own food and housing from the local population. This policy has led to military reliance on forced civilian labour and the widespread theft of food and other property from local civilian populations. The policy reportedly continues despite recent reforms, in violation of international law.<sup>277</sup>

Mr. Davis, for example, reported interviewing a number of Kachin civilians who had been forced to carry weapons or supplies for the *Tatmadaw* in Kachin State during the current round of hostilities.<sup>278</sup> Information submitted to the Subcommittee documents a number of alleged incidents in which civilians, including children under the age of 18, in Kachin and northern Shan states were reportedly detained by the Burmese military and forced to carry loads and/or cook for soldiers. According to information received, during the period in which they provided forced labour, these individuals were not paid, and were severely mistreated. The cases documented include allegations of severe beatings at the hands of *Tatmadaw* soldiers, being bound and left without adequate shelter or blankets at night, being given inadequate food or left without food, sexual humiliation including forced public nudity, and being forced to carry painfully heavy loads.<sup>279</sup> Information from the Karen Human Rights Group indicates that Karen villagers in other parts of Burma have

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275 Written submission of Mr. Davis, p. 7; *Dignity Uprooted*, Submission of the Kachin Canadian Association.

276 International Committee of the Red Cross, “[Rules](#),” *Customary International Humanitarian Law Database: Convention for the Protection of Cultural Property in the Event of Armed Conflict*.

277 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); Written submission of Inter Pares, pp. 6-7; written submission of Mr. James and Mrs. Hkaw Win Humphries; written submission of Mr. Davis, *Under Siege in Kachin State, Burma*, Physicians for Human Rights, November 2011, p. 3, 8-9; *Dignity Uprooted*, Submission of the Kachin Canadian Association. Forced labour is prohibited under international law: International Committee of the Red Cross, “[Rule 95: Forced Labour](#),” *Customary International Humanitarian Law Database*; UDHR, art. 4; *Forced Labour Convention (No. 29)* (ILO).

278 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mrs. Hkaw Win Humphries).

279 *Dignity Uprooted*, Submission of the Kachin Canadian Association; Kachin Women's Association of Thailand, [Ongoing Impunity: Continued Burma Army Atrocities Against the Kachin People](#), June 2012.

reported being required by the military to construct army camps, and that such orders “are usually accompanied with implicit and explicit threats of violence.”<sup>280</sup>

We also received reports that the *Tatmadaw* was intentionally targeting civilians in Kachin State, including reports of the murder of Kachin civilians by Burmese troops.<sup>281</sup> According to Mr. and Mrs. Humphries, in areas of Kachin State affected by armed conflict, food, weapons and the bodies of the dead are sometimes booby-trapped. Strengthening the weight of these allegations, the Subcommittee received similar reports from other parts of Burma. For example, we were informed that shoot-on sight orders are reportedly still in effect in some Karen regions in eastern Burma, where killings have reportedly taken place when villagers have crossed military supply roads and when gathering food. The *Tatmadaw* also allegedly continues to shoot villagers working in their fields in some Karen areas where it is trying to strengthen control.<sup>282</sup>

The Subcommittee also received credible reports of Kachin people being tortured for information, after which some of these individuals were either killed or subject to enforced disappearance. There was also an overtone of religious discrimination in some of the reported incidents.<sup>283</sup> In addition, we received credible reports from multiple sources that civilians are forced to walk ahead of troops, acting as human shields and/or mine-sweepers, in Kachin State as well as in other parts of eastern Burma.<sup>284</sup>

The Subcommittee stresses that intentionally or indiscriminately targeting persons who are not taking direct part in hostilities constitutes a war crime under international law, as does the wilful killing of such persons. International humanitarian and international criminal law also clearly prohibit all forms of torture and cruel treatment, as well as other

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280 Written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, August 2012” by the Karen Human Rights Group.

281 Kachin Women’s Association of Thailand, [Ongoing Impunity: Continued Burma Army Atrocities Against the Kachin People](#), June 2012; Human Rights Action Group (northern Myanmar), *Dignity Uprooted: Denied Human Rights in the Armed Conflict in Kachin State and northeastern Shan State*, June 2012, submitted to the Subcommittee by the Kachin Canadian Association.

282 Ibid.; written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, August 2012” by the Karen Human Rights Group. Mr. Giokas also told the Subcommittee that extrajudicial executions remained a problem in Burma: [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

283 Written submission of Mr. James and Mrs. Hkaw Win Humphries; Human Rights Action Group (northern Myanmar), *Dignity Uprooted*, Submission of the Kachin Canadian Association. Enforced disappearance means “that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.” [Declaration on the Protection of all Persons from Enforced Disappearance](#), Adopted by General Assembly resolution 47/133 of 18 December 1992. A similar definition is found in the Rome Statute, art. 7(2)(i).

284 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); written submission of Mr. Davis, p. 7; written submission of Mr. James and Mrs. Hkaw Win Humphries; written submission of Inter Pares, attachment entitled “Human Rights Situation in eastern Burma, August 2012” by the Karen Human Rights Group; Kachin Women’s Association of Thailand, [Ongoing Impunity: Continued Burma Army Atrocities Against the Kachin People](#), June 2012.



inhumane acts in situations of armed conflict.<sup>285</sup> Finally, we recall that the use of human shields is manifestly unlawful.<sup>286</sup>

The Subcommittee was very disturbed to learn of allegations that the Burmese military continues to use sexual violence against women and children as a weapon of war in Kachin State.<sup>287</sup> Physicians for Human Rights reported to the Subcommittee 66 alleged instances of rape of women and girls in Kachin State, at least 13 of whom were killed, between June 2011 and May 2012.<sup>288</sup> We wish to stress that rape and other forms of sexual violence in armed conflict are specifically prohibited crimes under international law and constitute violations of Common Article 3 of the *Geneva Conventions* of 1949. We condemn these alleged violations of international law in the strongest possible terms.

Mrs. Humphries and Mr. Davis informed us that children are reportedly being used to fight in the conflict in Kachin State.<sup>289</sup> The Burmese military and some ethnic armies, including the Kachin Independence Army, reportedly use child soldiers.<sup>290</sup> We note that the *Convention on the Rights of the Child* specifically prohibits Burma from recruiting or using children under the age of 15 years to take a direct part in hostilities.<sup>291</sup> We were, therefore, pleased to find out that the *Tatmadaw* agreed in June 2012 to an action plan, to be undertaken in conjunction with the United Nations, to release and prevent the further recruitment of child soldiers.<sup>292</sup> In our view, however, mere words are insufficient — a real change must be felt on the ground. The active participation of children in hostilities needs to cease immediately. We call upon the Burmese military and all non-state armed groups to promptly release all child soldiers in their ranks.

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285 Common Article 3 to the Geneva Conventions of 1949.

286 International Committee of the Red Cross, "[Rule 97: Human Shields](#)," *Customary International Humanitarian Law Database*.

287 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas); written submission of Mr. James and Mrs. Hkaw Win Humphries; written submission of Mr. Davis, attachment entitled "An update on atrocities in Kachin State," 10 May 2012 by the Kachin Women's Association of Thailand. These credible allegations are echoed in the reports of Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented to the 19th Session of the Human Rights Council, 7 March 2012, UN Doc. A/HRC/19/67, para. 60 and [Conflict-related sexual violence: Report of the Secretary-General](#), Presented to the 66<sup>th</sup> session of the UN Security Council, 13 January 2012, UN Doc. A/66/657-S/2012/33, para. 39-41.

288 Written submission of Mr. Davis, p. 7, relying on information provided by the Kachin Women's Association of Thailand. Information provided to the Subcommittee by Mr. Davis included a document prepared by the Kachin Women's Association of Thailand entitled "An update on atrocities in Kachin State," 10 May 2012, reporting 66 instances of rape of women and girls by Burmese soldiers since the commencement of hostilities in June 2011.

289 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012, 1315 (Mrs. Hkaw Win Humphries).

290 Written submission of Inter Pares, p. 2. Radhika Coomaraswamy, [Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict](#), Presented to the UN Human Rights Council, 28 June 2012, UN Doc. A/HRC/21/38, Annex I, p. 20.

291 CRC, art. 38.

292 Leila Zerrougui, [Report of the Special Representative of the Secretary-General for Children and Armed Conflict](#), Submitted to the UN General Assembly, 6 August 2012, UN Doc. A/67/256, para. 36.

Mr. and Mrs. Humphries also made us aware of the devastating use of landmines in Kachin State.<sup>293</sup> Landmines are also reportedly used by the *Tatmadaw* and other ethnic armies throughout the conflict zones on Burma's borders.<sup>294</sup>

Since Burma has not signed the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (known as the "Ottawa Treaty"), the use of landmines in the country is not unlawful. Nevertheless, the disproportionate and indiscriminate harm and suffering that these weapons inflict on civilians is widely recognized.<sup>295</sup> Landmines continue to kill and maim for years after the end of active hostilities; they obstruct reconstruction and development, and prevent the return of displaced persons and refugees. The Subcommittee strongly condemns the continued use of landmines by all parties to armed conflict in Burma and we urge the Government of Burma to consider ratifying the Ottawa Treaty.

As noted above, the armed conflict in Kachin State has displaced an estimated 75,000 persons.<sup>296</sup> According to United Nations reports, as of early November 2012, less than half of those who have been displaced are fully accessible to relief agencies. Although local organizations have been able to provide some humanitarian assistance to the displaced, UN humanitarian aid convoys were not able to reach those in need for months at a time during 2012. Ensuring that displaced people have access to basic shelter and food remains a serious concern.<sup>297</sup>

The Subcommittee learned that many of the displaced live in desperate conditions. Mr. Davis told the Subcommittee that in a camp for internally displaced persons that he visited in Kachin State in the autumn of 2011, approximately 11% of children under the age of five were malnourished to some extent. Given the high prevalence of diarrhea and upper respiratory infections in the camps, Mr. Davis characterized this situation as "severe."<sup>298</sup>

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293 Written submission of Mr. James and Mrs. Hkaw Win Humphries; written submission of Mr. Davis, p. 9. Both sides in the conflict reportedly use these weapons: Tomás Ojea Quintana, [Report of the Special Rapporteur on the situation of human rights in Myanmar](#), Presented at the 67<sup>th</sup> Session of the UN General Assembly, 25 September 2012, UN Doc. A/67/383, para. 49; Human Rights Watch, *Untold Miseries*, pp. 62-63.

294 Written submission of Inter Pares, attachment entitled "Human Rights Situation in eastern Burma, August 2012" by the Karen Human Rights Group.

295 One hundred and sixty of the UN's 193 member states have ratified the [Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction](#); United Nations, "[Chapter XXVI.5](#)," *United Nations Treaty Collection*

296 OCHA, "[Humanitarian Bulletin: Myanmar](#), September 2012."

297 Myanmar Information Unit, "[Humanitarian Situation in Kachin and Rakhine](#)," 5 November 2012.

298 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); written submission of Mr. Davis. Mr. and Mrs. Humphries made a similar point in their testimony: [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James and Mrs. Hkaw Win Humphries).

### c. Responses from the Government of Burma to International Concerns About Violations in Conflict Zones

The Subcommittee is deeply concerned that in its April 2012 response to the Special Rapporteur on human rights in Myanmar's interim report, the Government of Burma stated categorically that

allegations of torture and ill-treatment during interrogation, the use of prisoners as porters or 'human shields' for the military are unfounded. These allegations originate with the insurgent groups. They fabricated photographs and video footages of the so-called porters and human shields in the areas under their control, and circulated them to the foreign media aimed at undermining the image of the *Tatmadaw*.<sup>299</sup>

The Government of Burma goes on to state that the creation of a national human rights commission and the signing of an MOU with the International Labour Organization indicate its "genuine commitment to the promotion and protection of human rights, invalidating the aforementioned allegations."<sup>300</sup>

The Subcommittee is convinced of the credibility of the eye-witness allegations and other testimony that it received relating to ongoing serious violations of international humanitarian law and the commission of international crimes in Burma's border regions. Members do not believe that these well-documented atrocities are merely the propaganda of ethnic non-state armed groups, as the Burmese government claims.

In the same document, the Government of Burma submitted to the UN Human Rights Council that:

In the Kachan State [sic], the Shan State and the Kayin State, where the peace talks are still in progress, cases of serious human rights violations, including attacks against civilian populations, sexual violence and arbitrary arrest, are non-existent. All military personnel are being effectively imparted with the awareness about the military rules of engagement.

...

The Armed Forces always practise an effective system of administrative supervision at different levels. Like in other countries, rape cases by *Tatmadaw* men are only isolated ones. These cases are very rare. It is not system-wide. If it occurs, it would be only due to the individual character and behaviour of the serviceman concerned.<sup>301</sup>

The Subcommittee believes that the allegations it received that sexual violence has been used as a weapon of war in Burma are credible. We stress that the use of sexual violence in armed conflict is a widespread problem around the world and is most certainly

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299 Government of Myanmar, [Note verbale dated 12 April 2012 from the Permanent Mission of Myanmar to the United Nations Office and other international organizations in Geneva addressed to the secretariat of the Human Rights Council](#), 18 April 2012, UN Doc. A/HRC/19/G/18, p. 2.

300 Ibid, pp. 2-3.

301 Ibid.

not a problem that can be ascribed to isolated acts by a few ill-disciplined servicemen. The Burmese response to the Special Rapporteur's concerns seems to indicate a fundamental lack of understanding of the gravity of sexual violence in situations of armed conflict. Members are dismayed to see such serious allegations minimized and dismissed out of hand by the Burmese military.

Members are also disturbed that the Burmese military appears to be using its recent, modest progress towards reform as a shield to deny the existence of past and ongoing violations of international law. While the Government of Burma's recent movements toward democratic reform and greater respect for human rights are welcome, the Subcommittee wishes to stress that these are but the first steps in a very long process. If the Burmese military refuses to even acknowledge the existence of problems, past and present, we fail to see how Canada or other like-minded nations can have confidence that it will effectively implement changes to its practices and policies in order to improve respect for international human rights and humanitarian law across the country. In the Subcommittee's view, the Burmese response to the Special Rapporteur also highlights the need for an effective accountability process that includes access to truth as a central plank of efforts toward a political settlement and national reconciliation between the Burmese Government and various ethnic minority groups. In our view, this response also highlights the need for independent and impartial civilian judicial supervision of the military justice system.

#### **4. The Situation in Rakhine State**

##### **a. Introduction**

The Rohingya people are one of the many minority groups of Burma. They live in regions of Burma near the Bangladeshi border and share some similarities with some people in eastern Bangladesh. However, they speak a distinct dialect and form a distinct ethnic group. As noted above, the majority of the Rohingya are Muslim. The Subcommittee learned that the Rohingya are a people of mixed Arab, South and Central Asian descent who have lived in the region that now forms part of Rakhine State in western Burma for centuries, under the dominion of the Chittigonian, then Burman kings and later under British rule. The first recorded use of the word Rohingya to describe inhabitants of the region was in 1799. Currently, the Rohingya make up approximately 40% of the population of Rakhine State.<sup>302</sup> As noted above, the predominantly Buddhist Rakhine people also inhabit this region and are ethnically more similar to the Burmans than to South Asian populations.

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302 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); written submission of Prof. William Schabas, pp. 22-24.

Figure 5: Map of Rakhine State, Showing Distribution of the Rohingya population with inset map of Burma



Source: Submission of Dr. Uddin to the Subcommittee on International Human Rights and, for inset inset map, [http://d-maps.com/pays.php?num\\_pay=73&lang=en](http://d-maps.com/pays.php?num_pay=73&lang=en)

Since the 1962 military coup, the Burmese junta has pursued a policy of persecution against the Rohingya on the basis of their ethnicity.<sup>303</sup> In 1977, the government instituted “Operation Nagmin,” which aimed to scrutinize the citizenship status of all individuals and to expel foreigners. In Rakhine State, this policy led to extreme violence and massive human rights violations against the Rohingya and the “mass exodus” of an estimated 200,000 Rohingya across the Burmese-Bangladeshi border.<sup>304</sup> While the student uprising of 1988 and the junta’s failure to honour the 1990 election results led to the conclusion of ceasefire agreements with other ethnic minority armies, the junta commenced a massive crackdown in Rohingya-dominated regions in 1991–1992, when approximately 270,000 Rohingya fled to the Cox’s Bazar region of Bangladesh.<sup>305</sup> Although many of these refugees subsequently returned to Burma, approximately 29,000 remain in official refugee camps in Bangladesh. Approximately 200,000 additional Rohingya live in Bangladesh without any legal status.<sup>306</sup>

Since the colonial period, the Rakhine and the Rohingya have had a tense relationship, competing for access to scarce resources in an environment characterized by severe repression and deep poverty for both groups.

### **b. Persistent Violations of the Human Rights of the Rohingya**

Witnesses told the Subcommittee that the Rohingya are one of the most heavily persecuted groups in Burma.<sup>307</sup> The Rohingya are not recognized among the “national races” of Burma under the 2008 constitution. The government claims that all or most of the Rohingya are descendants of illegal immigrants from Bangladesh. Mr. Davis told us that for many years, the military junta has described the Rohingya as non-citizen “invaders,” which has convinced many Burmese who have never seen the Rohingya or interacted with them.<sup>308</sup> He explained the situation as follows:

I'll tell you what the anti-Rohingya propagandists say. They say the Rohingya are Bangladeshi. They came over 20 years ago and they're new and transient. The Rohingyas say they've been a part of Arakan state [the pre-junta name for Rakhine state] for hundreds and hundreds of years. They've had ministers in the Arakan kingdom back before Burma was even a country, and they are part of the society.<sup>309</sup>

Formally stripped of their citizenship since 1982, the majority of the approximately 800,000 Rohingya in Burma are considered stateless. Dr. Uddin told the Subcommittee

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303 Ibid.

304 Written submission of Prof. William Schabas, pp. 25-26.

305 Ibid., p. 26.

306 Office of the UN High Commissioner for Refugees [UNHCR], [“Bangladesh: 2012 UNHCR country operations profile.”](#)

307 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis). The Special Rapporteur on Human Rights in Myanmar reached a similar conclusion in his March 2012 report, para. 71.

308 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

309 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012.

that Rohingya, alone among the ethnic minority groups of Burma, are required and routinely denied permits to marry, contrary to the right of all individuals to marry and found a family under the *Universal Declaration on Human Rights*. Rohingya children are routinely denied birth certificates by the Burmese authorities and children born to parents who were married without a permit are denied any form of registration.<sup>310</sup> Severe restrictions on access to education mean that less than 1% of Rohingya children complete high school and illiteracy rates in the Rohingya population are exceptionally high. The Subcommittee notes that such restrictions clearly violate Burma's legal obligations under the *Convention on the Rights of the Child* to register the birth of all children and to ensure the right of a child to acquire a nationality, in particular those children who would otherwise be stateless, as well as children's right to an education as discussed above.<sup>311</sup>

The Subcommittee was informed that the Rohingya are subject to a number of other serious human rights violations that occur with regularity, including:

- “Severe travel restrictions” amounting to disproportionate and inappropriate limitations on the right to freedom of movement,<sup>312</sup>
- Widespread arbitrary detention;
- Torture, cruel or inhuman and degrading treatment or punishment;
- Extra-judicial executions;
- Forced labour, including forced labour by children as young as five and six years of age;
- Forcible population transfer by physical force and through systematic persecution and denial of citizenship;
- Sexual violence against women and girls, which “frequently” occurs at military or [other security force] bases and barracks, during forced labour, during other acts of an official capacity such as house searches and at checkpoints, as well as while women are in detention” and often happens in front of family members”,<sup>313</sup>
- Confiscation of land without compensation in violation of the right to adequate housing. In addition, we were informed that families from central

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310 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin); written submission of Prof. William Schabas.

311 CRC, art. 7.

312 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin).

313 Written submission of Prof. William Schabas.

Burma are often resettled on confiscated Rohingya land in an apparent attempt to change the ethnic make-up of the region.<sup>314</sup>

We pause here to note that Professor Schabas' written submission stressed that Buddhists and Hindus in Rakhine State, like other ethnic minorities in Burma, have suffered many of the same human rights violations at the hands of the Burmese security forces. Even in this context, however, the plight of the Rohingya is particularly acute.

A detailed report submitted to the Subcommittee by Professor Schabas, written in 2010, concludes that human rights violations committed against the Rohingya are sufficiently widespread and systematic to meet the legal threshold of crimes against humanity.<sup>315</sup> In the Subcommittee's view, at the very least, these measures are in clear contravention of the prohibition on racial, ethnic and religious discrimination under international law and have no relationship to *bona fide* immigration or security concerns.

Mr. Davis and Dr. Uddin stressed that violations in Rakhine State are ongoing. Mr. Davis told the Subcommittee that it appears now that the Rohingya will be excluded

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314 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin); [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); written submission of Prof. William Schabas.

315 Written submission of Professor William Schabas. Crimes against humanity are defined in article 7(1) of the Rome Statute as "any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:"

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any other crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Unlike war crimes, crimes against humanity do not have to be committed in the context of an armed conflict, although it is often in such situations that they arise. International law requires, however, that the acts in question be directed against a civilian population as part of an attack on that population. The attack must be either widespread, or systematic — the legal requirement is disjunctive, not cumulative. A detailed discussion of crimes against humanity under the Rome Statute can be found in the written submission of Prof. William Schabas to the Subcommittee on International Human Rights, pp. 29-35.



from the planned 2014 census, which will serve to further marginalize them. Mr. Davis stressed to the Subcommittee that “[i]f the changes in Burma are slow to reach other ethnic groups, the Rohingya will be the last to feel any benefit from change. This group should be the measure of progress of human rights in Burma.”<sup>316</sup>

### c. Recent Communal Violence in Rakhine State

On 10 June 2012, President Thein Sein declared a state of emergency in Rakhine State in response to sectarian violence between Rakhine Buddhists and Muslim Rohingya. Media reports indicate that the gang rape and murder of a Rakhine Buddhist woman in May 2012, allegedly by Rohingya men, was followed by a revenge attack carried out by a group of Rakhine Buddhists, who, we were told, dragged 10 Burmese Muslims off a bus and beat them to death. It appears that most of the victims were visiting the area on a religious pilgrimage and were not of Rohingya ethnicity.<sup>317</sup> A wave of communal violence followed. Official government figures estimated that by mid-August, 87 people had died, 120 had been injured, 5,300 residential buildings had been damaged, and that over 68,500 people had been displaced within the state as a result of the violence.<sup>318</sup>

Dr. Uddin informed us that, despite the declaration of a state of emergency, local Burmese officials in Rakhine State failed to enforce a curfew or to take effective measures to stop attacks on Rohingya by Rakhine Buddhists. These attacks included killings as well as looting of shops and homes. Many Rohingya villages in the countryside were razed and tens of thousands of people have been displaced. Dr. Uddin alleged that during the unrest, Burmese security forces “shot at unarmed Rohingya” and immediately removed the bodies of the dead so that they could not be recovered. He estimated that the number of Rohingya killed in this way could be in the thousands. We were told that many more Rohingya were arbitrarily arrested by the security forces during the violence.<sup>319</sup> The Subcommittee notes that the homes and property of ethnic Rakhine people were also attacked by angry Rohingya and many Rakhine were killed, despite the security measures in place.<sup>320</sup>

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316 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

317 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin); Hpyo Wai Tha, “[Arakan Conflict Threatens Reform: Thein Sein](#),” *The Irrawaddy*, 11 June 2012.

318 OCHA, “[Myanmar, Displacement in Rakhine State: Situation Report No. 7](#),” 15 August 2012.

319 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin). These and similar allegations have been documented by Human Rights Watch in its recent report [The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State](#), August 2012 and by the Special Rapporteur on Human Rights in Myanmar: “[Statement of the Special Rapporteur on the Situation of human rights in Myanmar](#),” 4 August 2012.

320 “[Statement of the Special Rapporteur on the Situation of Human Rights in Myanmar](#),” 4 August 2012; Human Rights Watch, *ibid.*

Dr. Uddin shared his fears that the situation of those displaced by the violence is desperate. He said that international humanitarian assistance and impartial, outside monitoring of the situation is urgently needed.<sup>321</sup>

Bangladesh has closed its borders to Rohingya fleeing the violence and has reportedly turned back boatloads of asylum-seekers despite the unseaworthiness of their vessels, leading to loss of life.<sup>322</sup> The Subcommittee has learned that Bangladesh has also expelled three major international aid organizations working to provide humanitarian assistance to Rohingya refugees and persons of concern in southeastern Bangladesh.<sup>323</sup>

The Subcommittee has continued to monitor the situation in Rakhine State and notes that violence broke out again in late October 2012 between Muslim and Buddhist communities, reportedly displacing a minimum of 35,000 people, of whom the overwhelming majority are Muslim, according to Burmese government estimates made available through the UN. At least 89 people were killed and 5,300 houses and religious buildings were destroyed or burnt.<sup>324</sup> Serious incidents of sectarian violence between Buddhist and Muslim communities have also occurred elsewhere in Burma.<sup>325</sup>

The Subcommittee is aware that the United Nations World Food Programme was able to quickly reach approximately 66,000 displaced people with emergency food supplies following the violence in June 2012,<sup>326</sup> and that the Myanmar Government has requested and permitted urgent humanitarian assistance for affected people in a number of areas.<sup>327</sup>

We are deeply disturbed, however, by President Thein Sein's reported statements that the Rohingya population of Rakhine State ought to be separated from the rest of the population, confined in camps run by the Office of the UN High Commissioner for Refugees (UNHCR), and/or deported to any country that will take them. We note that Mr. António Guterres, the UN High Commissioner for Refugees, swiftly and correctly rejected this abhorrent proposal.<sup>328</sup>

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321 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin).

322 [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin); Human Rights Watch, "[Bangladesh: Stop Boat Push-backs to Burma](#)," 20 June 2012.

323 UNHCR, "[UNHCR urges Bangladesh to lift NGO ban in south-east](#)," 7 August 2012.

324 OCHA, "[Myanmar: Displacement in Rakhine State, Situation Report No. 11](#)," 2 November 2012; OCHA, "[Myanmar - Displacement in Rakhine State: Situation Report No. 10](#)," 28 October 2012; OCHA, "[Rakhine Unrest Since 21 October 2012](#)," 29 October 2012.

325 OCHA, "[Myanmar: Meikhtila inter-communal violence Situation Report No. 4 \(as of 9 April 2013\)](#)," 9 April 2013; "[Fresh Communal Violence Hits Central Burma](#)," *Radio Free Asia*, 30 April 2013.

326 UN World Food Program, "[WFP Scales Up Response to Rakhine Displacement in Myanmar](#)."

327 UNHCR, "[UNHCR delivers aid to over 30,000 displaced people in Myanmar's Rakhine state](#)," 27 July 2012.

328 Radio Netherlands International, "[Myanmar moots camps, deportation as Rohingya 'solution'](#)," 12 July 2012; *Associated Press*, "[UN refugee chief rejects Myanmar president's call for world body to take care of Rohingya](#)," Human Rights Watch, *The Government Could Have Stopped This*, p. 19.

In the Subcommittee's view, the Burmese government's response to inter-ethnic violence in Rakhine State raises serious questions about the capacity and willingness of the Burmese security forces to protect all of the people of Burma without discrimination. In addition, the violence has drawn international attention to the desperate situation of the Rohingya ethnic minority, who still face massive, state-sponsored discrimination and a very high level of prejudice, racism and hatred from other sectors of the population. The Subcommittee wishes to express, in the strongest possible terms, its view that advocating the separation and confinement to camps of a population on the basis of ethnicity, as well as advocating the forcible transfer of such a population to other countries, is absolutely unacceptable.

The Subcommittee also notes that the leader of Burma's political opposition, Daw Aung San Suu Kyi, appears to have taken an ambiguous stance on this violence. In an article published in *Le Monde* in November 2012, Daw Aung San Suu Kyi was reported to have firmly condemned the communal violence between the Buddhists and Muslims in Rakhine State in recent months, calling it a "huge international tragedy."<sup>329</sup> However, that same article reports that she said she wants to work for reconciliation and so "prefer[s] not to take sides" in favour of either community, given that violence has been committed by both sides.<sup>330</sup>

The Subcommittee condemns the communal violence perpetrated by individuals from both of the two major ethnic groups in northwestern Rakhine State. We note the difficulty in obtaining comprehensive and reliable information about the crisis compiled by independent sources and we urge the Government of Burma to permit unfettered access to the United Nations, international humanitarian organizations and international media. We are also deeply concerned by the humanitarian situation of both the Rohingya and the Rakhine victims of violence in western Burma. The Subcommittee notes the importance of addressing the urgent humanitarian needs of all people in Rakhine State, regardless of ethnicity, and facilitating humanitarian access where needed. We are also troubled and dismayed by the discriminatory, inhumane and unlawful treatment that the people of Rakhine State, and in particular the Rohingya minority, have suffered and continue to suffer at the hands of successive Burmese governments. All branches and officials of the Burmese government must respect the prohibition on discrimination and incitement of racial and religious hatred under international law, and must also act to ensure that private individuals and organizations in Burma respect the human rights of others.

During this time of democratic transition, it is the responsibility of the Government of Burma to promote tolerance and understanding amongst all people under its jurisdiction, in full compliance with international human rights standards. We agree with the Special Rapporteur on human rights in Myanmar who has emphasized the need to resolve the issue of the citizenship of the Rohingya population of Burma in accordance with

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329 *Le Monde*, "[Les violences communautaires en Birmanie, une tragédie internationale.](#)" 15 November 2012; New Delhi Television (NDTV), "[Full transcript: My farewell message for my husband was too late, says Aung San Suu Kyi to NDTV.](#)" 15 November 2012.

330 *Ibid.*

international human rights and refugee law standards, in a process conducted in accordance with the rule of law.<sup>331</sup> We stress that the Burmese government and the other political parties will need to engage in meaningful dialogue with all of the ethnic minority groups in the country, including the Rohingya, as an essential step to the process of fostering a democratic political system.

## 5. Internally Displaced Persons and Refugees

Burma's protracted armed conflicts and its policies towards the Rohingya have displaced large numbers of people. Inter Pares indicates that since 1962, an estimated two million refugees have entered the neighbouring countries of Thailand, Malaysia, Bangladesh, India and China. An estimated one million people have been internally displaced within Burma during the same period.<sup>332</sup> Mr. Giokas told the Subcommittee that "access to conflict-affected areas by international humanitarian organizations has been very limited."<sup>333</sup> We were told that reaching ethnic minority populations to provide humanitarian assistance is very difficult from inside Burma, but it can also be challenging to reach these populations from outside the country. Despite some recent reports of improvement, "huge challenges" still exist.<sup>334</sup>

The Subcommittee is concerned about restrictions on humanitarian access to conflict and violence-affected regions of Burma and hopes that the Burmese government, as well as ethnic armed groups, will work to allow access and to help address the humanitarian needs of the civilian population on the ground. We note that the Special Rapporteur on human rights in Myanmar has stressed that "[s]ystematic measures to address the needs of internally displaced people should be part of national reconciliation efforts."<sup>335</sup>

## 6. The Need for a Durable Political Settlement and National Reconciliation

Many witnesses discussed the political aspects of Burma's ethnic armed conflicts and emphasized that these conflicts could only be resolved through an evolution in Burma's political arrangements.

We were informed by Inter Pares that Burmese military forces tend to remain in these ethnic minority areas once they gain a strategic foothold, and then concentrate on

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331 Tomás Ojea Quintana, "[Statement of the Special Rapporteur on the Situation of human rights in Myanmar](#)," 4 August 2012.

332 Written submission of Inter Pares, p. 1.

333 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

334 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Jeff Nankivell).

335 Tomás Ojea Quintana, [Progress report of the Special Rapporteur on the Situation of human rights in Myanmar](#), Presented to the 16<sup>th</sup> Session of the Human Rights Council, 7 March 2011, UN Doc. A/HRC/16/59, para 72.

profit-making projects rather than combat where ceasefires have been reached.<sup>336</sup> Moreover, in eastern Burma, where negotiations are ongoing between representatives of the Karen and the Burmese government, the Burmese military has reportedly made it clear that it is not willing to reduce its presence in the countryside, and the civilian government is unwilling and unable to force such a withdrawal in light of its lack of legal and practical control over the armed forces.<sup>337</sup> From the point of view of many witnesses, achieving a peaceful end to Burma's ethnic armed conflicts and outbreaks of communal violence must entail building the confidence of ethnic minority groups and bringing them into the political fold through a negotiated settlement. Mr. Davis told us that many Chin and Kachin refugees outside Burma lacked confidence in the government's will or ability to bring about democratic change. He stressed that generations of human rights violations "cannot be erased after just two elections in Burma."<sup>338</sup> Mr. Giokas told the Subcommittee that the recent ceasefire agreements between the government and individual groups "must be followed by more comprehensive peace and reconciliation talks and agreements."<sup>339</sup> Mr. Din emphasized that both the Burmese government and its civil society activists have a duty to address the plight of ethnic minorities in the country.<sup>340</sup>

Some witnesses were of the opinion that the 1947 Panglong Agreement should be used as a basis for reaching peace settlements with Burma's ethnic minority groups. This agreement — which was negotiated between Aung San and the Kachin, Chin and Shan groups but was never implemented — guaranteed the establishment of a federal union and a degree of autonomy for Burma's ethnic minorities.<sup>341</sup> Mr. Humphries, for example, suggested that the Subcommittee "strongly encourage the Government of Myanmar to use the Panglong Agreement as a foundation for further discussion in building the road for future peace and harmony within the various ethnic groups."<sup>342</sup> Similarly, Mr. Din said:

Current peace talks between ethnic armed groups and the regime may not lead to the permanent ending of civil war without the establishment of ethnic rights. Such rights include a certain degree of autonomy, self-determination, and proper sharing of revenue generated from natural resources located in ethnic areas, which represent 60% of the country's total land, as well as a complete end to human rights violations in ethnic areas, committed by the Burmese military.<sup>343</sup>

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336 Written submission of Inter Pares, p. 6; [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis); [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012 (Mr. James Humphries).

337 *Ibid.*, p. 7.

338 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

339 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

340 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012, 1355 (Mr. Aung Din).

341 Human Rights Watch, ["Untold Miseries": Wartime Abuses and Forced Displacement in Kachin State](#), March 2012.

342 [Evidence](#), Meeting No. 40, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 29 May 2012.

343 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012.

We were told that an inclusive dialogue, a nationwide ceasefire as well as troop withdrawal from the conflict areas would form a necessary part of any long-term solution to these conflicts. The Subcommittee notes that witnesses also stressed the need to include women and all ethnic minority groups in any such process.

The Subcommittee agrees with Mr. Giokas that resolution of the armed conflicts in Burma's border areas is "one key ingredient" to assuring the world that Burma is truly on the path to reform.<sup>344</sup> In light of the serious human rights violations perpetrated by the Burmese military in ethnic minority areas, we agree with witnesses who stressed the need to ensure that Burma's ongoing reform process addresses ethnic minority issues directly. In our view, this must include resolving issues related to political power-sharing, social and education policy, linguistic and religious rights, control over natural resource exploitation, and the equitable distribution of the economic and other benefits of such activities. A commitment by all parties to halt to ongoing serious violations of international law and ensure respect for international human rights standards must also form part of this process.

### **a. Accountability**

The Subcommittee recognizes that the process of bringing Burma's ethnic armed conflicts to an end is not simply about reaching ceasefires, but rather a broader process of achieving national reconciliation through accountability for past wrongs. As Mr. Din told the Subcommittee:

National reconciliation is not just about dialogue and ceasefire agreements between the government and ethnic armed groups. It should be a process of ending decades of violence, abuses, and impunity for systematic and widespread human rights violations, addressing the suffering of the abused, and holding accountable those who committed the horrible crimes. Any peace-making effort without addressing truth, justice, and accountability will not be credible.<sup>345</sup>

Witnesses emphasized that in the long term, access to aid and development assistance alone will be insufficient. True national reconciliation requires an end to human rights violations, acknowledgement of past violations and abuses, and some form of accountability process.<sup>346</sup> Witnesses suggested that these broader goals will likely encounter resistance, in particular from military commanders who are responsible for human rights violations. Mr. Davis suggested that true accountability will probably be a long-term project in Burma, but that it is important at present to empower Burmese civil society groups and community-based organizations who can continue to push for change over time.<sup>347</sup>

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344 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

345 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012.

346 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

347 [Ibid.](#)

The Subcommittee recognizes the complexity of the internal armed conflicts that have plagued that country for so many decades. We are strongly of the view that accountability for perpetrators of serious violations of international law, regardless of their political affiliation or opinions, is critical to the success of Burma's reforms today and into the future. The Subcommittee believes that it is crucial for the Government of Burma to engage with stakeholders, including victims, regarding the timing and design of any truth, reconciliation and accountability mechanism. We observe further that concrete steps to provide effective remedies to victims also would be required in order for Burma's efforts to meet international standards. Consultation with international mechanisms and with truth and reconciliation bodies in other countries may be able to provide useful advice and assistance. Finally, any effort by the Government of Burma to move forward with national reconciliation must also include a real and substantial commitment to strengthening civilian governance and undertaking security sector reform.

## CANADIAN POLICY TOWARDS BURMA

Officials from DFAIT and CIDA provided us with an overview of Canada's policy towards, and programming related to, Burma. In particular, we heard of Canada's responses to the recent developments occurring in the country and the evolution of Canadian policy as a result.

Mr. Giokas told the Subcommittee that Canada has consistently spoken out about the human rights situation in Burma,

raising this issue bilaterally at all appropriate opportunities, as well as in international forums such as the UN General Assembly and Human Rights Council. Specific concerns we have raised included the detention of hundreds of political prisoners, fighting and abuses in ethnic areas.<sup>348</sup>

In 2011, in its statement during the interactive dialogue portion of Myanmar's Universal Periodic Review at the United Nations Human Rights Council, Canada "expressed concern about the human rights situation and requested answers to its advance questions, especially on the legislation planned by the new Parliament to address human rights gaps and the lack of participation in international human rights instruments."<sup>349</sup>

Following recent moves towards democratic change in Burma, Foreign Affairs Minister John Baird travelled to Burma on 8 March 2012. According to Mr. Giokas, "this was the first official visit to that country by a Canadian foreign minister. He conveyed Canada's hope that progress made to date will continue and lead to further reforms."<sup>350</sup> Mr. Giokas stressed that the Government of Canada is willing to engage and support

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348 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

349 United Nations Human Rights Council, [Report of the Working Group on the Universal Periodic Review – Myanmar](#), 24 March 2011, UN Doc. A/HRC/17/9, para. 34.

350 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

Burma in its democratic transition.<sup>351</sup> On 13 July 2012, Minister Baird announced Canada's intention to open an embassy in Burma.<sup>352</sup>

Witnesses stressed that Burma will require assistance to build its capacity to implement democratic reforms. Mr. Giokas told the Subcommittee that one area where Canada may be able to contribute usefully is through parliamentary exchanges or contacts with the Government of Burma.<sup>353</sup> The Subcommittee believes that an exchange of information and views on the role of parliaments and governments in federal states in the context of such exchanges should be part of any such contacts. Mr. Nankivell told the Subcommittee that CIDA monitors developments in Burma "very closely" and is liaising with the World Bank, the Asian Development Bank, UN bodies, and the donor agencies of like-minded countries regarding their activities on the ground.<sup>354</sup>

The Government of Canada does not provide aid directly to the Burmese government. Canada provides humanitarian assistance to refugees and displaced persons inside Burma and in border regions, as well as food aid and other humanitarian assistance to those affected by natural disasters. Canada has also recently begun to support some programs within Burma that aim to further its democratic transition.<sup>355</sup> Since 1988, CIDA has provided significant assistance to Burmese migrants and refugees in border areas through the Burma border assistance program, which is implemented by Inter Pares, a Canadian NGO.<sup>356</sup>

Witnesses alerted the Subcommittee to the fact that a number of countries that have traditionally supported civil society organizations in Burma's border regions or in neighbouring countries are beginning to shift their resources to groups deeper inside Burma. In light of the acute humanitarian needs in Burma's border regions and the capacity of existing organizations to contribute to strengthening civil society within the country, Mr. Davis urged Canada to continue to support civil society organizations that operate on the borders and which advocate for reform from outside the country.<sup>357</sup>

## A. Sanctions

In light of the recent reforms being undertaken in Burma, Canada — as well as other countries around the world — has moved with cautious optimism to adjust its policy and engage with Burma. This process has included the suspension of most sanctions. In particular, Canada removed prohibitions on exports, imports, financial services and investment that had been imposed under the *Special Economic Measures (Burma)*

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351 Ibid.

352 DFAIT, "[Baird Announces Intention to Open Canadian Embassy in Burma](#)," News release, 13 July 2012.

353 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

354 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Jeff Nankivell).

355 DFAIT, "[Canada-Burma relations](#)."

356 Ibid.; written submission of Inter Pares.

357 [Evidence](#), Meeting No. 37, 41<sup>st</sup> Session, 1<sup>st</sup> Parliament, 10 May 2012.



*Regulations*.<sup>358</sup> It also removed Burma from the *Area Control List*, which means that an export permit from the Minister of Foreign Affairs will not be required to export most non-military and non-dual-use goods and technology to Burma.<sup>359</sup> Canada maintains a prohibition on any trade in arms and related material along with the provision of related technical and financial assistance. It also maintains an asset freeze and prohibition on transactions against certain designated individuals and entities listed in the Regulations (the “list of designated persons”).<sup>360</sup>

Canada is, in good company, reassessing its sanctions policy in response to developments in Burma. The European Union has lifted sanctions, with the exception of its arms embargo.<sup>361</sup> The United States has also eased restrictions, including the suspension of certain sanctions to permit American investment in the country, through the issuing of a licence to American businesses.<sup>362</sup>

As Mr. Giokas put it, the question for Canada now is how best “to encourage, facilitate and assist in democratic development and change? The suspension of sanctions enables us to engage with these issues. Whether that is a question of losing influence or gaining influence remains to be seen; we don’t know yet.”<sup>363</sup>

The Subcommittee heard that although there has been an absence of relationships with many Western countries in recent years, Burma has forged economic and political relationships with its Asian neighbours. For instance, Mr. Giokas told the Subcommittee that when Western companies left Burma due to economic sanctions, China, Thailand and India filled the void.<sup>364</sup> Prior to the easing of sanctions, there had been concern by some in the international community, such as Mr. Markus Loening, Germany’s federal commissioner for human rights policy, that the continuing Western sanctions on Burma allowed China to further extend its strategic reach in Burma. In a June 2011 article, Mr. Loening argued that “Beijing is exploiting the gap we have left with our across-the-board hard-line sanctions policy.”<sup>365</sup> Indeed, according to the Economist Intelligence Unit, relations between Burma and China have been important in recent years: China was “the

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358 SOR/2007-285.

359 *Export and Import Permits Act*, s. 4; *Area Control List*, as amended by SOR/2012-86, s. 1; Government of Canada, Embassy of Canada to Thailand website, “[Canada’s Policy on Burma](#).”

360 *Special Economic Measures Act*, S.C. 1992, c. 17, *Special Economic Measures (Burma) Regulations*, ss. 3, 4 and the Schedule to the Regulations; Government of Canada, Embassy of Canada to Thailand website, *ibid*.

361 Council of the European Union, [Council Conclusions on Myanmar/Burma](#), News release, 22 April 2013.

362 U.S. Department of State, “[Remarks With Foreign Minister of Burma U Wunna Maung Lwin After Their Meeting](#),” Remarks by Hillary Rodham Clinton, 17 May 2012; US Department of State, “[Background Briefing on the Administration’s Policies Toward Burma Sanctions](#),” 2 May 2013.

363 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012 (Mr. Greg Giokas).

364 *Ibid*.

365 Mr. Markus Loening, “[It is time to fine-tune sanctions on Burma](#),” *Financial Times*, 20 June 2011.

strongest backer of the military junta” which ruled until 2010, and remains a “crucially important trade and investment partner.”<sup>366</sup>

Nevertheless, all of the witnesses before the Subcommittee expressed the view that Canadian sanctions had played an important role in bringing about change in Burma. Some witnesses expressed a concern that Canada could lose leverage to promote further change in Burma if remaining sanctions are lifted too quickly. In particular, some witnesses suggested that prematurely lifting sanctions could jeopardize peace negotiations between the military and ethnic armed groups that are currently underway. One witness indicated that “the majority of Burma’s ethnic populations believe that the regime is engaging in these negotiations to win economic concessions from the ethnic armed groups. If the international community rewards the regime with economic gains, critical leverage is lost to ensure that national reconciliation and peace is achieved.”<sup>367</sup>

These witnesses advocated a gradual approach to the reduction of sanctions that sets clear benchmarks for democratic progress and provides for a reassessment of the situation in the future. For example, Mr. Din told the Subcommittee:

I support the gradual relaxation of sanctions in a way that is directly tied to progress. A gradual approach enables the international governments to engage and influence the Burmese government in a direction that supports genuine and sustained political reform toward democratization, durable peace, and improved respect for human rights.<sup>368</sup>

Mr. Davis argued that

if Burma is on this true path of reform, people will see benefits, people in power will see benefits and the middle class in Rangoon and Mandalay will see benefits, and this will start pushing and supporting more reforms. So there has been a carrot-and-stick approach with sanctions, and sanctions will be maintained until different indicators are met. Those indicators, I think, should include stopping human rights violations.<sup>369</sup>

Inter Pares and Dr. Wakar Uddin also stressed the need for concrete human rights benchmarks to be attained before sanctions are permanently lifted.<sup>370</sup>

Several witnesses recommended that the Government of Canada not take further steps towards lifting sanctions at this point in time. Mr. Davis, for example, strongly advocated the maintenance of all remaining sanctions, in particular those targeting

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366 EIU, *Country Report: Myanmar (Burma)*, March 2012. The political, economic and human rights impacts of the relationship between China and Burma are discussed in depth in a recent report of the International Crisis Group, [China’s Myanmar Strategy: Elections, Ethnic Politics and Economics](#), Asia Briefing No. 112, 21 September 2010.

367 [Evidence](#), Meeting No. 36, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 8 May 2012 (Mr. Aung Din).

368 Ibid.

369 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

370 Written submission of Inter Pares; [Evidence](#), Meeting No. 44, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 19 June 2012 (Dr. Wakar Uddin).

individuals within the Burmese regime suspected of human rights violations or associates of the regime suspected of benefitting from these violations.<sup>371</sup>

The Subcommittee notes that DFAIT has indicated that Canada's list of designated persons will be reviewed and updated in light of Burma's recent reforms.<sup>372</sup> Witnesses highlighted the effectiveness of such listings in bringing about change in Burma and stressed the importance of keeping the list of designated persons up to date as reforms progress. Mr. Davis, for example, recommended that Canada ensure that its list of designated individuals is "broad, and includes those individuals who have profited from human rights violations, such as forced labour and displacement."<sup>373</sup> Mr. Din, on behalf of the U.S. Campaign for Burma, suggested that as part of such an update, Canada ought to consider listing individuals and businesses closely associated with the Union Solidarity and Development Party (USDP) and the Burmese military following the 2010 elections, with a particular focus on:

- individuals holding senior command positions in the Burmese military;
- top military commanders in northern Shan State and Kachin State, where armed conflict continues involving serious violations of international humanitarian law and gross violations of international human rights;
- regional military commanders and divisional commanders whose economic activities have resulted in or contributed to land confiscations, forced labour, forced relocation and other human rights violations and abuses;
- military-appointed ministers, deputy ministers and Members of Parliament at the Union and regional levels;
- a wider range of military-owned business entities;
- Burmese nationals and business entities that have strong ties to the military and which act to undermine or oppose reforms, or that are involved in the commission of human rights abuses; Burmese government ministers and USDP leaders who oppose democratic reform.<sup>374</sup>

Mr. Giokas told the Subcommittee that "there's a willingness to reimpose sanctions if conditions warrant."<sup>375</sup> While the Government of Canada believes that the progress achieved thus far merited the suspension of sanctions, Mr. Giokas indicated that Canada

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371 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012 (Mr. William Davis).

372 DFAIT, "[Backgrounder - Canada Eases Economic Sanctions Against Burma](#)," 24 April 2012.

373 [Evidence](#), Meeting No. 37, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 10 May 2012.

374 Written submission of Mr. Aung Din to the Subcommittee on International Human Rights, 10 August 2012.

375 [Evidence](#), Meeting No. 33, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 26 April 2012.

will “monitor carefully” developments in Burma to “encourage but also to ensure that there's due process and due respect given to the areas of concern that resulted in these sanctions in the first place.”<sup>376</sup> The Subcommittee agrees with this cautious but supportive approach to reform in Burma.

## **THE SUBCOMMITTEE’S CONCLUSIONS AND RECOMMENDATIONS**

In light of the continuing grave human rights and international humanitarian law violations occurring in ethnic minority areas of Burma, the Subcommittee believes that the country’s recent democratic reforms must be viewed with caution by Canada and the international community. We agree with the U.S. Campaign for Burma’s submission that encouraging reformers in Burma “should not undermine democracy activists, ethnic nationalities, and human rights defenders” in the country.<sup>377</sup> We are convinced that human rights standards and principles must remain at the centre of Burma’s ongoing reform process.

The Subcommittee believes that broad-based civil participation in governance, national reconciliation, accountability, transparency, the rule of law, effective civilian control of the military, and the principle of non-discrimination are indispensable for the creation of a free, fair and just society for all those who live in Burma.

We are convinced that the Government of Burma must move to effectively halt violations of international human rights and humanitarian law, as well as human rights abuses by non-state actors, including mob violence. Burma must protect the human rights of all individuals under its jurisdiction without discrimination, ensure unfettered access to humanitarian workers, facilitate the reintegration and return of displaced persons and refugees, and effectively investigate and hold accountable perpetrators of mass atrocities. The people of Burma deserve no less.

The Subcommittee’s recommendations are made with the aim of contributing to Canada’s efforts, as a friend and an equal, to assist the Government of Burma to ensure that all people in that country may live equally in dignity and rights. On the basis of the evidence it has heard, the Subcommittee makes the following recommendations to the Government of Canada:

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376 Ibid.

377 Written submission of Mr. Aung Din to the Subcommittee on International Human Rights, 8 May 2012.

## **A. List of Recommendations**

*Recommendations to the Government of Canada aimed at strengthening respect for human rights in Burma*

### **Recommendation 1**

The Subcommittee recommends that the Government of Canada support Burma's transition to democracy by continuing to raise human rights issues with the Government of Burma at all appropriate opportunities. In particular, the Subcommittee recommends that the Government of Canada raise concerns in respect of the following:

- Continued restrictions on freedom of expression, including restrictions on media freedom;
- Continued prevalence of extra-judicial executions and excessive use of force by security forces;
- Continued use of torture and cruel, inhuman and degrading treatment and punishment by security forces;
- Prison conditions that amount to cruel, inhuman, degrading treatment or punishment or which do not respect the inherent dignity and humanity of detainees;
- The mandate and powers of the National Human Rights Commission, which do not currently meet the standards set out in the *Principles Relating to the Status of National Institutions* (the Paris Principles);
- The prevalence of land confiscation without adequate compensation and the violation of the right to adequate housing;
- Continued use of forced labour, particularly in connection with large-scale development projects and in the context of activities undertaken by the military;
- Continued use of child soldiers;
- Continued use of sexual violence in situations of armed conflict and the ongoing impunity for perpetrators;
- Discriminatory educational practices and policies that prevent children of some ethnic minority groups from enjoying their right to education.

## **Recommendation 2**

**The Subcommittee recommends that the Government of Canada continue to advocate for religious freedom in all regions of Burma. As part of this advocacy, the Subcommittee further recommends that the Government of Canada encourage the Government of Burma to invite the UN Special Rapporteur on Freedom of Religion or Belief to visit the country and to give him unfettered access to ethnic minority areas.**

## **Recommendation 3**

**The Subcommittee recommends that the Government of Canada continue to stress to the Government of Burma and to Members of the Burmese Parliament, in all appropriate forums, the urgent need to undertake constitutional and legislative changes to conform to international human rights standards, and the need to reform the judiciary. The Burmese Parliament should play an important role in studying and adopting such reforms. In addition, reforms should be undertaken in consultation with civil society organizations, religious communities, and other civilian stakeholders.**

**The Subcommittee further recommends that the Government of Canada consider ways that it could contribute Canadian knowledge and expertise to international efforts to assist Burma to build its capacity to ensure the rule of law within its borders.**

## **Recommendation 4**

**The Subcommittee recommends that the Government of Canada continue to press for the immediate and unconditional release of all those imprisoned on the basis of the peaceful exercise of their human rights, including their political opinions, ethnicity or religion.**

## **Recommendation 5**

**The Subcommittee recommends that the Government of Canada continue its long-standing support of Burmese political dissidents and human rights defenders, including those facing persecution within Burma.**

## **Recommendation 6**

The Subcommittee recommends that the Government of Canada urge the Government of Burma to demonstrate a clear commitment to upholding universal human rights standards by ratifying the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and other core international human rights treaties and by cooperating with United Nations human rights mechanisms and the Office of the High Commissioner for Human Rights.

*Recommendations to the Government of Canada regarding the need to strengthen democratic reforms in Burma*

## **Recommendation 7**

The Subcommittee recommends that the Government of Canada continue to support Burma's transition to democracy, in particular by promoting a program of inter-parliamentary contacts between Burmese and Canadian parliamentarians.

## **Recommendation 8**

The Subcommittee recommends that the Government of Canada continue to impress upon its Burmese counterparts the vital importance of holding fully free and fair elections in 2015 and of allowing complete access to independent, international election observation missions during these elections. The 2015 elections must be free and fair not only in central Burma, but also in the ethnic minority areas on Burma's borders.

*Recommendations to the Government of Canada aimed at addressing the need for national reconciliation and an end to ethnic conflict in Burma*

## **Recommendation 9**

The Subcommittee recommends that the Government of Canada call on the Government of Burma and all non-state armed groups operating in the country to engage in honest and sincere negotiations with a view to reaching durable ceasefires, including agreements in respect of a principled and staged withdrawal of troops and fighters from conflict zones.

The Subcommittee further recommends that the Government of Canada stress to the civilian government of Burma the vital need to maintain the ceasefire in Kachin State and to ensure that negotiations

between representatives of the Burmese government and the Kachin people proceed on the basis of good faith, mutual respect, and a desire to accommodate the aspirations of the Kachin within a united Burma.

#### **Recommendation 10**

The Subcommittee recommends that the Government of Canada continue to press the Government of Burma to undertake a meaningful and inclusive process of national reconciliation with ethnic minority groups that includes:

- reaching a negotiated political settlement to armed conflicts;
- effectively investigating serious crimes and human rights violations; and,
- ensuring some form of accountability for perpetrators and remedies for victims.

This reconciliation process should also include dialogue with all stakeholders in Rakhine State, undertaken in an atmosphere of mutual respect and tolerance, in order to address the underlying causes of communal violence in that area. Ethnic and religious minorities and women must be included at all stages of the reconciliation process.

*Recommendations to the Government of Canada aimed at combating discrimination and enhancing inter-ethnic tolerance and dialogue in Burma*

#### **Recommendation 11**

The Subcommittee recommends that the Government of Canada stress to the Government of Burma the importance of repealing discriminatory legislation that targets the Rohingya ethnic minority, of respecting the human rights of the Rohingya people, and of resolving the issue of their citizenship in accordance with international human rights standards. The Subcommittee recommends that, consistent with its long-held position, the Government of Canada should condemn, at all appropriate opportunities, any move towards segregation, detention or mass forcible transfer of the Burmese Rohingya population.



## **Recommendation 12**

The Subcommittee recommends that the Government of Canada continue to closely monitor the human rights and humanitarian situation in Rakhine State, as well as any investigations into the violence in that region. The Subcommittee recommends that the Government of Canada communicate to the Government of Burma its intentions in this regard.

## **Recommendation 13**

The Subcommittee recommends that the Government of Canada continue to condemn incidences of inter-ethnic violence and take concrete steps to promote tolerance and the principle of non-discrimination in Burma as part of its strategy for supporting Burma's democratic transition.

*Recommendation to the Government of Canada regarding its relations with the Government of Bangladesh*

## **Recommendation 14**

The Subcommittee recommends that the Government of Canada raise with the Government of Bangladesh, in all appropriate forums, the need to treat Rohingya fleeing persecution in Burma in accordance with internationally accepted human rights standards, to permit humanitarian access to refugees and populations of concern within Bangladesh by international non-governmental organizations, and to facilitate the work of the Office of the UN High Commissioner for Refugees in southeastern Bangladesh.

*Recommendations to the Government of Canada aimed at improving respect for international humanitarian law in Burma*

## **Recommendation 15**

The Subcommittee recommends that the Government of Canada take appropriate steps to encourage the Government of Burma and the Burmese military to respect international humanitarian law, including by urging Burma to ratify the following international treaties:

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977;*

- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977;
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)*, 8 December 2005; and,
- *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, 3 December 1997.

#### **Recommendation 16**

The Subcommittee recommends that the Government of Canada consider the appropriateness of offering technical assistance to Burmese officials in the form of training on international humanitarian law.

*Recommendations to the Government of Canada aimed at improving humanitarian access and ensuring adequate humanitarian assistance in Burma*

#### **Recommendation 17**

The Subcommittee recommends that Canada continue to provide humanitarian assistance to Burma, including urgent assistance to address humanitarian needs in crisis situations as they arise. The Subcommittee wishes to highlight, in this regard, the dire humanitarian situation that currently prevails in parts of the Kachin and Rakhine states.

#### **Recommendation 18**

The Subcommittee recommends that the Government of Canada emphasize, in its relations with the Government of Burma and in any contacts it may have with, members of the Burmese Parliament and representatives of non-state armed groups, the necessity of permitting full humanitarian access to conflict and violence affected areas.

### **Recommendation 19**

**The Subcommittee also recommends that the Government of Canada push for the release of any staff of international non-governmental organizations who have been detained or convicted on the basis of peaceful activities undertaken as part of their humanitarian work in Rakhine State.**

*Recommendations to the Government of Canada aimed at supporting Burma's economic reforms*

### **Recommendation 20**

**The Subcommittee recommends that the Government of Canada continue to support Burma's economic reforms and take all appropriate steps to ensure that Canadian companies considering investing in Burma are aware of the weak governance context and ongoing human rights concerns in the country.**

**The Subcommittee further recommends that the Government of Canada continue to stress its expectation that Canadian corporations meet or exceed applicable corporate social responsibility standards, including the United Nations *Guiding Principles on Business and Human Rights*.**

### **Recommendation 21**

**The Subcommittee recommends that the Government of Canada, as part of its support for Burma's transition to democracy, consider ways to provide Canadian expertise to the Government of Burma, with a view to developing Burma's capacity to devise and implement a legal and regulatory framework to govern the extractive resource sector that meets international human rights standards.**

*Recommendation regarding Canadian international development policy in Burma*

### **Recommendation 22**

**The Subcommittee recommends that the Government of Canada continue to fund civil society organizations operating in Burma's border regions and outside the country, as part of a broader effort to support greater understanding of universal human rights principles in Burma, including the right to freedom from discrimination and freedom of thought, conscience and religion.**

*Recommendations in respect of Canadian sanctions policy toward Burma*

**Recommendation 23**

The Subcommittee recommends that the Government of Canada periodically reassess the decision that it has taken to suspend economic sanctions against Burma, taking into account the country's progress on its path towards democratic transition.

**Recommendation 24**

The Subcommittee recommends that the Government of Canada continue to periodically assess and update the individuals listed in the Schedule to the *Special Economic Measures (Burma) Regulations* with a view to ensuring that the Schedule reflects the most complete and relevant list of persons that are involved in and profiting from serious violations of international humanitarian law and gross violations of human rights, and which meet the relevant legal criteria under these *Regulations* and the *Special Economic Measures Act*.

**Recommendation 25**

The Subcommittee recommends that the Government of Canada publicly communicate that progress on human rights, the rule of law, and democratic governance must be made by Burma before Canada will permanently lift economic sanctions.

## APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<b>Canadian International Development Agency</b> Jeff Nankivell, Acting Regional Director General Asia Leslie Norton, Director General International Humanitarian Assistance Directorate	2012/04/26	33
<b>Department of Foreign Affairs and International Trade</b> Greg Giokas, Director General South, Southeast Asia and Oceania Lisa Rice Madan, Director Southeast Asia and Oceania Relations		
<b>Canadian Friends of Burma</b> Tin Maung Htoo, Executive Director	2012/05/03	35
<b>U.S. Campaign for Burma</b> Aung Din, Executive Director	2012/05/08	36
<b>Physicians for Human Rights</b> William Davis, Director Burma Project	2012/05/10	37
<b>Project L.A.M.B.S. International</b> James Paul Humphries, Founder and Director Hkaw Win Humphries, Teacher	2012/05/29	40
<b>Burmese Rohingya Association of North America (BRANA)</b> Wakar Uddin, Chairman Director General, Arakan Rohingya Union	2012/06/19	44
<b>Initiative on Quiet Diplomacy</b> Barry Parkinson, Associate		



## **APPENDIX B LIST OF BRIEFS**

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### **Organizations and Individuals**

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**Burmese Rohingya Association of North America (BRANA)**

**Inter Pares**

**Project L.A.M.B.S. International**

**Schabas, William A.**





## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the Government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* of the Committee ([Meeting No. 79](#)) is tabled and a copy of the relevant *Minutes of Proceedings* of the Subcommittee on International Human Rights ([Meetings Nos. 33, 35-37, 40-41, 44-45, 50-51, 56-57](#)) is tabled.

Respectfully submitted,

Dean Allison

Chair

