

United States Senate

WASHINGTON, DC 20510

March 19, 2019

The Honorable Michael R. Pompeo
Secretary of State
United States Department of State
2201 C Street, N.W.
Washington, DC 20520

The Honorable Steven Mnuchin
Secretary of the Treasury
United States Department of the Treasury
1500 Pennsylvania Ave N.W.
Washington, DC 20220

Dear Secretary Pompeo and Secretary Mnuchin,

We are writing to request clarification of the administration's policy on sanctioning the perpetrators of horrific atrocities committed against the Rohingya people.

The United Nations Fact Finding Mission, the U.S. government, and several non-governmental organizations have documented the killing of an estimated 6,000 to 43,000 Rohingya, and the displacement of 727,000 to neighboring Bangladesh, as well as cases of summary executions, mass rapes, and burnings of villages — all directed primarily by military units deployed to Rakhine State. The Department of State's own extensive report on the subject found that “fully one fifth” of Rohingya refugees interviewed by the Department had witnessed “a mass-casualty event of killings or injuries . . . with more than 100 victims,” and that 82 percent had witnessed a killing, more than 50 percent had witnessed sexual violence, and 45 percent had witnessed a rape.¹

Despite broad agreement on the horrific nature of these attacks and the need for a solution that supports the rights of the Rohingya, there have been no credible signs of progress. In fact, during an October 25, 2018 briefing to the Security Council, the chair of the United Nations Independent Fact-Finding Mission reported that “atrocities continue to take place today.”² He specifically pointed to the presence of more than 240,000 Rohingya in northern Rakhine state who remain at “grave risk,” and the likelihood that Rohingya returning to Rakhine from Bangladesh would continue to be “condemned to life as sub-humans and further mass killings.”³

¹ US Department of State, *Documentation of Atrocities in Northern Rakhine State* (Sept. 24, 2018), <https://www.state.gov/j/drl/rls/286063.htm>.

² Farnaz Fassihi, *Genocide Continues in Myanmar, Says U.N. Investigator*, Wall Street Journal (Oct. 24, 2018), <https://www.wsj.com/articles/u-n-investigator-says-genocide-continues-in-myanmar-1540427100>.

³ *Id.*

The December 2018 threat by the governments of Burma and Bangladesh to involuntarily repatriate hundreds of Rohingya, despite warnings by the international community, underscores this risk.⁴

Further action is needed. According to the United Nations Independent Fact-Finding Mission, “targeted individual sanctions, including travel bans and asset freezes, could support a reduction in violations of international law, particularly acts amounting to gross human rights violations and serious crimes under international law.”⁵ The Fact-Finding Mission emphasized that those steps would “send a strong message to Myanmar officials who appear most responsible for the violations and crimes.”⁶

In response to the atrocities, the Trump administration sanctioned five Burmese military officers and two units.⁷ While a welcome development, it was insufficient.

We agree with the United Nations, human rights organizations, and members of Burmese civil society who have urged the imposition of strong sanctions against four senior Burmese military officials identified as complicit in orchestrating the human rights violations and who have not been subject to sanctions:

1. Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing
2. Deputy Commander-in-Chief, Vice Senior-General Soe Win
3. Commander, 33rd Light Infantry Division, Brigadier-General Aung Aung⁸
4. Commander, 99th Light Infantry Division, Brigadier-General Than Oo.⁹

The Trump administration has taken no action against these senior officials even though sanctions designations would send a strong message that the United States supports accountability for those perpetrating well-documented human rights abuses against the Rohingya and other ethnic minorities. Additionally, while not the goal of sanctions, some individuals who have in the past been sanctioned by the United States, the European Union, Australia, and/or Canada have subsequently retired from the Burmese military.

Press reports from last year suggested that Treasury officials disagreed with State officials on the value of imposing sanctions on Burmese authorities, given the lack of U.S. assets held by these officials.¹⁰ We believe that it is important for the United States to signal its intolerance for behavior that contravenes fundamental human rights. In particular, the designation of Min Aung

⁴ *Rohingya refugees in Bangladesh refuse to go back to Myanmar*, The Economist (Nov. 22, 2018), <https://www.economist.com/asia/2018/11/24/rohingya-refugees-in-bangladesh-refuse-to-go-back-to-myanmar>.

⁵ United Nations Human Rights Council, *Myanmar: UN Fact-Finding Mission releases its full account of massive violations by military in Rakhine, Kachin and Shan States* (Sept. 18, 2018).

⁶ *Id.*

⁷ U.S. Department of the Treasury, *Treasury Sanctions Commanders and Units of the Burmese Security Forces for Serious Human Rights Abuses* (Aug. 17, 2018), <https://home.treasury.gov/news/press-releases/sm460>.

⁸ While the U.S. has sanctioned the division, organizations have recommended a specific designation on the commander.

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¹⁰ Nahal Toosi, *Trump officials split over punishing Myanmar over atrocities*, Politico (July 31, 2018), <https://www.politico.com/story/2018/07/31/myanmar-rohingya-white-house-trump-officials-752730>.

Hlaing under the Global Magnitsky program would carry special significance given his role as the head of the Burmese armed forces. The body of evidence establishing Min Aung Hlaing's complicity in the human rights abuses against the Rohingya plainly warrants designations under both the Global Magnitsky Act and President Trump's sanctions order.

To better understand the administration's plans to address the August 2017 violence and other human rights abuses of the Rohingya, we respectfully request a written response to the following questions no later than April 5, 2019:

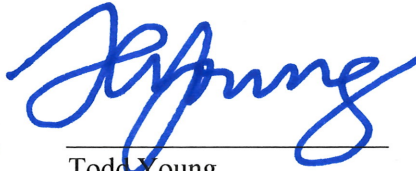
- 1) Has the administration considered sanctioning Senior-General Min Aung Hlaing and Vice Senior-General Soe Win? If not, why not?
- 2) Do current designations on the 33rd and 99th Light Infantry Battalions apply to the commanders and senior officers of those battalions?
 - a. If yes, how likely is it that financial institutions and other entities worldwide that screen against the Specially Designated Nationals and Blocked Persons (SDN) List will identify commanders, given that only unit names are explicitly listed and the Office of Foreign Assets Control (OFAC) has issued no clear guidance on implementation?
- 3) Does the administration believe there is value in sanctions designations even if Burmese human rights violators lack assets in the United States and rarely travel here?
 - a. If no, how is this situation different from the October 13, 2017 designation under Executive Order 13224 of the Islamic Revolutionary Guard Corps (IRGC) despite the IRGC's prior designation under Executive Orders 13382, 13553, and 13606? (Given that it had already been sanctioned, the IRGC was unlikely to have had assets or counterparties inside the United States.)
- 4) Does the administration believe additional designations would send the right message regarding the U.S. commitment to holding accountable the perpetrators of gross human rights abuses?
 - a. If no, has the administration engaged with human rights groups to better understand the practical effects of Global Magnitsky designations
 - b. If yes, which individuals are being considered for designation, and what is delaying their designation?
- 5) Has the United States determined the location of the financial assets or common counterparties of the individuals specifically listed above and of the other Burmese officials already designated by the European Union, but not yet designated by the United States?
 - a. If not, why not?
 - b. If yes, is the United States engaging with the countries associated with these individuals' assets or counterparties to encourage sanctions measures including the freezing of assets?
- 6) Does the United States plan to sanction individuals or entities who are sanctioned by the European Union, Australia, or Canada?


- 7) Some have suggested that insufficient State Department resources are an obstacle to implementing new Global Magnitsky Act sanctions. Is this true?
- a. If so, we request a briefing from Secretary Mnuchin to identify the budgetary increase Treasury's Global Magnitsky program needs in order to meet U.S. human rights priorities in Burma.


Thank you for your attention to this matter. Should you have any questions about this request please contact Satrajit Sardar of Senator Markey's staff at 202-224-2742.

Sincerely,


Edward J. Markey
United States Senator


Todd Young
United States Senator


Jeffrey A. Merkley
United States Senator


Richard J. Durbin
United States Senator