

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on  
Burma: Human Rights in the Aftermath of the Coup

September 13, 2023 – 2:30 p.m.  
H-313, the Capitol

STATEMENT SUBMITTED FOR THE RECORD

Submitted by:

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Fortify Rights commends the Tom Lantos Human Rights Commission for holding this much-needed hearing on the human rights situation in Burma (Myanmar). We especially thank Chairpersons McGovern and Smith, along with the other distinguished members of the Commission, for their continuing leadership in bringing too-often-overlooked human rights issues to the attention of the United States Government and the public.

Fortify Rights is an independent, non-profit, non-governmental human rights organization working to ensure and defend human rights for all. We investigate human rights violations, engage people with power on solutions, and strengthen human rights defenders and communities affected by violations. We have reported extensively on human rights in Myanmar<sup>1</sup> and have had the privilege

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<sup>1</sup> See, e.g., Fortify Rights, *Genocide by Attrition: The Role of Identity Documents in the Holocaust and the Genocides of Rwanda and Myanmar* (June 2022), <https://www.fortifyrights.org/mya-inv-rep-2022-06-08/>; Fortify Rights & the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School, *Nowhere is Safe: The Myanmar Junta's Crimes Against Humanity Following the Coup d'État* (March 2022), <https://www.fortifyrights.org/mya-inv-rep-2022-03-24/>; Fortify Rights, *Ongoing War Crimes in Karenni (Kayah) State, Myanmar: May 2021 to January 2022* (Feb. 2022), <https://www.fortifyrights.org/mya-inv-rep-2022-02-15/>; Fortify Rights, *Access Denied: The Myanmar Junta's Deprivation of Lifesaving Aid in Karenni (Kayah) State* (Nov. 2021), <https://www.fortifyrights.org/mya-inv-rep-2021-11-10/>; Fortify Rights, *Ending Impunity in Myanmar: Can the National Unity Government of Myanmar Delegate Jurisdiction to the International Criminal Court? A Legal Analysis* (Aug. 2021), <https://www.fortifyrights.org/mya-inv-rep-2021-08-19/>; Fortify Rights, *The Torture in My Mind: The Right to Mental Health for Rohingya Survivors of Genocide in Myanmar and Bangladesh* (Dec. 2020), <https://www.fortifyrights.org/mya-inv-rep-2020-12-10/>; Fortify Rights & ATHAN Freedom of Expression Organization, *Our Demands for All Students: Violations of Students' Rights in Mandalay, Myanmar* (Apr. 2020), <https://www.fortifyrights.org/mya-inv-rep-2020-04-23/>; Fortify Rights, *Tools of Genocide: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar* (Sep. 2019), <https://www.fortifyrights.org/mya-bgd-rep-2019-09-03/>; Fortify Rights & the Human Rights Commission of Malaysia (SUHAKAM), *Sold Like Fish: Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015* (Mar. 2019), <https://www.fortifyrights.org/reg-inv-rep-2019-03-27/>;

of testifying before this Commission on multiple occasions.<sup>2</sup>

For a decade now, our team has documented the Myanmar military's crimes and impunity throughout the country, working on the ground to conduct thousands of interviews and collect reliable evidence for future prosecution of the war criminals and human rights abusers currently attempting to control the country. We have worked, and continue to work, alongside local and global partners to identify and advance solutions to what has become one of the world's gravest humanitarian disasters.

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Fortify Rights submits this statement for the record for a single purpose: to request the United States Government to take further, direct, consequential action to stop the ongoing atrocities in Myanmar, ensure accountability for those responsible, and support the democratic will of the people of Myanmar. Mass atrocity crimes and impunity for these crimes have continued for too long in Myanmar, worsening since the illegal February 2021 *coup d'état*. Too many people have suffered for too long, and it must end.

The events in and surrounding Myanmar impact American interests in far more ways than the casual observer can see. If more significant, meaningful, and effective action is not taken soon, we

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Fortify Rights, *They Block Everything: Avoidable Deprivations in Humanitarian Aid to Ethnic Civilians Displaced by War in Kachin State, Myanmar* (Aug. 2018), <https://www.fortifyrights.org/mya-inv-rep-2018-08-30/>; Fortify Rights, *They Gave Them Long Swords: Preparations for Genocide and Crimes Against Humanity Against Rohingya Muslims in Rakhine State, Myanmar* (July 2018), <https://www.fortifyrights.org/mly-inv-rep-2018-07-19/>; Fortify Rights & Simon-Skjoldt Center for the Prevention of Genocide at the United States Holocaust Memorial Museum, *They Tried to Kill Us All: Atrocity Crimes Against Rohingya Muslims in Rakhine State, Myanmar* (Nov. 2017), <https://www.fortifyrights.org/mya-inv-rep-2017-11-15/>; Fortify Rights & United to End Genocide, *Supporting Human Rights in Myanmar: Why the U.S. Should Maintain Existing Sanctions Authority* (May 2016), <https://www.fortifyrights.org/mya-inv-rep-2016-05-09/>; Fortify Rights & the Burmese Rohingya Organization UK, *Everywhere is Trouble: An Update on the Situation of Rohingya Refugees in Thailand, Malaysia, and Indonesia* (Mar. 2016), <https://www.fortifyrights.org/reg-inv-rep-2016-03-11/>; Allard K. Lowenstein International Human Rights Clinic, Yale Law School for Fortify Rights, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? A Legal Analysis* (Oct. 2015), <https://www.fortifyrights.org/mya-inv-rep-2015-10-29/>; Fortify Rights & the Harvard Law School International Human Rights Clinic, *Crackdown at Letpadan: Excessive Force and Violations of the Rights to Freedom of Peaceful Assembly and Expression in Letpadan, Bago Region, Myanmar* (Oct. 2015), <https://www.fortifyrights.org/mya-inv-rep-2015-10-10/>; Fortify Rights, *Submission to the United Nations Universal Periodic Review: Myanmar, 23<sup>rd</sup> Session, November 2015* (Sep. 2015), <https://www.fortifyrights.org/mya-un-rep-2015-09-29/>; Fortify Rights, *Midnight Intrusions: Ending Guest Registration and Household Inspections in Myanmar* (Mar. 2015), <https://www.fortifyrights.org/mya-inv-rep-2015-03-19/>; Fortify Rights, *I Thought They Would Kill Me: Ending Wartime Torture in Northern Myanmar* (June 2014), <https://www.fortifyrights.org/mya-inv-rep-2014-06-09/>; Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar* (Feb. 2014), <https://www.fortifyrights.org/mya-inv-rep-2014-02-25/>.

<sup>2</sup> Statement of Matthew Smith, Co-Founder and CEO, Fortify Rights, at Hearing on Victim's Rights in Burma, House Foreign Affairs Committee Tom Lantos Human Rights Commission, Washington, D.C. (July 25, 2018), <https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/TLHRC%20Burma%20Smith%20Final.pdf>; Fortify Rights, *The Human Rights of the Rohingya People: Testimony Before the Tom Lantos Human Rights Commission* (Mar. 17, 2017), <https://www.fortifyrights.org/mya-us-tes-2017-03-17/>.

fear Myanmar will serve as a template for other countries to consolidate power in authoritarian regimes. These countries will eventually fall into the ambit of Chinese and Russian alliances and, ultimately, normalize the use of human rights violations and atrocity crimes, including genocide, as tools for social and political control. The longer the United States and other nations fail to address the mass atrocities in Myanmar adequately, the more likely another “Myanmar” will occur, and the more likely that Myanmar will sink even deeper into the morass of mass atrocity crimes, impunity, and authoritarianism. This scenario must not be allowed to happen.

Ignoring impunity has a cost. Impunity begets normalization, and normalization begets repetition. Moreover, impunity travels like a virus, seeking hosts, seeking to expand, and perpetuating cycles of violence and human rights abuses. Therefore, allowing impunity to reign in Myanmar would be a moral and strategic failure that the United States, the people of Myanmar, and innocent civilians worldwide cannot afford.

For these reasons and those elaborated upon further in this statement, we implore the distinguished members of the Commission to use all the considerable means and methods at their disposal to urge members of the Executive and Legislative Branches of the U.S. Government to act now and to act decisively, as recommended below.

### **Urgency Lost**

War crimes, crimes against humanity, and genocide have plagued Myanmar for decades, and the violence today only worsens. Despite repeated warnings, effective action to stop this humanitarian catastrophe is stalling and, in some cases, backsliding.

Indeed, since 2012, my colleagues and I have collected extensive evidence in Myanmar of how the military and police massacred, raped, disappeared, tortured, imprisoned, and persecuted indigenous Rohingya.<sup>3</sup> The Myanmar military, police, and former government forced Rohingya in Rakhine State to live in what one U.N. expert called “concentration camps” that “have become urban ghettos like those Jews lived in under Nazi-occupied Europe.”<sup>4</sup> As years passed, governments worldwide largely ignored warnings from Rohingya people, Myanmar-based human

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<sup>3</sup> See Human Rights Watch, *All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State* (Apr. 2013), <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>; Human Rights Watch, *The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State* (Aug. 2012), <https://www.hrw.org/report/2012/08/01/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan#:~:text=Government%20Failure%20to%20Protect%20Victims%20of%20Sectarian%20Violence&text=A%2040%2Dyear%2Dold%20Arakan%20man%20in%20Sittwe%20told%20Human,slept%20well%20since%20this%20began.%E2%80%9D>.

<sup>4</sup> Karen McVeigh & Hannah Ellis-Peterson, *UN Official Likens Rohingya Living Conditions to Nazi Concentration Camps*, THE GUARDIAN (July, 4, 2019), <https://www.theguardian.com/world/2019/jul/04/un-warns-of-possible-new-war-crimes-in-myanmar>.

rights defenders, Fortify Rights, and other non-governmental organizations of the Myanmar military's genocidal intent, genocidal preparations, and genocidal actions toward Rohingya.<sup>5</sup>

The Myanmar military exploited international indifference to commit genocide against the Rohingya, particularly in 2016 and 2017. Subsequently, they engaged in a horrific pattern of violence, including the killing, rape, and torture of civilians from various ethnic backgrounds, forcibly displacing millions, imprisoning democratically elected leaders, and suppressing fundamental civil rights. This reign of terror extended to longstanding civil wars where women, children, men, and houses of worship were treated as military targets.

Regrettably, it wasn't until March 2022 that the United States officially recognized the actions taken against the Rohingya since 2012 as genocide and crimes against humanity. By then, the Myanmar military junta had initiated an illegal *coup d'état* in February 2021, followed by a relentless and systematic nationwide assault on the civilian population, meticulously documented by Fortify Rights. While the U.S. Government has condemned the coup, imposed targeted sanctions, and provided humanitarian aid, the urgency of the present situation calls for more decisive action and a more comprehensive response.

Another decade cannot pass before the U.S. Government recognizes the crimes happening in Myanmar today for what they are: crimes against humanity and war crimes. The United States can do more; we can all do more. We must act now to stop those crimes, not merely wait to condemn them retrospectively.

### **Post-Coup Crimes Against Humanity**

Fortify Rights has demonstrated previously how the lack of a sense of urgency from the international community can produce tragic results for those on the ground in Myanmar.<sup>6</sup> The same can be said today about the conditions in Myanmar since the 2021 coup.

In March 2022, Fortify Rights and the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School published a 196-page report entitled *Nowhere is Safe*.<sup>7</sup> It documented the junta's ongoing crimes against humanity and war crimes committed in the first six months

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<sup>5</sup> See, e.g., Fortify Rights, *Resources on the Rohingya Genocide* (Aug. 24, 2023), <https://www.fortifyrights.org/res-rohingya-genocide/>; UN News, *Myanmar Military Leaders Must Face Genocide Charges — UN Report* (Aug. 27, 2018), <https://www.hrw.org/report/2013/04/22/all-you-can-do-pray/crimes-against-humanity-and-ethnic-cleansing-rohingya-muslims>.

<sup>6</sup> Matthew Smith, *Symposium on Myanmar and International Indifference: The Rohingya Genocide — Warning Signs, International Inaction, and Missteps*, OPINIOJURIS (Aug. 29, 2022), <https://opiniojuris.org/2022/08/29/symposium-on-myanmar-and-international-indifference-the-rohingya-genocide-warning-signs-international-inaction-and-missteps/>.

<sup>7</sup> Fortify Rights & Orville H. Schell, Jr. Center for International Human Rights at Yale Law School, *Nowhere is Safe: The Myanmar Junta's Crimes Against Humanity Following the Coup d'État* (Mar. 2022), <https://www.fortifyrights.org/mya-inv-rep-2022-03-24/> [hereinafter *Nowhere is Safe*].

following the February 2021 *coup d'état* — crimes that now reach every corner of the territory of Myanmar.

*Nowhere is Safe* relied on more than 100 interviews conducted by Fortify Rights and the Schell Center with victims in 30 townships and 13 states throughout Myanmar; open-source evidence of atrocity crimes; primary evidence collected by Fortify Rights and the Schell Center from confidential sources in the Myanmar military; and testimony taken by Fortify Rights and the Schell Center from active-duty Myanmar military personnel. The report concludes unequivocally that the Myanmar military committed thousands of human rights violations between February and December 2021 that constitute crimes against humanity.

These crimes are revolting and demonstrate direct responsibility on behalf of the highest ranks of military leaders. Our evidence supports findings that well over 2,000 murders occurred during the 11 months after the *coup*, in addition to countless instances of torture, arbitrary detention, the forcible transfer of populations, enforced disappearances, persecution, rape, and the brazen oppression of fundamental freedoms of speech, expression, and association. In most instances, there can be little doubt that junta soldiers carried out these crimes pursuant to official military policy, expressed in some cases in direct testimony and internal junta documents obtained by Fortify Rights.

Direct testimony from a Myanmar Army Major with whom Fortify Rights spoke stated, without hesitation, that army snipers are ordered “to shoot at the leader of the protesters” because “[w]hen the leaders are shot, the protesters will be fearful.”<sup>8</sup> He continued, stating that this was “military procedure. There are written papers outlining this procedure.”<sup>9</sup> A Mandalay District Police Memorandum instructed police officers to “fire” at protesters “with a 12-gauge anti-riot shotgun if the protester is just one person” and “with a 38-mm anti-riot gun if the protesters are in a crowd.”<sup>10</sup> An Army Captain told Fortify Rights and the Schell Center that he had direct knowledge of “regiment seniors or commanders” giving verbal commands to lower-level soldiers “to shoot the people.”<sup>11</sup> Interviews with dozens of eyewitnesses, journalists, doctors, and defectors document how these orders were carried out nationwide for months, amounting to an undeniable pattern of slaughter to suppress dissent. Videos posted to social media corroborate these claims further.

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<sup>8</sup> *Id.*, p. 45 (quoting Myanmar Army Major from Light Infantry Division 99, Fortify Rights Interview with #84 (Apr. 21, 22, 30; May 7, 2021) (location withheld)).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, p. 71 (quoting Mandalay District Police Memorandum (Feb. 3, 2021) (unofficial translation on file with Fortify Rights)).

<sup>11</sup> *Id.*, p. 48 (quoting Myanmar Army Captain Nyi Thuta, Fortify Rights Interview with # 152 (Dec. 16, 2021) (location withheld)).

Our report is replete with eyewitness testimony from witness after witness telling the same graphic story: members of the military and police systematically and fatally shot unarmed civilians protesting the *coup* and disappeared their bodies to hide the evidence of their crimes. When the military was unable to disappear the body, doctor after doctor told Fortify Rights about bodies of gun-shot victims arriving dead at hospitals.

Outside the more populated urban areas where large protests were centered, humanitarian workers and other civilians discovered mass graves. They told of other massacres of dozens of individuals later identified as innocent villagers, many of whom were members of the Civilian Disobedience Movement (“CDM”). The physical condition of their bodies told the undeniable story of torture before their deaths.<sup>12</sup>

Beyond these heinous murders, internal memoranda from the Myanmar Police Force show that officials instructed police “to make arrests, one after the other, every night” and to “charge people who are supporting and helping the CDM.”<sup>13</sup> A Lance Corporal in the Myanmar Police Force told Fortify Rights and the Schell center that he received an “order . . . from the military [saying] that we must arrest people, take their shields, and crack down on them.”<sup>14</sup> Evidence suggests the military arrested more than 10,000 people between February and December 2021, including children, elected officials, protesters, journalists, lawyers, human rights defenders, and other dissenters.<sup>15</sup> Based on the evidence and testimony collected by Fortify Rights and the Schell Center, these arrests amounted to arbitrary detention, and almost all such arrests exhibited one common denominator: the detainees dared to disagree with the military junta.

During these detentions, victims and witnesses told Fortify Rights and the Schell Center that “[e]very detainee was tortured.”<sup>16</sup> Members of the military and police routinely beat, threatened with rape and death, and interrogated civilians about supporting the CDM.<sup>17</sup> One civilian — stopped by police for walking at night and never formally detained — told of the police burning off his tattoo of Aung San Suu Kyi on the spot, then beating him on the ground.<sup>18</sup>

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<sup>12</sup> *Id.*, pp. 67–69.

<sup>13</sup> *Nowhere is Safe*, pp. 69–70 (quoting Memorandum from Karen State Police Force (Mar. 18, 2021) (on file with Fortify Rights) & Myanmar Police Force Lance Corporal, Interview with # 32, in Myanmar (Mar. 17, 2021) (location withheld)).

<sup>14</sup> *Id.*, p. 71 (quoting Interview with # 32, in Myanmar (Mar. 17, 2021) (location withheld)).

<sup>15</sup> *Nowhere is Safe*, pp. 69–70.

<sup>16</sup> *Id.*, p. 88 (quoting Myanmar Journalist and Torture Survivor, Inter with # 58, in Tamwe Township, Yangon Region, Myanmar (Mar. 23, 2021)).

<sup>17</sup> *Id.*, pp. 88–98.

<sup>18</sup> *Id.*, pp. 91–92.

Further outside the urban centers of central Myanmar, and months after the crackdowns on protesters, the junta used various means to forcibly displace segments of the civilian population throughout the country. Fortify Rights and the Schell Center interviewed eyewitnesses, survivors, and others in Chin State, Bago Region, and Karenni State between June and October 2021 regarding the forced displacement and fleeing military attacks. As we reported at the time of our writing in December 2021, more than 440,000 people had been internally displaced in Myanmar since the *coup* alone, on top of 370,000 internally displaced before the *coup*. Junta forces launched systematic offensives in Chin, Kachin, Karen, Karenni, and other states and regions in the country, including through airstrikes and the use of heavy artillery in civilian areas, leading to civilian casualties and widespread displacement. Military troops also reportedly looted and destroyed homes and property of civilians with impunity.<sup>19</sup>

Fortify Rights has published a report documenting these ongoing war crimes since the *coup*, including targeted killings of civilians and attacks on churches and worship centers throughout the country.<sup>20</sup>

These crimes against humanity and war crimes are disgusting enough, but the military's depravity did not stop in December 2021. It continues today, escalating in the shadow of the world's attention on the crisis in Ukraine. In 2022, as part of an ongoing investigation, I traveled to areas of armed conflict in Chin State, Myanmar, where the military junta was razing villages and attacking civilians. We documented the systematic burning of civilian homes by junta forces and the targeting of civilian objects. We collected evidence of mass killings by junta forces against ethnic-Chin civilians and horrific cases of prolonged torture against Chin civilians, including stress positions, beatings, and forcing civilians to dig their own graves. We investigated a beheading of a civilian by junta soldiers — a longstanding tactic by the military to instill terror among civilians — and other extrajudicial killings of civilians, including a massacre of ten people, one of whom was a child. Landmine injuries and the use of civilians as human shields are also extensive. We spoke with landmine victims, eyewitnesses, and soldiers in Chin State. One Chin soldier, a university student before the *coup*, lost a hand, and another his eyesight. There are untold numbers of Chin widows due to landmines.<sup>21</sup>

Myanmar military defectors also explained to us how front-line battalions often do not distinguish between civilians and soldiers in ethnic states and that commanders order them to do so.

U.N. High Commissioner for Human Rights, Volker Türk, stated this summer that he believes Myanmar is in a “deadly freefall into even deeper violence and heartbreak” and that “it is almost

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<sup>19</sup> *Id.*, pp. 101–103.

<sup>20</sup> See Fortify Rights, *Ongoing War Crimes in Karenni (Kayah) State, Myanmar: May 2021 to January 2022* (Feb. 2022), <https://www.fortifyrights.org/mya-inv-rep-2022-02-15/>.

<sup>21</sup> See, e.g., Victoria Milko & David Rising, ‘I Just Want My Legs Back’: Myanmar Landmine Casualties Soar, ASSOCIATED PRESS (Feb. 19, 2023).

impossible to imagine that the people of Myanmar can endure more suffering.”<sup>22</sup> And yet, suffering continues.

Some, including former Fortify Rights employee and current member of our Board of Directors Nickey Diamond, have endured harrowing journeys to escape the oppressive rule in Myanmar. Indeed, after a contact in the Myanmar junta’s Ministry of Home Affairs informed Diamond that the junta had ordered his detention because of his human rights work and that if captured, he would be tortured or killed, Diamond and his family fled the country. During their escape, they had to dig bomb trenches to survive air strikes on civilian encampments.<sup>23</sup>

Many others, however, cannot escape. They are stuck in a land without adequate food, rights, or hope.<sup>24</sup> The latest United Nations report indicates that “[d]ue to military actions, humanitarian assistance in most areas of the country can only be provided by evading military rules at great personal risk of arrest, mistreatment or even death.”<sup>25</sup> In a country already considered a humanitarian catastrophe before 2021, the need for humanitarian assistance inside Myanmar has increased by more than 1,600 percent since the *coup*.<sup>26</sup>

And for Rohingya remaining in Rakhine State, the Myanmar junta’s efforts to destroy them as a group continues, including through administrative means. For example, Fortify Rights documented how the Myanmar junta continues to force Rohingya to obtain National Verification Cards (NVC) to access basic facilities, effectively erasing their ethnic identity and identifying them as foreigners.<sup>27</sup> The Myanmar junta’s continued use of these pernicious identity documents facilitates the genocide of the Rohingya people.<sup>28</sup>

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<sup>22</sup> Statement Delivered by Volker Türk, U.N. High Commissioner for Human Rights, at Interactive Dialogue on Myanmar, 53rd Session of the Human Rights Council, Geneva (6 July 2023), <https://www.ohchr.org/en/statements-and-speeches/2023/07/myanmar-deadly-freefall-even-deeper-violence-says-turk>.

<sup>23</sup> See, e.g., Nickey Diamond, *Myanmar’s Victims and Survivors Deserve Justice*, THE DIPLOMAT (Apr. 13, 2023), <https://thediplomat.com/2023/04/myanmars-victims-and-survivors-deserve-justice/>; Sippachai Kunnuwong, *Profile: Seeking Accountability in German Courts: Nickey Diamond*, FORTIFY RIGHTS (Jan. 25, 2023), <https://www.fortifyrights.org/mya-inv-pro-2023-01-25/>.

<sup>24</sup> Report of the United Nations High Commissioner for Human Rights, *Situation of Human Rights in Myanmar Since 1 February 2021*, Human Rights Council, Fifty-Third Session, U.N. Doc. A/HRC/53/52, ¶ 11 (28 June 2023), <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session53/advance-versions/A-HRC-53-52-AdvanceUneditedVersion.docx>.

<sup>25</sup> *Id.*, ¶ 18.

<sup>26</sup> *Id.*, ¶ 15.

<sup>27</sup> Fortify Rights, *Myanmar Junta: Comply with World Court Rulings, End Ongoing Genocide Against Rohingya* (Aug. 24, 2023), <https://www.fortifyrights.org/mya-inv-2023-08-24/>.

<sup>28</sup> Fortify Rights, *Genocide by Attrition: The Role of Identity Documents in the Holocaust and the Genocides of Rwanda and Myanmar* (June 2022), <https://www.fortifyrights.org/downloads/Genocide%20by%20Attrition%20-%20Fortify%20Rights%20Report.pdf>.

The effects of the junta's atrocities are not limited to Myanmar. More than a million Rohingya civilians from Myanmar are now trapped in appalling conditions in refugee camps in Bangladesh, and recent reductions in food rations due to humanitarian funding cuts are already having devastating consequences.<sup>29</sup>

We have seen this, and worse, firsthand. Fortify Rights regularly visits the refugee camps in Bangladesh and has collected significant evidence of arbitrary restrictions on movement, violence, poor living conditions, and other tragic results in the grossly over-populated and under-funded camps on the edge of a genocidal conflict zone.<sup>30</sup> Beyond Bangladesh, Fortify Rights also conducted a recent investigation that shows Rohingya in India face years-long arbitrary detention or deportation back to their tormentors in Myanmar.<sup>31</sup>

The takeaway from this brief description of the situation is simple: events in Myanmar and the surrounding region are worsening by the day, but the world seems to have moved on. We urge the distinguished members of the Commission not to let that happen.

### **Attempts at Accountability**

While several governments debated whether the events in Myanmar starting in 2012 should be considered genocide, some actors sought accountability for those crimes much sooner. In March 2017, the U.N. Human Rights Council established a Fact-Finding Mission on Myanmar and a subsequent Independent Investigative Mechanism for Myanmar — both of which received support from the United States — to memorialize evidence for future accountability.<sup>32</sup> In 2019, The Gambia filed a dispute before the International Court of Justice alleging that Myanmar violated the Genocide Convention through its operations against the Rohingya in Rakhine State. The Governments of Canada, Germany, the Netherlands, the United Kingdom, and most recently, France have expressed their intentions to intervene in that case in support of The Gambia.<sup>33</sup> Also

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<sup>29</sup> *Id.*, ¶ 14.

<sup>30</sup> Fortify Rights recently documented beatings and extortion of Rohingya refugees by Bangladesh police. *See*, Fortify Rights, *Bangladesh: Ensure Accountability for Police Corruption, Torture of Rohingya Refugees* (Aug. 10, 2023), <https://www.fortifyrights.org/bgd-inv-2023-08-10/>.

<sup>31</sup> Fortify Rights, *India: End Crackdown and Indefinite Detention of Rohingya Refugees* (July 28, 2023), <https://www.fortifyrights.org/glo-inv-2023-07-28/>.

<sup>32</sup> *See* U.N. Human Rights Council, *Independent International Fact-Finding Mission on Myanmar*, <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/index>; United Nations, *Independent Investigative Mechanism for Myanmar*, <https://iimm.un.org/>.

<sup>33</sup> *See, e.g.*, International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Gen. Case List No. 178, Overview of the Case, <https://icj-cij.org/case/178>; Government of Canada, *Canada's Strategy to Respond to the Rohingya and Myanmar Crises (2021 to 2024)*, [https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/reponse\\_conflict-reponse\\_conflits/crisis-crisis/myanmar-phase2.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/reponse_conflict-reponse_conflits/crisis-crisis/myanmar-phase2.aspx?lang=eng); Press Release, Federal Foreign Office of Germany, *Federal Foreign Office on the Fifth Anniversary of the Attacks Against Rohingya Communities in Myanmar and the Refugee Crisis They Triggered* (Aug. 25, 2022), <https://www.auswaertiges-amt.de/en/newsroom/news/-/2548384>; Government of the Netherlands, *Diplomatic*

in 2019, the Office of the Prosecutor of the International Criminal Court requested (and was later granted) authorization to investigate a narrow set of potential crimes within the Court’s jurisdiction in which at least one element occurred on Bangladeshi territory.<sup>34</sup>

Since the *coup*, human rights groups, including Fortify Rights, filed universal jurisdiction cases in national courts, including in Argentina and Germany, which maintain jurisdiction over such heinous atrocity crimes no matter where they occur.<sup>35</sup> The criminal complaint filed in Germany by Fortify Rights and 16 individual survivors from Myanmar includes complainants from six ethnic groups, including Rohingya, demonstrating unprecedented ethnic unity in seeking justice and accountability. And the democratically-elected civilian government of Myanmar — the National Unity Government of the Republic of the Union of Myanmar Appointed in Accordance with the Federal Democracy Charter (“NUG”) — accepted the jurisdiction of the International Criminal Court through an Article 12(3) declaration to the Court, to investigate and prosecute international crimes committed in Myanmar since July 1, 2002.<sup>36</sup> Regrettably, the ICC Prosecutor has still not acted on the NUG’s 12(3) declaration.

The United States, one of the world’s most powerful and influential countries, could do much more to hold perpetrators in Myanmar accountable on the international stage. The U.S. Congress took a significant step forward to push the Executive Branch to engage in these efforts by passing the BURMA Act of 2022, specifically authorizing technical assistance for efforts against human rights violations, even mentioning the U.N. Independent Investigative Mechanism for Myanmar. However, authorization and suggestion are meaningless without obligation and funding.

Our understanding is that the United States has not provided any such technical assistance, nor has Congress appropriated any funds pursuant to the BURMA Act to encourage and facilitate such assistance. Instead, the United States House Appropriations Subcommittee on State, Foreign Operations, and Related Programs has recommended appropriations below the total budget

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Statement: Joint Statement of Canada and the Kingdom of the Netherlands Regarding Today’s Decision of the International Court of Justice in the Rohingya Genocide Case Between The Gambia and Myanmar (July 22, 2022), <https://www.government.nl/documents/diplomatic-statements/2022/07/22/joint-statement-canada-netherlands-rohingya-genocide-case-between-gambia-and-myanmar>; Press Release, Government of the United Kingdom, Fifth Anniversary of the Rohingya Crisis in Myanmar: UK Statement (Aug. 25, 2022), <https://www.gov.uk/government/news/uk-statement-on-the-5th-anniversary-of-the-rohingya-crisis#:~:text=Our%20decision%20to%20intervene%20in.and%20the%20supply%20of%20arms>; Sm Najmus Sakib, *France to ‘Intervene in’ Rohingya Genocide Case at UN Court*, ANADOLU AJANSI (Sep. 11, 2023), <https://www.aa.com.tr/en/asia-pacific/france-to-intervene-in-rohingya-genocide-case-at-un-court/2989341>.

<sup>34</sup> International Criminal Court, Bangladesh/Myanmar: Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19, <https://www.icc-cpi.int/bangladesh-myanmar>.

<sup>35</sup> Fortify Rights, *Criminal Complaint Filed in Germany Against Myanmar Generals for Atrocity Crimes* (Jan. 24, 2023), <https://www.fortifyrights.org/mya-inv-2023-01-24/>; Fortify Rights, *Argentina: Prosecute Crimes Against Rohingya in Myanmar* (Sep. 30, 2021), <https://www.fortifyrights.org/mya-inv-2021-09-30/>.

<sup>36</sup> Fortify Rights, *The International Criminal Court Acknowledges National Unity Government of Myanmar’s Delegation of Jurisdiction* (Feb. 9, 2022), [https://www.fortifyrights.org/our\\_impact/imp-mya-2022-02-09/](https://www.fortifyrights.org/our_impact/imp-mya-2022-02-09/).

requests of the State Department and none for activities in Myanmar other than humanitarian assistance.

Without funding and binding obligations, the BURMA Act will risk disappointing and frustrating the civilian population of Myanmar. It will certainly not contribute to any accountability mechanisms; to the contrary, it will only reaffirm the military junta's belief that it will enjoy continuing impunity for myriad atrocity crimes.

Moreover, the sanctions regime and concomitant waivers in place have all but ensured that those facilitating the Myanmar junta's reign of terror also escape accountability and continue to profit from dealing in death and oppression. As Fortify Rights and 189 other human rights organizations pointed out in a Joint Letter to President Biden, sanctions targeting only entities in Myanmar are not enough. The Myanmar military junta can still act, and its entities can operate in many instances because the military can easily create proxy companies outside of Myanmar that serve as effective loopholes to evade sanctions.<sup>37</sup> The honorable U.N. Special Rapporteur on the situation of human rights in Myanmar, from whom the Commission also heard, has made this abundantly clear.

If sanctions and embargoes can provide a form of accountability and deterrence at all, they must be complete and comprehensive. The United States and the international community at large must make it clear to countries such as China, India, Israel, Russia, Singapore, and other nations, as well as private entities, that they will not tolerate any form of arms dealing or other financial support to the Myanmar military junta — whether direct or indirect.

### **Great Power Competition**

The United States cannot lose sight of the individual suffering of tens of millions of civilians at the hands of the Myanmar military. That needless suffering is our focus at Fortify Rights, and it should be a focus of the U.S. Government. At the same time, we cannot ignore the fact that the Myanmar military and the abuses it has perpetrated against humankind are inextricably intertwined with the interests of other, relatively more powerful authoritarian regimes: namely, China, Russia, and in some ways, the increasingly-less-democratic India. Without their economic, political, and military support and facilitation for the Myanmar junta, it is unlikely that these atrocities would continue at such an appalling rate.

On numerous occasions, China, Russia, and India have demonstrated that they are willing to ignore, condone, facilitate, or even outrightly support the Myanmar military's atrocity crimes if and to the extent that they believe doing so will benefit their governing regimes. In the absence of more effective U.S. engagement to end and remedy these atrocity crimes, authoritarian regimes are filling the gap in developing foreign relations with the Myanmar junta and its neighbors. These countries can affect dramatic change within South and Southeast Asia, and we believe the United

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<sup>37</sup> Fortify Rights, *Burma: Joint Letter from 190 Organizations to President Biden Calling for Sanctions on Companies Supplying the Burmese Military with Jet Fuel* (May 4, 2023), <https://www.fortifyrights.org/mya-inv-let-2023-05-04/>.

States should redouble efforts to engage Myanmar's neighbors on these issues and incentivize them to change course.

For example, China and India are actively facilitating deportations and repatriation of Rohingya to the very regime that committed genocide against them, using leverage and political capital to strong-arm Bangladesh into an agreement with the Myanmar military. India, Russia, and China knowingly provide the Myanmar military arms. Russia may seek to establish military bases in the country, as the U.S. State Department warned.<sup>38</sup> China has increased its diplomatic engagement with the junta and is trying to fracture ethnic armed organizations in Myanmar so they will not cooperate with the United States or entities such as the NUG.<sup>39</sup> India is collaborating with the junta to strengthen its Bay of Bengal Initiative for Multisectoral and Technical Cooperation and complete a delayed highway project with Myanmar and Thailand.<sup>40</sup>

In doing so, these powerful authoritarian and authoritarian-leaning regimes are *de facto* condoning the use of human rights abuses and atrocity crimes as political tools for preserving power and building cross-border alliances to combat international intervention and influence. If the United States does not take a firm, effective, and very public stand against this type of geopolitical manipulation, more and more authoritarian regimes may be emboldened to continue to use these types of methods to control their populations and form great-power alliances, further pushing non-aligned countries away from the liberal democratic international order the United States hopes to promote, and toward the type of authoritarian abuses we are witnessing in Myanmar today.

For these reasons, the United States should aggressively support regional democracies in South and Southeast Asia, take decisive action against the Myanmar military junta, and devise steps to prevent powerful authoritarian support to Myanmar.

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<sup>38</sup> See, e.g., Conference Room Paper of the Special Rapporteur on the Situation of Human Rights in Myanmar, *Enabling Atrocities: UN Member States' Arms Transfers to the Myanmar Military*, Human Rights Council, Forty-Ninth Session, U.N. Doc. A/HRC/49/CRP.1 (Feb. 22, 2022), <https://www.ohchr.org/sites/default/files/2022-02/CRP-31012022.docx>; Michael Kugelman, *India Steps Up Diplomacy with Myanmar*, FOREIGN POLICY (July 19, 2023), <https://foreignpolicy.com/2023/07/19/india-myanmar-diplomacy-border-engagement-manipur/>; Poppy Mcpherson, *Russian Support for Myanmar Junta 'Destabilising' Southeast Asia — U.S. Envoy*, REUTERS (Mar. 23, 2023), <https://www.reuters.com/world/asia-pacific/russian-support-myanmar-junta-destabilising-southeast-asia-us-envoy-2023-03-23/>.

<sup>39</sup> Sydney Tucker & Lian Bawi Thang, *Is Myanmar Still Hopeful About the NDAA Burma Act?*, STIMSON (Aug. 17, 2023), <https://www.stimson.org/2023/is-myanmar-still-hopeful-about-the-ndaa-burma-act/>.

<sup>40</sup> Michael Kugelman, *India Steps Up Diplomacy with Myanmar*, FOREIGN POLICY (July 19, 2023), <https://foreignpolicy.com/2023/07/19/india-myanmar-diplomacy-border-engagement-manipur/>.

## **Recommendations**

As mentioned at the outset of this statement, Fortify Rights recommends that the Commission and its members do all they can to take and encourage meaningful, effective action to end and remedy the Myanmar military junta's ongoing atrocities and to bring the perpetrators to justice. We recognize that the Commission is limited in what it can do regarding influencing the larger Congress and the Executive Branch. Still, we request each member to use all the considerable political tools, capital, and creativity at your disposal to affect change.

For the foregoing reasons, and based on the knowledge and information we possess, Fortify Rights specifically recommends the distinguished members of the Commission to pursue and promote the following actions by the United States:

- Adequately fund the BURMA Act, appropriating specific resources to allow the State Department and other appropriate executive agencies to investigate atrocity crimes in Myanmar and more effectively cooperate with and assist ongoing national and international efforts to litigate and prosecute atrocity crimes in Myanmar, including but not limited to such efforts before or facilitated by the International Court of Justice, International Criminal Court, the United Nations, and the domestic courts of Argentina and Germany.
- Pass amendments to and revise the BURMA Act such that all recommendations to and authorizations for the Executive Branch are converted to obligations (as permitted by the U.S. Constitution).
- Impose broader, secondary sanctions that encompass international companies trading with the Myanmar military and more targeted sanctions that fill gaps left by the current scheme, including against the Myanmar Oil and Gas Enterprise, with special attention to blocking the junta's access to revenues and financial services, and targeting individuals and entities involved in the import and export of arms, aviation parts, and aviation fuel to Myanmar.
- Recognize the National Unity Government as the legitimate government capable of representing the State of Myanmar in all international relations and before all international fora, and encourage the Biden Administration to do the same. Ensure that such recognition is communicated clearly to all States Parties to the Rome Statute, such that the National Unity Government's declaration giving jurisdiction to the International Criminal Court is more likely to be recognized as valid and enforceable.
- Provide financial and technical support as needed for the National Unity Government, including on international human rights laws and standards and other governance matters.

- Support resolutions before the United Nations Security Council to:
  - refer the situation in Myanmar to the International Criminal Court or, alternatively, establish an *ad hoc* international criminal tribunal to investigate and prosecute genocide, crimes against humanity, and war crimes; and
  - impose a global arms embargo on the Myanmar military and targeted sanctions against military-owned enterprises, with particular attention to blocking the junta's access to natural gas revenues and financial services.
- Intervene at the International Court of Justice in support of The Gambia's case against Myanmar concerning violations of the Genocide Convention.
- Publicly declare the ongoing actions of the Myanmar military since the 2021 *coup d'état* to be crimes against humanity and war crimes and pursue all avenues of prosecution and accountability for the same.
- Support, increase, and facilitate U.S. engagement in the South and Southeast Asia regions and cooperate with States bordering Myanmar to alleviate the financial, logistic, and practical burdens associated with the refugee crises experienced therein.
- Take all feasible administrative, legislative, and regulatory measures possible to ease the refugee crisis resulting from the ongoing conflict in Myanmar, including immigration and asylum measures that would allow such refugees haven in the United States.
- Ensure the resettlement and protection of Myanmar military defectors who seek asylum, especially those possessing information that could be useful in future prosecutions.
- Publicly denounce direct and indirect foreign support for the Myanmar military junta in any form and encourage the Biden Administration to devise adequate and meaningful penalties for the same.