

115TH CONGRESS
2D SESSION

S. 3696

To promote democracy and human rights in Burma, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 29, 2018

Mr. CARDIN (for himself, Mr. YOUNG, Mr. MERKLEY, Mr. DURBIN, Mr. SCHATZ, Mr. VAN HOLLEN, Mr. BOOKER, Mr. MARKEY, Ms. COLLINS, Mr. COONS, Ms. CANTWELL, Mrs. SHAHEEN, Mr. WYDEN, Ms. HARRIS, Mr. CASEY, Mr. KAINE, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To promote democracy and human rights in Burma, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Burma Human Rights
5 and Freedom Act of 2018”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The United States policy of principled en-
9 gagement since 1988 has fostered positive demo-

1 cratic reforms in Burma, which have led to signifi-
2 cant milestones on the path to full democracy.

3 (2) On November 8, 2015, Burma held historic
4 elections in which the National League for Democ-
5 racy won a supermajority of seats in the combined
6 national parliament. On March 30, 2016, Htin
7 Kyaw was inaugurated as the President of Burma,
8 the country's first civilian President in more than 50
9 years. Aung San Suu Kyi, President of the National
10 League for Democracy, was barred from becoming
11 President due to the provisions of section 59(f) of
12 the 2008 Constitution, and therefore assumed the
13 office of State Counsellor, a position created for her
14 that made her the country's de facto leader.

15 (3) Aung San Suu Kyi's first acts as State
16 Counsellor after her National League for Democracy
17 party took office included releasing more than 100
18 political prisoners, including well-known journalists
19 and student activists held on politically motivated
20 charges. However, as of November 2017, there were
21 228 political prisoners in Burma, 46 of which were
22 serving prison sentences, 49 of which were awaiting
23 trial inside prison, and 133 of which were awaiting
24 trial outside prison, according to the Assistance As-
25 sociation for Political Prisoners.

1 (4) The Government of Burma also continues
2 to systematically discriminate against the Rohingya
3 people. Burma's 1982 citizenship law stripped
4 Rohingya Burmese of their Burmese citizenship,
5 rendering them stateless, and the Government con-
6 tinues to restrict Rohingya births and to deny the
7 Rohingya freedom of movement and access to
8 healthcare, land, education, voting, political partici-
9 pation, and marriage.

10 (5) Despite the meaningful steps taken toward
11 democracy in Burma, there remain important struc-
12 tural and systemic impediments to the realization of
13 a fully democratic civilian government, including—

14 (A) the 2008 Constitution, which is in
15 need of reform;

16 (B) the disfranchisement of certain groups
17 who voted in previous elections;

18 (C) the social, political, and economic con-
19 ditions in Rakhine State, particularly with re-
20 spect to the Rohingya population; and

21 (D) the current humanitarian and human
22 rights crisis affecting Burma's Rohingya popu-
23 lation and residents of the Rakhine, Kachin,
24 and Shan states, including credible reports of
25 ethnic cleansing, crimes against humanity,

1 extrajudicial killings, sexual and gender-based
2 violence, and forced displacement.

3 (6) Actions of the military of Burma, known as
4 the Tatmadaw, including continuing assaults on per-
5 sonnel and territory controlled by armed ethnic orga-
6 nizations, military offensives immediately preceding
7 the peace conference in Naypyitaw, and human
8 rights violations against noncombatant civilians in
9 conflict areas, undermine confidence in establishing
10 a credible nationwide ceasefire agreement to end
11 Burma's civil war.

12 (7) The people of Burma continue to suffer
13 from an ongoing civil war between the Tatmadaw
14 and nearly 20 armed ethnic organizations. Any pros-
15 pects for a full democracy in Burma are contingent
16 on ending the civil war and finding a path toward
17 national reconciliation between Burma's Bamar ma-
18 jority and its various ethnic minorities.

19 (8) Since 2011, over 98,000 people have been
20 displaced in Kachin and northern Shan State over
21 the escalating violence and instability, resulting in
22 continued massive internal displacement, including
23 in internally displaced person (IDP) camps, which
24 continues to undermine the trust necessary to
25 achieve a durable, lasting peace, and has caused a

1 massive humanitarian crisis which disproportionately
2 affects the lives of innocent civilians and internally
3 displaced persons forced from their homes. Accord-
4 ing to the United Nations Office for the Coordina-
5 tion of Humanitarian Affairs, some 50 percent of
6 these displaced persons are staying in areas beyond
7 Government control where humanitarian access is
8 limited. Even in areas controlled by the Government,
9 delivery of humanitarian assistance has been in-
10 creasingly restricted through onerous bureaucratic
11 requirements resulting in limited access by inter-
12 national and local humanitarian organizations.

13 (9) In 2015, the nongovernmental campaign
14 Global Witness found that, in 2014, the estimated
15 value of official production of jade equated to up to
16 48 percent of the official gross domestic product of
17 Burma. Because of corruption and a lack of trans-
18 parency, much of the proceeds of the Burmese jade
19 trade enrich notorious leaders from the military
20 junta, including former dictator Than Shwe and
21 United States-sanctioned drug lord Hsueh Kang
22 Wei, and vested interests in jade are undermining
23 prospects for resolving the most intractable armed
24 conflict in Burma.

1 (10) On August 31, 2016, State Counsellor
2 Aung San Suu Kyi and the Government of Burma
3 initiated the Union Peace Conference 21st Century
4 Panglong in Naypyitaw, which more than 1,400 rep-
5 resentatives of various concerned parties attended in
6 an effort to begin the process of ending Burma’s
7 civil war and to discuss options in forming a demo-
8 cratic state of Burma. On May 24, 2017, the Gov-
9 ernment of Burma held a second Panglong Peace
10 Conference, with mixed results.

11 (11) On January 4, 2018, the Department of
12 State determined that Burma remains designated as
13 a country of particular concern for religious freedom
14 under section 402(b) of the International Religious
15 Freedom Act (22 U.S.C. 6442(b)), and that “mem-
16 bers of the Rohingya community in particular face
17 abuses by the Government of Burma, including
18 those involving torture, unlawful arrest and deten-
19 tion, restricted movement, restrictions on religious
20 practices, discrimination in employment, and access
21 to social services”.

22 (12) The February 2017 panels set up by the
23 Burmese army and the Home Affairs Ministry are
24 widely perceived by the international community to
25 lack independence and impartiality. The December

1 2016 commission established by Burma’s President
2 Htin Kyaw to investigate the October 2016 attacks
3 dismissed claims of misconduct by security forces
4 due to “insufficient evidence.” A Burmese army in-
5 ternal inquiry completed in November 2017 claimed
6 there had been no abuses committed by the military.
7 The 2012 commission government established to in-
8 vestigate violence in Rakhine State that year never
9 held anyone accountable.

10 (13) In a public address on October 12, 2017,
11 State Counsellor Aung San Suu Kyi laid out 3 goals
12 for the Rakhine State:

13 (A) Repatriation of those who have crossed
14 over to Bangladesh and effective provision of
15 humanitarian assistance.

16 (B) Resettlement of displaced populations.

17 (C) Economic development and durable
18 peace.

19 (14) According to the Médecins Sans Frontières
20 estimates, at least 6,700 Rohingya have been killed,
21 including 730 children, and that at least 2,700 oth-
22 ers died from disease and malnutrition and over an
23 estimated 680,000 Rohingya have fled to Ban-
24 gladesh since August 2017, fearing loss of livelihood

1 and shelter and disproportionate use of force by the
2 military of Burma.

3 (15) On October 23, 2017, the Department of
4 State said, “We express our gravest concern with re-
5 cent events in Rakhine State and the violent, trau-
6 matic abuses Rohingya and other communities have
7 endured. It is imperative that any individuals or en-
8 tities responsible for atrocities, including non-state
9 actors and vigilantes, be held accountable.”.

10 (16) At a Senate Foreign Relations Committee
11 hearing on October 24, 2017, the Department of
12 State indicated that “refugees continue to cross into
13 Bangladesh, and we continue to receive credible re-
14 ports of sporadic violence in northern Rakhine
15 State”.

16 (17) Amnesty International and Human Rights
17 Watch have reported and documented a campaign of
18 violence perpetuated by the security forces of Burma
19 that “may amount to crimes against humanity” and
20 “ethnic cleansing” and includes—

- 21 (A) indiscriminate attacks on civilians;
- 22 (B) rape of women and girls; and
- 23 (C) arbitrary arrest and detention of
24 Rohingya men without charge.

1 (18) According to Human Rights Watch, Bur-
2 mese security forces have committed widespread
3 rape against women and girls as part of a campaign
4 of ethnic cleansing against Rohingya Muslims in
5 Burma's Rakhine State. Survivors said that soldiers
6 gathered them together in groups and then raped or
7 gang raped them.

8 (19) Because survivors of conflict-related sexual
9 or gender-based violence know very little about the
10 abusers, aside from identifying the abuser as a mem-
11 ber of a military unit, existing laws and account-
12 ability mechanisms often fail to protect victims of
13 such violence.

14 (20) Satellite images captured by Human
15 Rights Watch reveal that, out of the approximately
16 470 villages in northern Rakhine State, most of
17 which were completely or partially populated with
18 Rohingya Muslims, nearly 300 were partially or
19 completely destroyed by fire after August 25, 2017.

20 (21) The Government of Burma has continued
21 to block access to northern Rakhine State by United
22 Nations and other humanitarian organizations, pre-
23 venting hundreds of thousands of vulnerable
24 Rohingya, Rakhine, and other ethnic groups, includ-
25 ing children with acute malnutrition, from receiving

1 humanitarian aid. According to a report by the
2 United Nations Children’s Fund, a diphtheria out-
3 break has led to 424 cases and 6 deaths since De-
4 cember 6, 2017. In addition, the levels of global
5 acute malnutrition in refugees from Burma exceeds
6 the World Health Organization’s threshold by 15
7 percent in children aged 6–59 months. Over 50 per-
8 cent of the Rohingya children are reported to be suf-
9 fering from anemia.

10 (22) In response to previous violence between
11 the Burmese military and the ethnic Rohingya peo-
12 ple in 2016, Aung San Suu Kyi established the Ad-
13 visory Commission on Rakhine State headed by
14 former United Nations Secretary-General Kofi
15 Annan to address tensions in Northern Rakhine. She
16 has since also endorsed the Commission’s rec-
17 ommendations and established an “Advisory Team
18 for the Committee for the Implementation of Rec-
19 ommendations on Rakhine State” to move forward
20 with implementation.

21 (23) On December 21, 2017, using the author-
22 ity granted by the Global Magnitsky Human Rights
23 Accountability Act (subtitle F of title XII of Public
24 Law 114–328), the President imposed sanctions on
25 Maung Maung Soe, a Major General who was the

1 chief of the Burmese Army’s Western command dur-
2 ing the August 2017 attack in Rakhine state.

3 (24) On November 22, 2017, Secretary of State
4 Rex Tillerson stated, “After careful and thorough
5 analysis of available facts, it is clear that the situa-
6 tion in northern Rakhine state constitutes ethnic
7 cleansing against the Rohingya. Those responsible
8 for these atrocities must be held accountable.”.

9 (25) Ethnic cleansing is a despicable evil, and
10 while it is not an independent crime under domestic
11 or international law, it is often accomplished
12 through acts that constitute war crimes, crimes
13 against humanity, or genocide, and the perpetrators
14 of such crimes in Burma must be held accountable.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) APPROPRIATE CONGRESSIONAL COMMIT-
18 TEES.—The term “appropriate congressional com-
19 mittees” means—

20 (A) the Committee on Foreign Relations
21 and the Committee on Armed Services of the
22 Senate; and

23 (B) the Committee on Foreign Affairs and
24 the Committee on Armed Services of the House
25 of Representatives.

1 (2) GENOCIDE.—The term “genocide” means
2 any offense described in section 1091(a) of title 18,
3 United States Code.

4 (3) HYBRID TRIBUNAL.—The term “hybrid tri-
5 bunal” means a temporary criminal tribunal that in-
6 volves a combination of domestic and international
7 lawyers, judges, and other professionals to prosecute
8 individuals suspected of committing war crimes,
9 crimes against humanity, or genocide.

10 (4) TRANSITIONAL JUSTICE.—The term “tran-
11 sitional justice” means the range of judicial, non-
12 judicial, formal, informal, retributive, and restorative
13 measures employed by countries transitioning out of
14 armed conflict or repressive regimes—

15 (A) to redress legacies of atrocities; and

16 (B) to promote long-term, sustainable
17 peace.

18 (5) WAR CRIME.—The term “war crime” has
19 the meaning given the term in section 2441(c) of
20 title 18, United States Code.

21 **SEC. 4. STATEMENT OF POLICY.**

22 It is the policy of the United States that—

23 (1) the pursuit of a calibrated engagement
24 strategy is essential to support the establishment of
25 a peaceful, prosperous, and democratic Burma that

1 includes respect for the human rights of all its peo-
2 ple regardless of ethnicity and religion; and

3 (2) the guiding principles of such a strategy in-
4 clude—

5 (A) support for meaningful legal and con-
6 stitutional reforms that remove remaining re-
7 strictions on civil and political rights and insti-
8 tute civilian control of the military, civilian con-
9 trol of the government, and the constitutional
10 provision reserving 25 percent of parliamentary
11 seats for the military, which provides the mili-
12 tary with veto power over constitutional amend-
13 ments;

14 (B) the establishment of a fully demo-
15 cratic, pluralistic, civilian controlled, and rep-
16 resentative political system that includes regu-
17 larized free and fair elections in which all peo-
18 ple of Burma, including the Rohingya, can vote;

19 (C) the promotion of genuine national rec-
20 onciliation and conclusion of a credible and sus-
21 tainable nationwide ceasefire agreement, polit-
22 ical accommodation of the needs of ethnic Shan,
23 Kachin, Chin, Karen, and other ethnic groups,
24 safe and voluntary return of displaced persons

1 to villages of origins, and constitutional change
2 allowing inclusive permanent peace;

3 (D) investigations into credible reports of
4 ethnic cleansing, crimes against humanity, sex-
5 ual and gender-based violence, and genocide
6 perpetrated against ethnic minorities like the
7 Rohingya by the government, military, and se-
8 curity forces of Burma, violent extremist
9 groups, and other combatants involved in the
10 conflict;

11 (E) accountability for determinations of
12 ethnic cleansing, crimes against humanity, sex-
13 ual and gender-based violence, and genocide
14 perpetrated against ethnic minorities like the
15 Rohingya by the Government, military, and se-
16 curity forces of Burma, violent extremist
17 groups, and other combatants involved in the
18 conflict;

19 (F) strengthening the government's civilian
20 institutions, including support for greater trans-
21 parency and accountability;

22 (G) the establishment of professional and
23 nonpartisan military, security, and police forces
24 that operate under civilian control;

1 (H) empowering local communities, civil
2 society, and independent media;

3 (I) promoting responsible international and
4 regional engagement;

5 (J) strengthening respect for and protec-
6 tion of human rights and religious freedom;

7 (K) addressing and ending the humani-
8 tarian and human rights crisis, including by
9 supporting the return of the displaced Rohingya
10 to their homes and providing equal access to
11 restoration of full citizenship for the Rohingya
12 population; and

13 (L) promoting broad-based, inclusive eco-
14 nomic development and fostering healthy and
15 resilient communities.

16 **SEC. 5. AUTHORIZATION OF HUMANITARIAN ASSISTANCE**
17 **AND RECONCILIATION.**

18 (a) HUMANITARIAN ASSISTANCE.—

19 (1) IN GENERAL.—There is authorized to be
20 appropriated \$103,695,069 for fiscal year 2018 for
21 humanitarian assistance for Burma, Bangladesh,
22 and the region. The assistance may include—

23 (A) assistance for the victims of the Bur-
24 mese military's ethnic cleansing campaign tar-
25 geting Rohingya in Rakhine State, including

1 those displaced in Bangladesh, Burma, and the
2 region;

3 (B) support for voluntary resettlement or
4 repatriation efforts regionally; and

5 (C) humanitarian assistance to victims of
6 violence and destruction in Rakhine State, in-
7 cluding victims of gender-based violence and
8 unaccompanied minors.

9 (2) SENSE OF CONGRESS ON ADDITIONAL
10 FUNDING.—It is the sense of Congress that addi-
11 tional significant and sustained funding will be nec-
12 essary to address the medium and long-term impacts
13 of this crisis.

14 (b) RECONCILIATION PROGRAMS.—There is author-
15 ized to be appropriated \$27,400,000 for fiscal year 2018
16 for reconciliation programs in Burma. The assistance may
17 include—

18 (1) reducing the influence of the drivers of
19 intercommunal conflict;

20 (2) strengthening engagement on areas affect-
21 ing fundamental freedoms;

22 (3) enhancing the ability of key stakeholders to
23 engage in the peace process; and

24 (4) assisting the implementation of the Kofi
25 Annan Commission report.

1 **SEC. 6. MULTILATERAL ASSISTANCE.**

2 The Secretary of the Treasury should instruct the
3 United States executive director of each international fi-
4 nancial institution to use the voice and vote of the United
5 States to support projects in Burma that—

6 (1) provide for accountability and transparency,
7 including the collection, verification and publication
8 of beneficial ownership information related to extrac-
9 tive industries and on-site monitoring during the life
10 of the project;

11 (2) will be developed and carried out in accord-
12 ance with best practices regarding environmental
13 conservation, cultural protection, and empowerment
14 of local populations, including free, prior, and in-
15 formed consent of affected indigenous communities;

16 (3) do not provide incentives for, or facilitate,
17 forced displacement; and

18 (4) do not partner with or otherwise involve en-
19 terprises owned or controlled by the armed forces.

20 **SEC. 7. SENSE OF CONGRESS ON RIGHT OF RETURNEES**
21 **AND FREEDOM OF MOVEMENT.**

22 (a) **RIGHT OF RETURN.**—It is the sense of Congress
23 that the Government of Burma, in collaboration with the
24 regional and international community, including the
25 United Nations High Commissioner for Refugees,
26 should—

1 (1) ensure the dignified, safe, and voluntary re-
2 turn of all those displaced from their homes, espe-
3 cially from Rakhine State, without an unduly high
4 burden of proof;

5 (2) offer to those who do not want to return
6 meaningful opportunity to obtain appropriate com-
7 pensation or restitution;

8 (3) not place returning Rohingya in DP camps
9 or “model villages”, but instead make efforts to re-
10 construct Rohingya villages as and where they were;

11 (4) keep any funds collected by the Government
12 by harvesting the land previously owned and tended
13 by Rohingya farmers for them upon their return;
14 and

15 (5) fully implement all of the recommendations
16 of the Advisory Commission on Rakhine State.

17 (b) FREEDOM OF MOVEMENT OF REFUGEES AND IN-
18 TERNALLY DISPLACED PERSONS.—Congress recognizes
19 that the Government of Bangladesh has provided long-
20 standing support and hospitality to people fleeing violence
21 in Burma, and calls on the Government of Bangladesh—

22 (1) to ensure all refugees have freedom of
23 movement and under no circumstance are subject to
24 unsafe, involuntary, or uninformed repatriation; and

1 (2) to ensure the dignified, safe, and voluntary
2 return of those displaced from their homes, and
3 offer to those who do not want to return meaningful
4 means to obtain compensation or restitution.

5 **SEC. 8. MILITARY COOPERATION.**

6 (a) PROHIBITION.—Except as provided under sub-
7 section (b), the President may not furnish any security
8 assistance or engage in any military-to-military programs
9 with the armed forces of Burma, including training or ob-
10 servation or participation in regional exercises, until the
11 Secretary of State, in consultation with the Secretary of
12 Defense, certifies to the appropriate congressional com-
13 mittees that the Burmese military has demonstrated sig-
14 nificant progress in abiding by international human rights
15 standards and is undertaking meaningful and significant
16 security sector reform, including transparency and ac-
17 countability to prevent future abuses, as determined by
18 applying the following criteria:

19 (1) The military adheres to international
20 human rights standards and pledges to stop future
21 human rights violations.

22 (2) The military supports efforts to carry out
23 meaningful and comprehensive investigations of
24 credible reports of abuses and is taking steps to hold

1 accountable those in the Burmese military respon-
2 sible for human rights violations.

3 (3) The military supports efforts to carry out
4 meaningful and comprehensive investigations of re-
5 ports of conflict-related sexual and gender-based vio-
6 lence and is taking steps to hold accountable those
7 in the Burmese military who failed to prevent, re-
8 spond to, investigate, and prosecute violence against
9 women, sexual violence, or other gender-based vio-
10 lence.

11 (4) The Government of Burma, including the
12 military, allows immediate and unfettered humani-
13 tarian access to communities in areas affected by
14 conflict, including Rohingya communities in Rakhine
15 State.

16 (5) The Government of Burma, including the
17 military, cooperates with the United Nations High
18 Commissioner for Refugees and other relevant
19 United Nations agencies to ensure the protection of
20 displaced persons and the safe and voluntary return
21 of Rohingya refugees and internally displaced per-
22 sons.

23 (6) The Government of Burma, including the
24 military, takes steps toward the implementation of

1 the recommendations of the Advisory Commission on
2 Rakhine State.

3 (b) EXCEPTIONS.—

4 (1) CERTAIN EXISTING AUTHORITIES.—The
5 Department of Defense may continue to conduct
6 consultations based on the authorities under section
7 1253 of the Carl Levin and Howard P. “Buck”
8 McKeon National Defense Authorization Act for
9 Fiscal Year 2015 (Public Law 113–291; 22 U.S.C.
10 2151 note).

11 (2) HOSPITALITY.—The United States Agency
12 for International Development and the Department
13 of State may provide assistance authorized by part
14 I of the Foreign Assistance Act of 1961 (22 U.S.C.
15 2151 et seq.) to support ethnic armed groups and
16 the Burmese military for the purpose of supporting
17 research, dialogues, meetings, and other activities re-
18 lated to the Union Peace Conference, Political Dia-
19 logues, and related processes, in furtherance of in-
20 clusive, sustainable reconciliation.

21 (c) MILITARY REFORM.—The certification required
22 under subsection (a) shall include a written justification
23 in classified and unclassified form describing the Burmese
24 military’s efforts to implement reforms, end impunity for

1 human rights violations, and increase transparency and
2 accountability.

3 (d) RULE OF CONSTRUCTION.—Nothing in this Act
4 shall be construed to authorize Department of Defense as-
5 sistance to the Government of Burma except as provided
6 in this section.

7 (e) REPORT.—

8 (1) IN GENERAL.—Not later than 180 days
9 after the date of the enactment of this Act, and
10 every 180 days thereafter, the Secretary of State
11 and the Secretary of Defense shall submit to the ap-
12 propriate congressional committees a report, in both
13 classified and unclassified form, on the strategy and
14 plans for military-to-military engagement between
15 the United States Armed Forces and the military of
16 Burma.

17 (2) ELEMENTS.—The report required under
18 paragraph (1) shall include the following elements:

19 (A) A description and assessment of the
20 Government of Burma's strategy for security
21 sector reform, including as it relates to an end
22 to involvement in the illicit trade in jade and
23 other natural resources, reforms to end corrup-
24 tion and illicit drug trafficking, and constitu-

1 tional reforms to ensure civilian control of the
2 Government.

3 (B) A list of ongoing military activities
4 conducted by the United States Government
5 with the Government of Burma, and a descrip-
6 tion of the United States strategy for future
7 military-to-military engagements between the
8 United States and Burma's military forces, in-
9 cluding the military of Burma, the Burma Po-
10 lice Force, and armed ethnic groups.

11 (C) An assessment of the progress of the
12 military of Burma towards developing a frame-
13 work to implement human rights reforms, in-
14 cluding—

15 (i) cooperation with civilian authori-
16 ties to investigate and prosecute cases of
17 human rights violations;

18 (ii) steps taken to demonstrate respect
19 for internationally recognized human rights
20 standards and implementation of and ad-
21 herence to the laws of war; and

22 (iii) a description of the elements of
23 the military-to-military engagement be-
24 tween the United States and Burma that
25 promote such implementation.

1 (D) An assessment of progress on the
2 peaceful settlement of armed conflicts between
3 the Government of Burma and ethnic minority
4 groups, including actions taken by the military
5 of Burma to adhere to ceasefire agreements,
6 allow for safe and voluntary returns of dis-
7 placed persons to their villages of origin, and
8 withdraw forces from conflict zones.

9 (E) An assessment of the Burmese's mili-
10 tary recruitment and use of children as soldiers.

11 (F) An assessment of the Burmese's mili-
12 tary's use of violence against women, sexual vio-
13 lence, or other gender-based violence as a tool
14 of terror, war, or ethnic cleansing.

15 (f) CIVILIAN CHANNELS.—Any program initiated
16 under this section shall use appropriate civilian govern-
17 ment channels with the democratically elected Government
18 of Burma.

19 (g) REGULAR CONSULTATIONS.—Any new program
20 or activity in Burma initiated under this section shall be
21 subject to prior consultation with the appropriate congres-
22 sional committees.

1 **SEC. 9. REINSTATEMENT OF IMPORT RESTRICTIONS ON**
2 **JADEITE FROM BURMA.**

3 (a) DEFINITIONS.—Section 3A(a) of the Burmese
4 Freedom and Democracy Act of 2003 (Public Law 108–
5 61; 50 U.S.C. 1701 note) is amended—

6 (1) by striking paragraph (2) and inserting the
7 following:

8 “(2) BURMESE COVERED ARTICLE.—The term
9 ‘Burmese covered article’ means—

10 “(A) jadeite mined or extracted from
11 Burma; or

12 “(B) articles of jewelry containing jadeite
13 described in subparagraph (A).”;

14 (2) by striking paragraph (3) and inserting the
15 following:

16 “(3) NON-BURMESE COVERED ARTICLE.—The
17 term ‘non-Burmese covered article’ means—

18 “(A) jadeite mined or extracted from a
19 country other than Burma; or

20 “(B) articles of jewelry containing jadeite
21 described in subparagraph (A).”; and

22 (3) by striking paragraph (4) and inserting the
23 following:

24 “(4) JADEITE; ARTICLES OF JEWELRY CON-
25 TAINING JADEITE.—

1 “(A) JADEITE.—The term ‘jadeite’ means
2 any jadeite classifiable under heading 7103 of
3 the Harmonized Tariff Schedule of the United
4 States (in this paragraph referred to as the
5 ‘HTS’).

6 “(B) ARTICLES OF JEWELRY CONTAINING
7 JADEITE.—The term ‘articles of jewelry con-
8 taining jadeite’ means—

9 “(i) any article of jewelry classifiable
10 under heading 7113 of the HTS that con-
11 tains jadeite; or

12 “(ii) any article of jadeite classifiable
13 under heading 7116 of the HTS.”.

14 (b) TERMINATION.—Section 3A of the Burmese
15 Freedom and Democracy Act of 2003 (Public Law 108–
16 61; 50 U.S.C. 1701 note) is amended by striking sub-
17 sections (g) and (h) and inserting the following:

18 “(g) TERMINATION.—Notwithstanding section 9, this
19 section shall remain in effect until the President deter-
20 mines and certifies to the appropriate congressional com-
21 mittees that the Government of Burma has taken meas-
22 ures to reform the jadeite industry in Burma, including
23 measures to require—

24 “(1) the disclosure of the ultimate beneficial
25 ownership of entities in that industry; and

1 “(2) the publication of project revenues, pay-
2 ments, and contract terms relating to that indus-
3 try.”.

4 (c) CONFORMING AMENDMENTS.—Section 3A of the
5 Burmese Freedom and Democracy Act of 2003 (Public
6 Law 108–61; 50 U.S.C. 1701 note) is amended—

7 (1) in the section heading—

8 (A) by striking “**AND RUBIES**”; and

9 (B) by striking “**OR RUBIES**”;

10 (2) in subsection (b)—

11 (A) in paragraph (1), by striking “until
12 such time” and all that follows through “2008”
13 and inserting “beginning on the date that is
14 180 days after the date of the enactment of the
15 Burma Human Rights and Freedom Act of
16 2018”; and

17 (B) in paragraph (3), by striking “the date
18 of the enactment of this Act” and inserting
19 “the date of the enactment of the Burma
20 Human Rights and Freedom Act of 2018”; and

21 (3) in subsection (c)—

22 (A) in paragraph (1), by striking “until
23 such time” and all that follows through “2008”
24 and inserting “beginning on the date that is
25 180 days after the date of the enactment of the

1 Burma Human Rights and Freedom Act of
2 2018”; and

3 (B) in paragraph (2)(B)—

4 (i) in clause (ii), by striking “or pol-
5 ished rubies”; and

6 (ii) by striking “or rubies” each place
7 it appears.

8 **SEC. 10. VISA BAN AND ECONOMIC SANCTIONS WITH RE-**
9 **SPECT TO MILITARY OFFICIALS RESPON-**
10 **SIBLE FOR HUMAN RIGHTS VIOLATIONS.**

11 (a) LIST REQUIRED.—

12 (1) IN GENERAL.—Not later than 180 days
13 after the date of the enactment of this Act, the
14 President shall submit to the appropriate congress-
15 sional committees a list of senior officials of the mili-
16 tary and security forces of Burma that the President
17 determines have knowingly played a direct and sig-
18 nificant role in the commission of human rights vio-
19 lations in Burma, including against the Rohingya
20 minority population.

21 (2) INCLUSIONS.—The list required by para-
22 graph (1) shall include all of the senior officials of
23 the military and security forces of Burma—

24 (A) in charge of each unit that was oper-
25 ational during the so-called “clearance oper-

1 ations” that began during or after October
2 2016; and

3 (B) who knew, or should have known, that
4 the official’s subordinates were committing sex-
5 ual or gender-based violence and failed to take
6 adequate steps to prevent such violence or pun-
7 ish the individuals responsible for such violence.

8 (3) UPDATES.—Not less frequently than every
9 180 days, the President shall submit to the appro-
10 priate congressional committees an updated version
11 of the list required by paragraph (1).

12 (b) SANCTIONS.—

13 (1) VISA BAN.—The Secretary of State shall
14 deny a visa to, and the Secretary of Homeland Secu-
15 rity shall exclude from the United States, any indi-
16 vidual included in the most recent list required sub-
17 section (a).

18 (2) LIST OF SPECIALLY DESIGNATED NATION-
19 ALS AND BLOCKED PERSONS.—

20 (A) IN GENERAL.—Not later than 180
21 days after the date of the enactment of this
22 Act, the President shall—

23 (i) determine whether the individuals
24 specified in subparagraph (B) should be
25 included on the SDN list; and

1 (ii) submit to the appropriate congress-
2 sional committees a report, in classified
3 form if necessary, on the procedures for in-
4 cluding those individuals on the SDN list
5 under existing authorities of the Depart-
6 ment of the Treasury.

7 (B) INDIVIDUALS SPECIFIED.—The indi-
8 viduals specified in this subparagraph are—

9 (i) the head of each unit of the mili-
10 tary or security forces of Burma that was
11 operational during the so-called “clearance
12 operations” that began during or after Oc-
13 tober 2016, including—

14 (I) Senior General Min Aung
15 Hlaing; and

16 (II) Major General Khin Maung
17 Soe;

18 (ii) any senior official of the military
19 or security forces of Burma for which the
20 President determines there are credible re-
21 ports that the official has aided, partici-
22 pated, or is otherwise implicated in gross
23 human rights violations in Burma, includ-
24 ing sexual and ethnic- or gender-based vio-
25 lence; and

1 (iii) any senior official of the military
2 or security forces of Burma for which the
3 President determines there are credible re-
4 ports that the official knew, or should have
5 known, that the official's subordinates
6 were committing sexual or gender-based vi-
7 olence and failed to take adequate steps to
8 prevent such violence or punish the individ-
9 uals responsible for such violence.

10 (3) AUTHORITY FOR ADDITIONAL FINANCIAL
11 SANCTIONS.—The Secretary of the Treasury may, in
12 consultation with the Secretary of State, prohibit or
13 impose strict conditions on the opening or maintain-
14 ing in the United States of a correspondent account
15 or payable-through account by any financial institu-
16 tion that is a United States person, for or on behalf
17 of a foreign financial institution, if the Secretary de-
18 termines that the account is knowingly used—

19 (A) by a foreign financial institution that
20 knowingly holds property or an interest in prop-
21 erty of an individual included on the SDN list
22 pursuant to paragraph (2); or

23 (B) to conduct a significant transaction on
24 behalf of such an individual.

1 (4) RULE OF CONSTRUCTION.—Nothing in this
2 subsection may be construed to prohibit any contract
3 or other financial transaction by a United States
4 person with a credible nongovernmental humani-
5 tarian organization in Burma.

6 (c) REMOVAL FROM LIST.—The President may re-
7 move an individual from the list required by subsection
8 (a) if the President determines and reports to the appro-
9 priate congressional committees that—

10 (1) the individual has—

11 (A) publicly acknowledged the role of the
12 individual in committing past human rights vio-
13 lations;

14 (B) cooperated with independent efforts to
15 investigate such violations;

16 (C) been held accountable for such viola-
17 tions; and

18 (D) demonstrated substantial progress in
19 reforming the individual’s behavior with respect
20 to the protection of human rights in the con-
21 duct of civil-military relations; and

22 (2) removing the individual from the list is in
23 the national interest of the United States.

24 (d) EXCEPTIONS.—

1 (1) HUMANITARIAN ASSISTANCE.—A require-
2 ment to impose sanctions under this section shall
3 not apply with respect to the provision of medicine,
4 medical equipment or supplies, food, or any other
5 form of humanitarian or human rights-related as-
6 sistance provided to Burma in response to a humani-
7 tarian crisis.

8 (2) UNITED NATIONS HEADQUARTERS AGREE-
9 MENT.—Subsection (b)(1) shall not apply to the ad-
10 mission of an individual to the United States if such
11 admission is necessary to comply with United States
12 obligations under the Agreement between the United
13 Nations and the United States of America regarding
14 the Headquarters of the United Nations, signed at
15 Lake Success June 26, 1947, and entered into force
16 November 21, 1947, or under the Convention on
17 Consular Relations, done at Vienna April 24, 1963,
18 and entered into force March 19, 1967, or other
19 international obligations of the United States.

20 (e) WAIVER.—The President may waive a require-
21 ment of this section if the Secretary of State, in consulta-
22 tion with the Secretary of the Treasury, determines and
23 reports to the appropriate congressional committees that
24 the waiver is important to the national security interests
25 of the United States.

1 (f) IMPLEMENTATION; PENALTIES.—

2 (1) IMPLEMENTATION.—The President may ex-
3 ercise all authorities provided under sections 203
4 and 205 of the International Emergency Economic
5 Powers Act (50 U.S.C. 1702 and 1704) to carry out
6 this section.

7 (2) PENALTIES.—A person that violates, at-
8 tempts to violate, conspires to violate, or causes a
9 violation of paragraph (2) or (3) of subsection (b) or
10 any regulation, license, or order issued to carry out
11 either such paragraph shall be subject to the pen-
12 alties set forth in subsections (b) and (c) of section
13 206 of the International Emergency Economic Pow-
14 ers Act (50 U.S.C. 1705) to the same extent as a
15 person that commits an unlawful act described in
16 subsection (a) of that section.

17 (3) RULE OF CONSTRUCTION.—This subsection
18 shall not be construed to require the President to
19 declare a national emergency under section 202 of
20 the International Emergency Economic Powers Act
21 (50 U.S.C. 1701).

22 (g) DEFINITIONS.—In this section:

23 (1) ACCOUNT; CORRESPONDENT ACCOUNT; PAY-
24 ABLE-THROUGH ACCOUNT.—The terms “account”,
25 “correspondent account”, and “payable-through ac-

1 count” have the meanings given those terms in sec-
2 tion 5318A of title 31, United States Code.

3 (2) FINANCIAL INSTITUTION.—The term “fi-
4 nancial institution” has the meaning given that term
5 in section 5312 of title 31, United States Code.

6 (3) KNOWINGLY.—The term “knowingly”, with
7 respect to conduct, a circumstance, or a result,
8 means that a person has actual knowledge, or should
9 have known, of the conduct, the circumstance, or the
10 result.

11 (4) SDN LIST.—The term “SDN list” means
12 the list of specially designated nationals and blocked
13 persons maintained by the Office of Foreign Assets
14 Control of the Department of the Treasury.

15 (5) UNITED STATES PERSON.—The term
16 “United States person” means—

17 (A) a United States citizen or an alien law-
18 fully admitted for permanent residence to the
19 United States;

20 (B) an entity organized under the laws of
21 the United States or of any jurisdiction within
22 the United States, including a foreign branch of
23 such an entity; or

24 (C) any person in the United States.

1 **SEC. 11. STRATEGY FOR PROMOTING ECONOMIC DEVELOP-**
2 **MENT.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this Act, the Secretary of State,
5 the Secretary of the Treasury, and the Administrator of
6 the United States Agency for International Development
7 shall submit to the appropriate congressional committees
8 a strategy to support sustainable and broad-based eco-
9 nomic development, in accordance with the priorities of
10 the Government of Burma to improve economic conditions.

11 (b) ELEMENTS.—In order to support the efforts of
12 the Government of Burma, the strategy required by sub-
13 section (a) shall include a plan to promote inclusive and
14 responsible economic growth, including through the fol-
15 lowing initiatives:

16 (1) Develop an economic reform roadmap to di-
17 versify control over and access to participation in
18 key industries and sectors. The United States Gov-
19 ernment should support the Government of Burma
20 to develop a roadmap to assess and recommend
21 measures to remove barriers and increase competi-
22 tion, access and opportunity in sectors dominated by
23 the military, former military officials, and their fam-
24 ilies, and businesspeople connected to the military.
25 The roadmap should include areas related to govern-
26 ment transparency, accountability, and governance.

1 (2) Increase transparency disclosure require-
2 ments in key sectors to promote responsible invest-
3 ment. Provide technical support to develop and im-
4 plement policies, and revise existing policies on pub-
5 lic disclosure of beneficial owners of companies in
6 key sectors identified by the Government of Burma,
7 including the identities of those seeking or securing
8 access to Burma's most valuable resources. In the
9 ruby industry, this specifically includes working with
10 the Government of Burma to require the disclosure
11 of the ultimate beneficial ownership of entities in the
12 industry and the publication of project revenues,
13 payments, and contract terms relating to the indus-
14 try. Such new requirements should complement dis-
15 closures due to be put in place in Burma as a result
16 of its participation in the Extractives Industry
17 Transparency Initiative (EITI).

18 (3) Promote universal access to reliable, afford-
19 able, energy efficient, and sustainable power, includ-
20 ing leveraging United States assistance to support
21 reforms in the power sector and electrification
22 projects that increase energy access, in partnership
23 with multilateral organizations and the private sec-
24 tor.

1 **SEC. 12. REPORT ON ETHNIC CLEANSING AND SERIOUS**
2 **HUMAN RIGHTS ABUSES IN BURMA.**

3 (a) IN GENERAL.—Not later than 90 days after the
4 date of the enactment of this Act, the Secretary of State
5 shall submit to the appropriate congressional committees
6 a report detailing the credible reports of ethnic cleansing
7 and serious human rights abuses committed against the
8 Rohingya in Burma, including credible reports of war
9 crimes, crimes against humanity, and genocide, and on po-
10 tential transnational justice mechanisms in Burma.

11 (b) ELEMENTS.—The reports required under sub-
12 section (a) shall include—

13 (1) a description of credible reports of ethnic
14 cleansing and serious human rights abuses per-
15 petrated against the Rohingya ethnic minority in
16 Burma, including—

17 (A) incidents that may constitute ethnic
18 cleansing, crimes against humanity, sexual and
19 gender-based violence, and genocide committed
20 by the Burmese military, and other actors in-
21 volved in the violence;

22 (B) the role of the civilian government in
23 the commission of such activities;

24 (C) incidents that may constitute ethnic
25 cleansing, crimes against humanity, sexual and
26 gender-based violence, or genocide committed

1 by violent extremist groups or antigovernment
2 forces;

3 (D) any incidents that may violate the
4 principle of medical neutrality and, if possible,
5 identification of the individual or individuals
6 who engaged in or organized such incidents;
7 and

8 (E) to the extent possible, a description of
9 the conventional and unconventional weapons
10 used for such crimes and the origins of such
11 weapons;

12 (2) a description and assessment by the Depart-
13 ment of State, the United States Agency for Inter-
14 national Development, the Department of Justice,
15 and other appropriate Federal departments and
16 agencies of programs that the United States Govern-
17 ment has already or is planning to undertake to en-
18 sure accountability for credible reports of ethnic
19 cleansing and reports of war crimes, crimes against
20 humanity, sexual and gender-based violence, and
21 genocide perpetrated against the Rohingya and other
22 ethnic minority groups by the Government, security
23 forces, and military of Burma, violent extremist
24 groups, and other combatants involved in the con-
25 flict, including programs—

1 (A) to train investigators within and out-
2 side of Burma and Bangladesh on how to docu-
3 ment, investigate, develop findings of, and iden-
4 tify and locate alleged perpetrators of ethnic
5 cleansing, crimes against humanity, or genocide
6 in Burma;

7 (B) to promote and prepare for a transi-
8 tional justice process or processes for the per-
9 petrators of ethnic cleansing, crimes against hu-
10 manity, and genocide in Burma; and

11 (C) to document, collect, preserve, and pro-
12 tect evidence of reports of ethnic cleansing,
13 crimes against humanity, and genocide in
14 Burma, including support for Burmese and
15 Bangladeshi, foreign, and international non-
16 governmental organizations, the United Nations
17 Human Rights Council's investigative team,
18 and other entities; and

19 (3) a detailed study of the feasibility and desir-
20 ability of potential transitional justice mechanisms
21 for Burma, including a hybrid tribunal, and rec-
22 ommendations on which transitional justice mecha-
23 nisms the United States Government should sup-
24 port, why such mechanisms should be supported,
25 and what type of support should be offered.

1 (c) PROTECTION OF WITNESSES AND EVIDENCE.—
2 The Secretary shall take due care to ensure that the iden-
3 tification of witnesses and physical evidence are not pub-
4 licly disclosed in a manner that might place such persons
5 at risk of harm or encourage the destruction of evidence
6 by the Government of Burma.

7 **SEC. 13. TECHNICAL ASSISTANCE AUTHORIZED.**

8 (a) IN GENERAL.—The Secretary of State, in con-
9 sultation with the Department of Justice and other appro-
10 priate Federal departments and agencies, is authorized to
11 provide appropriate assistance to support entities that,
12 with respect to credible reports of ethnic cleansing, crimes
13 against humanity, and genocide perpetrated by the mili-
14 tary, security forces, and Government of Burma, Buddhist
15 militias, and all other armed groups fighting in Rakhine
16 State—

17 (1) identify suspected perpetrators of ethnic
18 cleansing, war crimes, crimes against humanity, and
19 genocide;

20 (2) collect, document, and protect evidence of
21 crimes and preserve the chain of custody for such
22 evidence;

23 (3) conduct criminal investigations; and

24 (4) support investigations by third-party states,
25 as appropriate.

1 (b) ADDITIONAL ASSISTANCE.—The Secretary of
 2 State, after consultation with appropriate Federal depart-
 3 ments and agencies and the appropriate congressional
 4 committees, and taking into account the findings of the
 5 transitional justice study required under section 12(b)(3),
 6 is authorized to provide assistance to support the creation
 7 and operation of transitional justice mechanisms for
 8 Burma.

9 **SEC. 14. SENSE OF CONGRESS ON PRESS FREEDOM.**

10 In order to promote freedom of the press in Burma,
 11 it is the sense of Congress that—

12 (1) Wa Lone and Kyaw Soe Oo should be im-
 13 mediately released and should have access to lawyers
 14 and their families; and

15 (2) the decision to use a colonial-era law to ar-
 16 rest these Reuters reporters undermines press free-
 17 dom around the world and further underscores the
 18 need for serious legal reform.

19 **SEC. 15. MEASURES RELATING TO MILITARY COOPERATION**
 20 **BETWEEN BURMA AND NORTH KOREA.**

21 (a) IMPOSITION OF SANCTIONS.—

22 (1) IN GENERAL.—The President may, with re-
 23 spect to any person described in paragraph (2)—

24 (A) impose the sanctions described in para-
 25 graph (1) or (3) of section 10(b); or

1 (B) include that person on the SDN list
2 (as defined in section 10(g)).

3 (2) PERSONS DESCRIBED.—A person described
4 in this paragraph is an official of the Government of
5 Burma or an individual or entity acting on behalf of
6 that Government that the President determines pur-
7 chases or otherwise acquires defense articles from
8 the Government of North Korea or an individual or
9 entity acting on behalf of that Government.

10 (b) RESTRICTION ON FOREIGN ASSISTANCE.—The
11 President may terminate or reduce the provision of United
12 States foreign assistance to Burma if the President deter-
13 mines that the Government of Burma does not verifiably
14 and irreversibly eliminate all purchases or other acquisi-
15 tions of defense articles by persons described in subsection
16 (a)(2) from the Government of North Korea or individuals
17 or entities acting on behalf of that Government.

18 (c) DEFENSE ARTICLE DEFINED.—In this section,
19 the term “defense article” has the meaning given that
20 term in section 47 of the Arms Export Control Act (22
21 U.S.C. 2794).

1 **SEC. 16. NO AUTHORIZATION FOR THE USE OF MILITARY**
2 **FORCE.**

3 Nothing in this Act shall be construed as an author-
4 ization for the use of force.

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