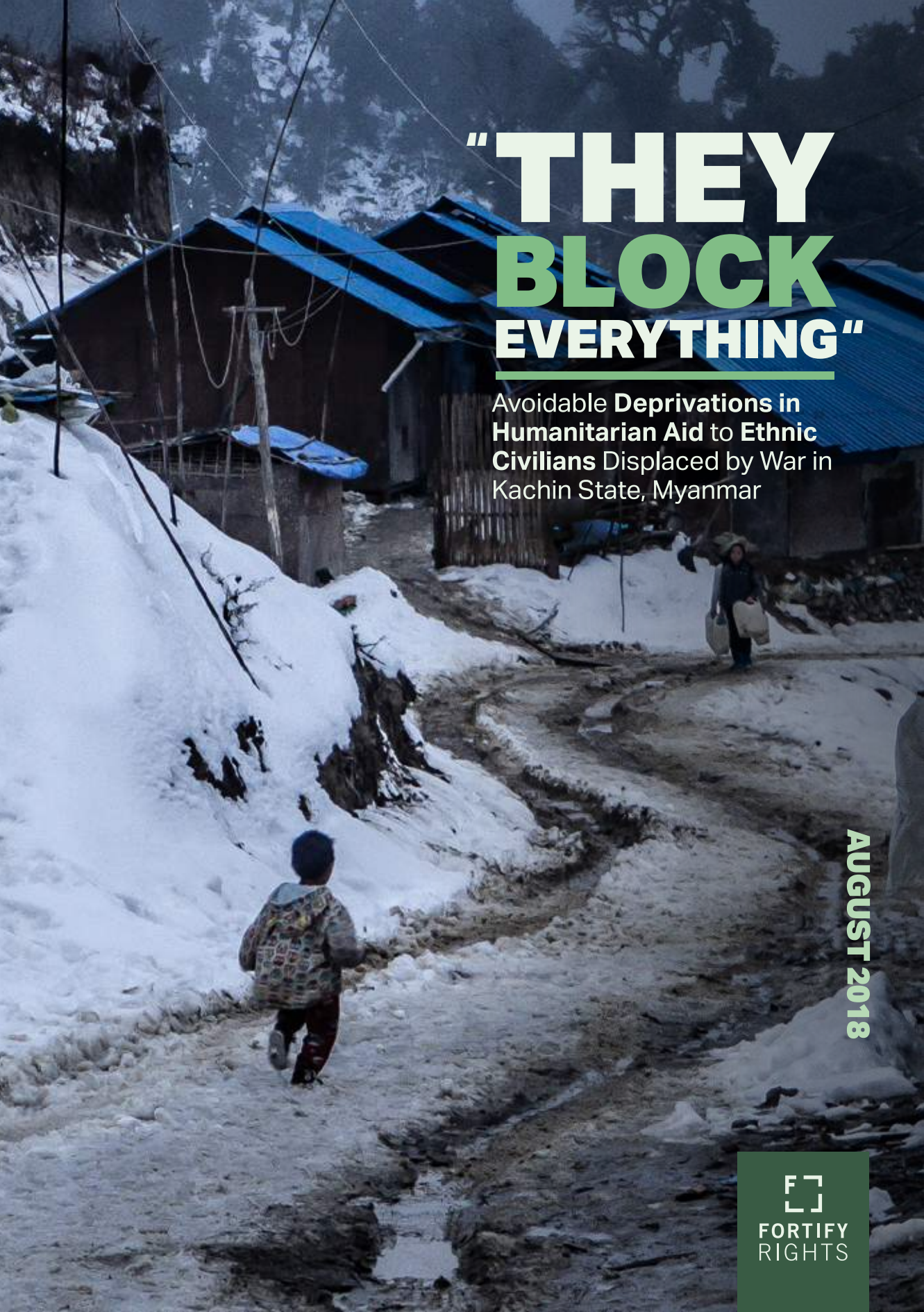

"THEY BLOCK EVERYTHING"

Avoidable **Deprivations in Humanitarian Aid** to **Ethnic Civilians** Displaced by War in Kachin State, Myanmar

AUGUST 2018

FORTIFY RIGHTS

"THEY BLOCK EVERYTHING"

Avoidable **Deprivations in Humanitarian Aid** to **Ethnic Civilians** Displaced by War in Kachin State, Myanmar

Cover:

Border Post 6 camp for displaced civilians near the China border in Myanmar's Kachin State. Myanmar government restrictions on humanitarian aid have resulted in shortages of blankets, clothing, bedding, and other essential items, making harsh winters unnecessarily difficult for displaced civilians.

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FORTIFY RIGHTS

Fortify Rights works to ensure human rights for all. We investigate human rights violations, engage people with power on solutions, and strengthen the work of human rights defenders, affected communities, and civil society. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working closely with individuals, communities, and movements pushing for change. We are an independent, nonprofit organization based in Southeast Asia and registered in the United States and Switzerland.

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KACHIN STATE, MYANMAR

INDIA

Newngmun
Pannadin
Newngmun
Puta-O
Machanbaw
Puta-O
Machanbaw
Khaunglanhpu
Khaunglanhpu
Shin Bway Yang
Tanai
Sumprabum
Tanai
Sumprabum
Tsawlaw
Tsawlaw
KACHIN STATE
Injangyan
Chipwi
Injangyan
Chipwi
Hpakant
Myitkyina
Hpakant
Kamaing
Myitkyina
Pang War
Nammatee
Waingmaw
Sadung
Kan Paik Ti
Mogaung
Waingmaw
Mogaung
Hopin
Mohnyin
CHINA
Mohnyin
Sinbo
Laiza
Dawthponeyan
Shwegu
Myo Hla
Momauk
Bhamo
SAGAING REGION
Shwegu
Momauk
Bhamo
Mai Ja Yang
Lwegel
Mansi
Mansi
Muse
SHAN STATE

Government-controlled areas
Ethnic armed group-controlled areas and contested areas
IDP Camp
IDPs in host families

Administrative/Settlement data: GAD, MIMU
Data source: OCHA, Camp Coordination and Camp Management (CCCM) Cluster The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Code: MMR-0102 Date: 25/06/2018
Locations of some camps have been adjusted for cartographic presentation.

Displaced Kachin sharing a meal at Tanai Kachin Baptist Church in Tanai Township, Kachin State. The Myanmar military's restrictions on humanitarian aid organizations have driven food shortages among displaced communities in Kachin State.

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▲ *Displaced Kachin rest in a temporary shelter at a Catholic Church in Kinsayar Ward of Tanai Township, Kachin State. Fighting between the Myanmar military and the Kachin Independence Army in April 2018 trapped thousands of Kachin civilians in nearby forests for several weeks without humanitarian aid. The Myanmar military repeatedly denied aid groups access to those trapped and refused to evacuate them.*

©Hkun Lat, May 2018.

SUMMARY

More than seven years after war resumed between the Myanmar Army and the Kachin Independence Army (KIA)—the main ethnic army operating in Kachin State—more than 106,000 ethnic civilians remain forcibly displaced in Kachin and northern Shan states. The Myanmar Army has killed, raped, and tortured civilians with impunity, and the Myanmar Army and KIA continue to lay landmines and use child soldiers.

Meanwhile, forcibly displaced civilians in Kachin and northern Shan states lack adequate humanitarian aid. While it has been widely known that displaced civilians in Kachin State lack adequate access to aid, much less is known about why and how aid fails to reach those in need. This report documents how civilian and military authorities in Myanmar have worked in concert since 2011 to weaponize the denial of humanitarian aid to Kachin State. While the Myanmar military is the biggest obstacle to the delivery of humanitarian aid to Kachin civilians, the previous administration of President Thein Sein (2011 to 2016) and the current administration of State Counsellor Aung San Suu Kyi (2016 to present) have demonstrated continuity in their respective policies to deprive war-affected Kachin civilians of adequate humanitarian aid.

This report also finds that Chinese authorities urged Myanmar authorities and non-state ethnic armies to prevent the United Nations and international humanitarian aid organizations from operating on the Myanmar side of the border near China's Yunnan Province.

Kachin State's internally displaced persons (IDPs) are currently located in 140 displacement sites, an estimated 40 percent of which are in areas beyond the control of the Government of Myanmar and in territory administered by the Kachin Independence Organization (KIO), the political body associated with the KIA.

The Government of Myanmar—and particularly the Myanmar military—have severely and systematically limited humanitarian access to displaced populations in Kachin State by imposing onerous and unnecessary travel restrictions on humanitarian aid organizations and failing to provide them with the necessary authorizations. These measures drive avoidable deprivations in aid and have left tens of thousands of displaced civilians without adequate access to food, healthcare, shelter, and other life-saving aid and assistance.

The government-imposed travel authorization process for humanitarian organizations is complicated, time-consuming, and inconsistent. Few requests for travel authorization for humanitarian purposes are unconditionally approved, and some international humanitarian aid organizations have stopped applying for travel authorizations to areas in Kachin State due to the perceived futility of the process. This report finds that from June 2017 to June 2018, the Government of Myanmar unconditionally approved approximately five percent of 562 humanitarian aid applications for travel authorization to government-controlled areas by international humanitarian agencies.

Even when the government provides travel authorizations for humanitarian organizations, it often imposes overly burdensome conditions, including restrictions on travel routes, aid-delivery locations, and types of aid. These restrictions limit the effective delivery of aid to populations in need.

"There is no food for people on the border," said "Zau Raw," a 60-year-old displaced Kachin man in KIA territory who witnessed Myanmar Army soldiers loot money from aid trucks attempting to access KIA territory, before turning the trucks away. "They block everything. All trucks that are trying to cross into KIA-controlled areas are blocked."

"Sometimes we'll have [travel authorization], but only for Myitkyina town or [the government will] give [approval for] Waingmaw or Mansi [townships], but we're not allowed to go there by road," said a representative of an international humanitarian organization working in Kachin State. "They're putting in these interesting clauses that make it impossible to actually go. It's not real access."

Recently, the Myanmar authorities took steps to criminalize humanitarian aid groups. On May 21, 2018 the Kachin State Minister of Security and Border Affairs sent a letter to the Kachin Baptist Convention—one of the largest providers of aid to displaced communities in Kachin State—threatening them with prosecution under Article 17(1) of the Unlawful Associations Act for traveling to deliver aid in an area under the control of the KIA. Conviction under Article 17(1) carries a three-year prison sentence and/or a fine.

Kachin-led humanitarian organizations are particularly integral in filling humanitarian gaps created by government restrictions on humanitarian aid. Among the many Kachin-led civil society organizations, the women-led organizations

Forcibly displaced Kachin huddle in a temporary shelter at Jaw Masat camp in Myitkyina Township, Kachin State. Displaced civilians fled here after being forced from their homes by fighting between the Myanmar military and the Kachin Independence Army. The Myanmar military denied aid groups access to them in April and May 2018.

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Wunpawng Ninghtoi (WPN), Bridging Rural Integrated Development and Grassroots Empowerment (BRIDGE), and the Kachin Women's Association Thailand (KWAT) have long strengthened and sustained communities in war-affected areas of Kachin State, despite the risks and restrictions.

"It's like a new four cuts approach," a Kachin humanitarian aid worker told Fortify Rights.

Beginning in the 1970s, the Myanmar military initiated the "Four Cuts" strategy in ethnic states to cut off ethnic armed-groups from funds, food, intelligence, and recruits. During the past four decades, the Myanmar Army implemented this campaign with ruthless brutality against ethnic communities throughout the country, creating a protracted population of displaced persons along Myanmar's borderlands.

This report is based primarily on 195 interviews conducted by Fortify Rights from 2013 to 2018 with displaced civilians, local and international humanitarian workers, United Nations officials, KIO representatives, and KIA soldiers. This includes 117 interviews from March 2016 to March 2018 and 78 interviews from September 2013 to April 2014. During this time, Fortify Rights visited more than 20 displacement camps and other sites in government and KIA-controlled territory.

The evidence in this report demonstrates the immediate and long-term impacts of avoidable deprivations in aid on displaced populations in Kachin State. Displaced civilians told Fortify Rights of food shortages, a lack of access to consistent food supplies, and reductions in the availability of diverse food products, such as meats, eggs, and vegetables.

Many displaced civilians reported a lack of access to proper healthcare facilities or treatment. Displaced populations in rural areas of Kachin and northern Shan states lack adequate access to health clinics or hospitals. In camps where clinics do exist, shortages of medicines, supplies, and trained medical staff often result in a lack of comprehensive or effective treatment for illnesses. There is little to no sustained provision of psycho-social support.

Restrictions on humanitarian aid organizations providing shelter materials have resulted in displaced civilians living in shelters in need of repair or renovation or in shelters that are too small to adequately accommodate residents. Displaced civilians are also forced to survive harsh, snow-covered winters without proper bedding, blankets, warm clothing, and other essential items due to aid shortages. The lack of infrastructure or material to repair deteriorating infrastructure has led to inconsistent access to water required for drinking and bathing as well as toilets.

Without necessary aid and assistance in camps, displaced civilians are often forced to take risky journeys, including through active armed-conflict zones and across the border to China, in search of food, livelihoods, and essential items. The presence of the Myanmar Army and the ubiquitous use of landmines by the Myanmar Army and the KIA heightens risks for displaced civilians traveling outside displacement camps. In some cases, the lack of adequate aid for displaced civilians drives migration to China, where Kachin and Shan refugees face further violations, including forced labor, abusive roadside drug tests and arbitrary detention, and labor exploitation.

The Government of Myanmar's willful deprivation of humanitarian aid to displaced civilians in Kachin State violates domestic and international law, including human rights law and humanitarian law, known as the laws of war. Under international humanitarian law, all parties to armed conflict are obligated to "facilitate the free passage of humanitarian assistance" and ensure aid workers have "rapid and unimpeded access to the internally displaced." "Willfully impeding relief supplies" is a serious violation of international humanitarian law that may constitute a war crime.

The U.N. Security Council should urgently refer Myanmar to the International Criminal Court to investigate and potentially prosecute war crimes in Kachin and northern Shan states.

It is imperative that the Government of Myanmar ensure all displaced populations have access to the rights and protections guaranteed by international humanitarian and human rights law, including the right to food, health, housing, water, and sanitation. Ultimately, the government of Myanmar and all parties to the armed conflict in Kachin State must ensure displaced civilians have the right to return to their places of origin. In the meantime, the government should immediately provide the U.N., national and international humanitarian aid organizations, and human rights monitors with safe, sustained, and unfettered access to all internally displaced populations.

A displaced Kachin woman rests at a temporary shelter with her week-old infant in Lungbyang village, Waingmaw Township, Kachin State. The child was born while his mother fled from Zai Aung camp for displaced persons after the Myanmar Army fired a mortar near their camp. Displaced mothers and children are disproportionately affected by government-imposed deprivations in aid and healthcare.

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Displaced Kachin warm themselves in the morning sun in front of their temporary shelter near Lungbyang village, Waingmaw Township, Kachin State. As a result of the Myanmar military's restrictions on humanitarian aid, shelters for the displaced in Kachin State are often inadequate and in disrepair.

©Hkun Lat, January 2017.

A displaced Kachin family keeps warm around a fire in front of their temporary shelter near Lungbyang village, Waingmaw Township, Kachin State. Displaced Kachin struggle to find essential non-food items, such as firewood, in displacement camps in Kachin State, where winters can be harsh.

©Hkun Lat, January 2017.

METHODOLOGY

This report is based primarily on 195 interviews conducted by Fortify Rights from 2013 to 2018. Fortify Rights worked closely with Kachin human rights defenders and humanitarian aid organizations to independently conduct this research. Interviews were conducted with survivors and eyewitnesses of violations, internally displaced persons, U.N. officials, representatives of international and national humanitarian aid organizations, KIO representatives, and KIA soldiers.

Fortify Rights conducted 117 interviews from March 2016 to March 2018, primarily in conflict zones of Kachin State in Waingmaw and Momauk townships. During that period, Fortify Rights visited nine IDP camps in Kachin State, six of which were in KIA-controlled territory and three of which were in government-controlled territory.

Fortify Rights also conducted 78 interviews from September 2013 to April 2014 with displaced civilians and survivors and witnesses of human rights violations, including 36 interviews in KIA-controlled territory in Kachin and northern Shan states and 42 interviews in government-controlled territory in Kachin State.

Fortify Rights conducted most interviews in Kachin or Burmese language with English interpretation. No one interviewed for this report received compensation, and all were informed of the purpose of the interview, its voluntary nature, and the ways that the information shared might be used. All of those interviewed provided informed consent or specified how the information shared could be used. For security purposes, the names of some survivors, eyewitnesses, and others are withheld or changed in this report.

On August 8, 2018, Fortify Rights sent a letter to the Government of Myanmar requesting further information on the travel authorization process for humanitarian organizations, government involvement in providing aid and assistance to displaced populations in Kachin and northern Shan states, and the general situation in Kachin and northern Shan states. Myanmar President Win Myint, State Counsellor Aung San Suu Kyi, Commander Major General Teza Kyaw of the Myanmar Army Northern Command, Minister of Social Welfare, Relief and Resettlement Dr. Win Myat Aye, and the Chairperson of the Myanmar National Human Rights Commission Win Mra received a copy of the letter. At the time of writing, Fortify Rights has not received a response. The letter is included as Annex A of this report.

BACKGROUND

Kachin State is Myanmar's northernmost state, sharing an international border with China and India. The ethnic Kachin people are predominantly Christian Baptists and Roman Catholics who reside mostly in Kachin State and northern Shan State.[1] Kachin State includes rugged and mountainous territory and is home to lucrative natural resources, including the world's largest and highest quality deposits of jade as well as timber, minerals, and some of Myanmar's most vital rivers.[2]

At the end of the Second World War, cleavages widened between majority ethnic-Burman nationalists who had allied with the Japanese and Myanmar's other ethnic populations—particularly the ethnic Karen, Shan, Kachin, and Chin—who had enjoyed relative autonomy and had sided with the British during the war.[3] As part of the negotiations for independence from Britain, the leader of the Burma Independence Army and father of Myanmar's current State Counsellor Aung San Suu Kyi, General Aung San, reached out to the Kachin and other ethnic nationalities in an attempt to unite the country.[4]

On February 12, 1947, the Kachin along with the Shan and Chin ethnic groups signed the Panglong Agreement, which guaranteed the establishment of a federal union and full autonomy for the ethnic states.[5] The Panglong Agreement paved the path for Myanmar's independence from Britain; however, the assassination of General Aung San and six key ministers in July 1947 effectively ended the Panglong Agreement and laid the foundations of protracted ethnic strife and armed-conflicts.[6]

After formal independence in 1948, armed conflict broke out between the central Myanmar government and non-state ethnic armed groups, eventually spreading to all seven of Myanmar's ethnic states.[7] By February 1961, Kachin nationalists formed the KIO and took up arms against the Myanmar government under the name of the KIA.[8] This was, in part, a response to the failed promises of the Panglong Agreement but also to Prime Minister U

1 Mandy Sadan, *Being and Becoming Kachin: Histories Beyond the State in the Borderworlds of Burma* (Oxford: British Academy and Oxford University Press, 2013), p. 7-8.

2 Kachin Development Networking Group, *Lessons from the Kachin "Development" Experience,* 2012, http://www.burmalibrary.org/docs13/lessons_from_the_kachin_development_experience(en)-red.pdf (accessed August 9, 2018).

3 Bertil Lintner, *Burma in Revolt: Opium and Insurgency Since 1948* (Boulder: Westview Press, 1994), p. 76.

4 Andrew Selth, *Burma: Insurgency and the Politics of Ethnicity* (London: Zed Books, 1991), p. 77.

5 *Id.* at p. 78.

6 Lintner, *Burma in Revolt*, p. xiv.

7 Mary P. Callahan, *Making Enemies: War and State Building in Burma* (Ithaca: Cornell University Press, 2004), p. 112-144. *See also,* The Asia Foundation, *Ethnic Armed Conflict and Territorial Administration in Myanmar,* July 2015, https://asiafoundation.org/resources/pdfs/ConflictTerritorialAdministrationfullreportENG.pdf (accessed August 9, 2018), p. 15-16.

8 Sadan, *Being and Becoming Kachin*, p. 330, 334.

Nu's demarcation of Kachin State's shared border with China in 1960—which split the Kachin population, leaving some in China and others in Myanmar—and the declaration of Buddhism as the official religion of the country.[9]

In 1962, a military *coup d'etat* led by General Ne Win began a period of 50 years of military rule in Myanmar marked by repression, international political and economic isolation, and grievous human rights violations, including severe restrictions on freedom of speech and expression as well as forced labor, extrajudicial killings, arbitrary arrest and detention, and other violations.[10] During this period, Myanmar was one of the world's most insular countries. The military leadership capitalized on the scope and scale of ethnic opposition to its rule to justify its authoritarian conduct, arguing that the stability and security of the nation was only possible with military control over the political and economic affairs of the country.[11] Beginning in the 1970s, the military began to incorporate the "Four Cuts" strategy in the country's ethnic states, which aimed at cutting off ethnic armed groups from funds, food, intelligence, and recruits.[12]

During the late 1970s and 1980s, the KIA's alliance with the China-backed Communist Party of Burma—which disbanded in 1989 and led to the creation of Myanmar's largest and most well-resourced ethnic armed group, the United Wa State Army—ensured a supply of weapons and ammunition for the KIA.[13] The disbanding of the Communist Party of Burma helped galvanize a ceasefire agreement between the KIA and the Myanmar military in 1994, granting the Kachin Independence Council (KIC) administrative autonomy over parts of Kachin State.[14] While the agreement marked an end to the fighting, the political resolution necessary to address the longstanding grievances of the Kachin people remained absent. The ceasefire also facilitated a dramatic increase both in the exploitation of Kachin State's natural resources—namely jade, timber, and other minerals—and the presence of the Myanmar military in Kachin State during the next 17 years.[15]

The enactment of Myanmar's 2008 Constitution marked the beginning of the country's transition from direct military rule to quasi-civilian rule or electoral authoritarianism. Drafted in a

9 General U Nu allegedly undertook the process of demarcation without the consultation of the Kachin community or leadership. *See,* Lintner, *Burma in Revolt*, p. 200-202.

10 *See generally,* Shan Women's Action Network (SWAN) and Shan Human Rights Foundation (SHRF), *License to Rape*, June 2002, http://www.shanwomen.org/images/reports/licensetorape/Licence_to_rape.pdf (accessed August 9, 2018); Kachin Women's Association of Thailand (KWAT), *Pushed to the Brink: Conflict and Human Trafficking on the Kachin-China Border*, June 2013, http://womenofburma.org/Report/2013/KWAT,%20Pushed_to_the_Brink.pdf (accessed August 9, 2018); Ta'ang Women's Organization, *Trained to Torture: Systematic War Crimes by the Burma Army in Ta'ang Areas of Northern Shan State (March 2011-March 2016)*, June 2016, http://www.burmapartnership.org/wp-content/uploads/2016/06/Trained-to-Torture-English_for-Web.pdf (accessed August 9, 2018); Karen Human Rights Group, "Reports," www.khrg.org/reports (accessed August 9, 2018); Human Rights Watch, *Burma: "We are Like Forgotten People": The Chin People of Burma: Unsafe in Burma, Unprotected in India,* January 2009, https://www.hrw.org/report/2009/01/27/we-are-forgotten-people/chin-people-burma-unsafe-burma-unprotected-india (accessed August 9, 2018); Harvard Law School International Human Rights Clinic, *Crimes in Burma*, May 2009, http://hrp.law.harvard.edu/wp-content/uploads/2009/05/Crimes-in-Burma.pdf (accessed August 9, 2018).

11 Selth, *Burma: Insurgency and the Politics of Ethnicity*, p. 198-206.

12 Karen Human Rights Group, *Suffering in Silence: The Human Rights Nightmare of the Karen People of Burma*, 2000, p. 15, quoted in Callahan, *Making Enemies*, p. 210. *See also,* The Asia Foundation, *Ethnic Armed Conflict and Territorial Administration in Myanmar*, p. 16.

13 Lintner, *Burma in Revolt*, p. 287-88.

14 The KIC is a civilian body appointed by senior members of the KIO that governs territories under the control of the KIA. The KIC oversees both the KIA and administrative departments, including health, education, the treasury, foreign affairs and the IDP and Refugee Relief Committee (IRRC). *See,* The Asia Foundation, *Ethnic Armed Conflict and Territorial Administration in Myanmar,* p. 94.

15 Kachin Development Networking Group, *Lessons from the Kachin "Development" Experience. See also,* Kevin Woods, "Ceasefire Capitalism: Military-Private Partnerships, Resource Concessions and Military-State Building in the Burma-China Borderlands," The Journal of Peasant Studies, 2011, p. 747-770, https://www.tandfonline.com/doi/abs/10.1080/03066150.2011.607699 (accessed August 9, 2018).

secretive process largely without consultation and passed through a flawed and unfair nationwide referendum vote, the 2008 Constitution entrenched the military in Myanmar's political system by setting aside 25 percent of the parliamentary seats for unelected military appointees and giving the military control over key ministries and Myanmar's most important executive body, the National Defense and Security Council.[16] The 2008 Constitution also stipulated that all groups under ceasefire agreements would have to transform to a Border Guard Force under the control of the Myanmar military—an important factor that contributed to the dissolution of the ceasefire with the KIA in June 2011.[17]

On June 9, 2011, Myanmar Army Battalion Nos. 437 and 438 attacked a KIA outpost in Sang Gang village in Momauk Township near the controversial Taping Hydropower Dam No. 1—a site of strategic importance for the Myanmar military and a sizable Chinese-led investment.[18] According to eyewitnesses and survivors interviewed by Fortify Rights, the military attacked in response to the detention of three Myanmar Army soldiers by the KIA on June 8 after the soldiers violated the ceasefire agreement by entering KIO territory without permission.[19] After the attack, the KIA agreed to exchange the three Myanmar Army soldiers for one KIA soldier captured during the attack near the Taping Dam.[20] On June 11, the Myanmar Army delivered KIA soldier Chang Ying's body, which allegedly showed signs of fatal torture.[21] This marked the onset of a new era of armed conflict between the Myanmar Army and the KIA. In the months and years that followed, armed conflict in Kachin State intensified, displacing more than 100,000 civilians while the KIA ceded significant amounts of territory to the Myanmar military.[22]

In August 2011, President Thein Sein initiated peace talks and preliminary ceasefire agreements with the country's ethnic armed groups, announcing that he was "opening the door for peace" and "holding out an olive branch" to ethnic armed groups to bring an end to Myanmar's decades-long civil war.[23] As peace talks continued in Naypyidaw, Yangon, and Ruili, China between the Myanmar military and ethnic armed groups, the conflict in Kachin and northern Shan states escalated. In December 2012 and January 2013, the Myanmar military used helicopter gunships and fighter jets to attack a KIA base near Laiza, the administrative capital of KIA-controlled territory and home to a large displaced population.[24] During the attacks, several shells landed across the Kachin State border in China, resulting in the Chinese government demanding that the Myanmar

16 Six of the 11 members of the National Defense and Security Council are serving in the military. Chapter 11 of the 2008 Constitution allows the Council to impose martial law, dissolve parliament, and govern the country when a state of emergency is declared. Taken together, these Constitutional provisions further afford the military an effective veto over Constitutional amendments. Constitution of the Republic of the Union of Myanmar, 2008 arts. 109(b), 141(b), and 436 (providing 25 percent reservations for the military and its effective veto); Art. 20(b) (providing for control over ministries); and arts. 343(b) and 445 (providing for removal of military from civilian oversight). *See also,* Francis Wade, "Burma's Militarized Ministries," *Foreign Policy*, November 15, 2015, http://foreignpolicy.com/2015/11/15/burmas-militarized-ministries/ (accessed August 9, 2018).

17 Human Rights Watch, *Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State*, March 2012, https://www.hrw.org/report/2012/03/20/untold-miseries/wartime-abuses-and-forced-displacement-burmas-kachin-state (accessed August 9, 2018).

18 "Tatmadaw Columns Inevitably Counterattack KIA Troops for Their Threats and Armed Attacks," *The New Light of Myanmar*, June 18, 2011.

19 Fortify Rights, *"I Thought They Would Kill Me": Ending Wartime Torture in Northern Myanmar*, June 2014, http://www.fortifyrights.org/downloads/Fortify%20Rights_Myanmar_9_June_2014.pdf (accessed August 9, 2018), p. 12.

20 Human Rights Watch, *Untold Miseries*, p. 28.

21 Fortify Rights, *"I Thought They Would Kill Me,"* p. 27.

22 *See,* Human Rights Watch, *Untold Miseries*.

23 International Crisis Group, *Myanmar's Peace Process: A Nationwide Ceasefire Remains Elusive*, Crisis Group Asia Briefing N°146 Yangon/Brussels, September 16, 2015, https://d2071andvip0wj.cloudfront.net/b146-myanmar-s-peace-process-a-nationwide-ceasefire-remains-elusive.pdf (accessed August 9, 2018), p. 3.

24 "Burma: Halt Indiscriminate Attacks in Kachin State," Human Rights Watch, news release, January 17, 2013 https://www.hrw.org/news/2013/01/17/burma-halt-indiscriminate-attacks-kachin-state (accessed August 9, 2018).

government and KIA "jointly protect the peace and stability of the China-Myanmar border area."[25] This sentiment received further resonance in February 2015 when conflict broke out between the Myanmar military and the Myanmar National Democratic Alliance Army (MNDAA)—a group excluded from President Thein Sein's peace process that purports to represent the ethnic Kokang population in northern Shan State. Fighting forced more than 50,000 ethnic Kokang civilians to flee from Shan State's Kokang region to China's Yunnan Province.[26]

In November 2015, Myanmar held historic elections that brought human rights icon Aung San Suu Kyi's National League for Democracy (NLD) to power. Although the 2008 Constitution includes a provision deliberately intended to prevent Suu Kyi from becoming President, a month after the NLD transitioned to power, the Myanmar Parliament passed a bill creating the position of State Counsellor—a work-around to enable Suu Kyi to be the *de facto* head of state.[27] While Suu Kyi and her government yield significant moral and political authority, the military controls a quarter of the parliamentary seats and several key ministries, including Defense, Home Affairs, and Border Affairs, maintaining its grip on the political landscape.[28]

Before the 2015 elections, the Myanmar military and eight ethnic armed groups signed a Nationwide Ceasefire Agreement (NCA) in October 2015, prohibiting parties from engaging in certain activities in ceasefire areas, including attacks, recruitment, and laying landmines.[29] The NCA also included a commitment to "coordinate with each other when implementing delivery of humanitarian assistance by the NGOs and INGOs to internally displaced persons."[30] As the Government of Myanmar won international acclaim for progress made in the "peace process," groups that account for more than 80 percent of the country's ethnic armed groups refused or were not invited to sign the accord.[31] Several key ethnic armed groups in Myanmar's north, including the KIA, rejected the government's demand of "disarmament, demobilization and reintegration" before any political discussions about the creation of a federal union.[32] On May 26, 2017, Myanmar military Commander-in-Chief Senior General Min Aung Hlaing spoke to representatives of these groups at the "21st Century Panglong Conference," noting that any attempt by ethnic armed groups to pursue peace outside of the NCA framework "will be seen as an attempt to spite the Union . . . [and as] tantamount to grabbing power and splitting from the Union through armed struggle."[33]

25 "China Rebukes Myanmar, Urges Ceasefire After Shell Crosses Border," *Reuters*, January 17, 2013.

26 Matthew Smith, "How China Fuels Myanmar's Wars," *The New York Times*, March 4, 2015, https://www.nytimes.com/2015/03/05/opinion/how-china-fuels-myanmars-wars.html (accessed August 9, 2018).

27 A clause in the constitution prevents anyone with family members who hold foreign nationality from becoming President. Suu Kyi, in addition to holding the State Counsellor position, is also the Foreign Minister. *See,* Euan McKirdy, "New government role created for Myanmar's Aung San Suu Kyi," *CNN*, April 7, 2016, http://edition.cnn.com/2016/04/06/asia/aung-san-suu-kyi-state-counsellor-role-created/index.html (accessed August 9, 2018).

28 Myanmar Constitution, arts. 109(b), 141(b), and 436 (providing 25 percent reservations for the military and its effective veto); Art. 20(b) (providing for control over ministries); and arts. 343(b) and 445 (providing for removal of military from civilian oversight).

29 International Crisis Group, *Myanmar's Peace Process: Getting to a Political Dialogue,* Crisis Group Asia Briefing N°149 Yangon/Brussels, October 19, 2016, https://www.crisisgroup.org/asia/south-east-asia/myanmar/myanmar-s-peace-process-getting-political-dialogue (accessed August 9, 2018), p. 3. *See also,* The Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations, 2015, http://www.mmpeacemonitor.org/images/2015/oct/nca%20contract%20eng.pdf (accessed August 9, 2018), p. 3-6.

30 *Ibid.*

31 Bertil Lintner, "Peace Process in Pieces In Myanmar," *Asia Times*, May 22, 2017, http://www.atimes.com/article/peace-process-pieces-myanmar/ (accessed August 9, 2018).

32 Bobby Anderson, "Myanmar's Peace Process: Disarmament, Demobilization and Reintegration, Borderland Economies, Service Delivery, and Other Post-Panglong Concerns (Part I)," *Tea Circle*, August 23, 2017, https://teacircleoxford.com/2017/08/23/myanmars-peace-process-disarmament-demobilization-and-reintegration-borderland-economies-service-delivery-and-other-post-panglong-concerns-part-i/ (accessed August 9, 2018).

33 "Senior General Min Aung Hlaing Criticizes Ethnic Armed Groups at Panglong Outset," *Network Media Group*, May 26, 2017, https://www.bnionline.net/news/network-media-group/item/3086-senior-general-min-aung-hlaing-criticizes-ethnic-armed-groups-at-panglong-outset.html (accessed August 9, 2018).

In November 2016, the Brotherhood of the Northern Alliance (BNA)—an alliance of ethnic armed groups comprising the KIA, the MNDAA, the Ta-ang National Liberation Army, and the Arakan Army—carried out attacks against police in Mong Ko, Muse Township in northern Shan State. The BNA seized the town of Mong Ko for several days before the Myanmar military drove them out in early December with airstrikes from helicopter gunships, warplanes, and heavy artillery.[34] In response to the attacks in Mong Ko, the Shan State parliament designated the groups of the BNA as terrorists, and Defense Minister Lieutenant General Sein Win called on humanitarian aid organizations to stop the provision of aid to areas where the groups operated.[35]

A month earlier, then U.N. Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Stephen O'Brien noted that government authorities in Kachin State were not only blocking humanitarian aid to certain areas but were also demanding that displaced people cross an active conflict line to receive humanitarian assistance.[36]

In December 2016, fighting intensified around the KIA's outposts at Gidon and Lai Hpawng in Waingmaw Township, key locations used by humanitarian aid organizations to access IDP camps in KIA-controlled areas.[37] The fighting displaced and re-displaced thousands of civilians.[38] On January 10, 2017, the Joint Strategy Team—a collective of nine Kachin humanitarian aid organizations—reported that Chinese authorities forcibly returned an estimated 4,000 Kachin civilians fleeing fighting in the Nagyang area, close to Zai Awng and Hkau Shau IDP camps in Waingmaw Township.[39] In May 2017, the U.N. Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that almost 7,000 people displaced by fighting in Kachin State in December had not been able to return home.[40]

34 "Burma: Protect Civilians in Northern Fighting," Human Rights Watch, news release, December 22, 2016, https://www.hrw.org/news/2016/12/22/burma-protect-civilians-northern-fighting (accessed August 9, 2018)

35 Zue Zue, "Shan State Parliament Approves Branding of Northern Alliance as 'Terrorists'," *The Irrawaddy*, December 7, 2016, http://www.irrawaddy.com/news/burma/shan-state-parliament-approves-branding-of-northern-alliance-as-terrorists.html (accessed August 9, 2018); Htet Naing Zaw, "Burma Army Proposes Branding of Northern Alliance as 'Terrorist Organizations'," *The Irrawaddy*, December 2, 2016, https://www.irrawaddy.com/news/burma/burma-army-proposes-branding-of-northern-alliance-as-terrorist-organizations.html (accessed August 9, 2018). The Myanmar military later sentenced two Kachin religious leaders to four years and three months and two years and three months in prison respectively for acting as the "financial supporter, informer, recruiter, rumor monger" for the KIA, following their assisting journalists investigating an unlawful military airstrike in Mong Ko. *See,* "Myanmar: Drop Case Against Kachin Religious Leaders," Fortify Rights, news release, October 27, 2017, http://www.fortifyrights.org/publication-20171027.html (accessed August 9, 2018).

36 "UN Humanitarian Chief Calls for Strengthened Humanitarian Action to Support the People of Myanmar," United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), news release, October 14, 2016, http://reliefweb.int/report/myanmar/un-humanitarian-chief-calls-strengthened-humanitarian-action-support-people-myanmar (accessed August 9, 2018). *See also,* Myanmar Humanitarian Country Team (United Nations and Partners), *2017 Humanitarian Needs Overview: Myanmar, December 2016*, 2017, http://reliefweb.int/sites/reliefweb.int/files/resources/Ref_Doc_Humanitarian_Needs_Overview_HCT_2017.pdf (accessed August 9, 2018), p. 9-10.

37 "Northern Burma Update: Burma Army Divides Kachin," Free Burma Rangers, January 18, 2017, http://www.freeburmarangers.org/2017/01/18/northern-burma-update-burma-army-divides-kachin/ (accessed August 9, 2018). *See,* "China: Protect Ethnic Kachin Refugees Fleeing War in Northern Myanmar," Fortify Rights, news release, January 13, 2017, http://www.fortifyrights.org/publication-20170113.html (accessed August 9, 2018).

38 *Ibid.*

39 "Urgent Humanitarian Situation Update in Kachin State," Joint Strategy Team, January 11, 2017, https://progressivevoicemyanmar.org/2017/01/11/urgent-humanitarian-situation-update-in-kachin-state-11th-january-2017/ (accessed August 9, 2018).

40 UNOCHA, *Myanmar Humanitarian Bulletin, Issue 1 2017, February-May*, May 2017, http://reliefweb.int/sites/reliefweb.int/files/resources/Myanmar%20Humanitarian%20Bulletin-%20Feb-May%202017.pdf (accessed August 9, 2018), p. 5.

At the time of writing, the situation in Kachin State remains dire as the conflict heads into its eighth year and fighting between the KIA and the Myanmar military continues, resulting in the unabated death and displacement of civilians.[41]

On May 31, 2018, UNOCHA estimated that the conflict in Kachin and Shan states temporarily displaced approximately 60,000 civilians between January 2017 and May 2018 and that the conflict since 2011 resulted in the displacement of more than 106,000 people, who are now residing in 169 displacement camps or settlements.[42]

The accessibility of these sites varies enormously; in turn affecting how humanitarian aid organizations provide assistance to displaced populations. In government-controlled areas of Kachin State, the close proximity of sizable IDP camps, such as Mai Na and Jan Mai, to the Kachin State capital of Myitkyina and the absence of conflict in the area affords humanitarian aid organizations greater access to displaced populations than more remote camps or camps located closer to the armed conflict. For example, if given unfettered access to KIA-controlled areas, humanitarian aid organizations would have to travel several hours on poorly maintained roads to access IDP camps in some areas. Nevertheless, these are conditions humanitarian organizations are equipped to handle should the government provide free and unfettered access.

According to the U.N. Humanitarian Country Team, IDPs throughout Kachin State lack access to adequate food, healthcare services, shelter, essential items, water, and sanitation.[43] Approximately 76 percent of these IDPs are women and children, and an estimated 43 percent of the total IDPs live in KIA-controlled areas where the Government of Myanmar severely restricts humanitarian access.[44]

41 Tom Miles, "U.N. Concerned About Heavy Fighting in Myanmar's Kachin State," *Reuters*, February 2, 2018, https://www.reuters.com/article/us-myanmar-kachin/u-n-concerned-about-heavy-fighting-in-myanmars-kachin-state-idUSKBN1FM1RS (accessed August 9, 2018).

42 UNOCHA, *Myanmar: IDP Sites In Kachin And Northern Shan States*, May 31, 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/KachinShan_Snapshot_IDPS_A4_May18.pdf (accessed August 9, 2018).

43 Myanmar Humanitarian Country Team (United Nations and Partners), *2018 Humanitarian Needs Overview: Myanmar*, November 2017, https://reliefweb.int/sites/reliefweb.int/files/resources/2018%20Myanmar%20Humanitarian%20Needs%20Overview.pdf (accessed August 9, 2018), p. 13.

44 *Id.* at p. 9.

I. RESTRICTIONS ON HUMANITARIAN ASSISTANCE

"There is not support from the government and even more blockages. As long as [the government] can't provide support, as long as they can't facilitate travel and movement, and we have to operate in this very challenging situation, it will be difficult for the international community to deliver what we committed to [deliver in order to meet] international standards . . . It will be very difficult for us to provide services to IDPs."

—Aid worker with an international humanitarian organization operating in Kachin State, 2017

Since armed conflict between the Myanmar military and the KIA resumed in 2011, the Government of Myanmar and the Myanmar military have restricted access for humanitarian organizations to displaced populations in Kachin State. In particular, government-imposed travel restrictions on humanitarian organizations have impeded the delivery of urgent and essential aid and the access of aid workers to displaced populations. The government has effectively denied tens of thousands of displaced Kachin civilians adequate access to basic life-saving assistance, including food, healthcare, shelter, essential items, water, and sanitation for several years. Since 2011, avoidable deprivations in aid in Kachin State have become the norm and, in some cases, have intensified, impacting the health and well-being of tens of thousands of displaced civilians.

The Government of China's position may have played a role in shaping the Myanmar authorities' continued restrictions on access for aid organizations. In August 2011, Myanmar President Thein Sein initiated peace talks between Myanmar authorities and ethnic armed groups, ostensibly to bring an end to Myanmar's decades-long civil war.[45] His government organized "peace talks" in Naypyidaw and Yangon in Myanmar as well as several rounds in Ruili, China between the Myanmar military and ethnic armed groups. Chinese representatives in the meetings reportedly insisted that aid organizations not

45 International Crisis Group, *Myanmar's Peace Process: A Nationwide Ceasefire Remains Elusive*, Crisis Group Asia Briefing N°146 Yangon/Brussels, September 16, 2015, https://d2071andvipowj.cloudfront.net/b146-myanmar-s-peace-process-a-nationwide-ceasefire-remains-elusive.pdf (accessed August 9, 2018), p. 3.

operate on the shared-border areas in Kachin State.[46] China made their position particularly explicit that humanitarian aid organizations should not be provided access to displaced populations on the Myanmar-China border, equating these organizations with "western" powers—namely the United States government.[47]

In order to obtain travel authorization to access displaced populations in Kachin State, humanitarian aid organizations must submit detailed activity plans four to six weeks in advance of the requested travel date to specific government ministries in Naypyidaw.[48] The specific ministry responsible for issuing travel authorizations to each humanitarian aid organization is spelled out in Memorandums of Understanding with the Government of Myanmar.[49] As a result, the responsible ministry for issuing travel authorizations differs from organization to organization and is not necessarily linked to the type of aid or service provided.

There is no standard form or questionnaire to facilitate the travel authorization process, resulting in a lack of clarity about the information required and ad hoc processes across different organizations and ministries.[50] As described by one international aid worker: "There is not one specific form that's designed for [facilitating travel authorization in] Naypyidaw . . . There are a number of agencies in Kachin who have [the same ministry] as their line ministry, and even then, there are different [forms] that they all use."[51]

Activity plans submitted to Naypyidaw typically include information on the townships, villages, or camps that the organization wants to visit, the general timeline of the proposed visit, proposed activities, the number of staff participating in the trip and their details, and passport copies of any international staff planning to participate in the trip.[52]

After receiving approval at the ministry-level in Naypidaw, humanitarian aid organizations must obtain approval at the state-level before they are able to begin their work.[53] In September 2016, the Ministry of Home Affairs issued a directive through Bhamo Township administrative offices stating: "All international/national social organizations (NGOs/ INGOs), religious organizations and local organizations have to get prior permission from the State Government before delivering humanitarian food assistance to any IDPs in both government and non-government-controlled areas."[54]

To obtain state-level permission, humanitarian aid organizations must submit a more detailed activity plan to their assigned ministry at the state-level, including the name and location of the specific IDP camps or villages to visit, the specific dates of the proposed visit, and the names of those driving vehicles for the trip.[55] Approval at the state level requires sign-off on the activity plan by the Minister of the assigned ministry, the Chief Minister of Kachin State, the Kachin State Minister of Border Affairs, and the Northern Commander of the Myanmar Army's Bureau of Special Operations.[56]

46 Fortify Rights communications with delegates of "peace talks" between the KIA and the Myanmar military, 2013, 2017, and 2018.

47 *Ibid*.

48 *Ibid*. Fortify Rights interview with F.D., Yangon, Myanmar, May 10, 2017.

49 Fortify Rights correspondence with U.N. official, July 2018.

50 Fortify Rights interview with F.D., Yangon, Myanmar, May 10, 2017.

51 *Ibid*.

52 *Ibid*. Fortify Rights interview with F.F., Yangon, Myanmar, May 12, 2017.

53 Fortify Rights interviews with F.C., F.D., and F.E., Myitkyina Township, Kachin State, and Yangon, Myanmar, April 25 to May 11, 2017.

54 General Administrative Office (Township Level), Bhamo Township, "Letter No. 5/2-17/ (Ma Na A' (2271)," September 9, 2016, on file with Fortify Rights. *See also*, Protection Sector Kachin, *Update Note Humanitarian Access in Kachin State*, November, 2016, http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Myanmar/files/humanitarian-access-kachin-sept-nov-2016-updated-note.pdf (accessed August 9, 2018), p. 2.

55 Fortify Rights interviews with F.D. and F.F., Yangon, Myanmar, May 10 and May 12, 2017.

56 Fortify Rights interviews with A.R. and F.C., Myitkyina Township, Kachin State, Myanmar, June 14, 2016 and April 25, 2017.

Despite these processes, several aid workers suggested that the ultimate decision-making power around travel authorization rests with the Myanmar military. For example, one aid worker with a U.N. humanitarian organization told Fortify Rights:

> [T]he State Government issues a letter to the Northern Commander saying that [the agency is] going to this area. 'Would you be able to facilitate the security of these people?' Then the Northern Commander decides whether to say yes or no. Only if we get permission from the Northern Commander can we travel.[57]

Another U.N. official reiterated frustration with the Myanmar military's control over travel-authorization approvals, saying: "Even when we had all the permissions from Naypyidaw after months of bureaucracy, we were stopped by the Northern Commander at the last minute."[58]

At both Union and State-level, the government does not issue denial letters or reasons for refusing to grant travel authorization.[59] When authorization is not granted, organizations are routinely told informally that it is because the government, or specifically, the Northern Commander of the Myanmar Army's Bureau of Special Operations, is unable to provide the necessary security.[60]

In some cases, the military refused to grant humanitarian aid organizations access to KIA-controlled areas on the basis that KIA combatants were allegedly coopting the aid.[61] As one humanitarian aid worker told Fortify Rights:

> It is the Northern Commander and Northern Commander's office who always say that humanitarian aid is arriving to armed groups . . . [The Myanmar military] say, 'Your humanitarian aid is arriving to armed groups', and they tell us, 'Do not transport with a hidden agenda. We know you have a hidden agenda.'[62]

In May 2017, government authorities denied the President of the International Committee of the Red Cross Peter Maurer access to IDP camps in KIA-controlled areas, prompting Maurer to call on the Government of Myanmar to provide humanitarian aid organizations with "unhindered access so that people affected by conflict and violence get the assistance and protection they need."[63] On May 12, Commander-in-Chief of the Myanmar military Senior General Min Aung Hlaing responded with a Facebook post, stating, "Insurgents open camps disguised as places for refugees, regarding local people as human shields and opening IDP camps unnecessarily to receive aid though [sic] refugees should be released."[64]

Few requests for travel authorization are approved. From June 2017 to June 15, 2018, the Government of Myanmar unconditionally approved approximately five percent of 562 humanitarian aid applications for travel authorization to government-controlled areas by international humanitarian organizations.[65] Given the challenges in obtaining travel authorization, particularly

57 Fortify Rights interview with A.A., Myitkyina Township, Kachin State, Myanmar, June 8, 2016.

58 Fortify Rights interview with A.R., Myitkyina Township, Kachin State, Myanmar, June 14, 2016.

59 Fortify Rights interviews with F.D. and F.F., Yangon, Myanmar, May 10 and May 12, 2017.

60 Fortify Rights interviews with F.C. and F.D., Myitkyina Township, Kachin State, and Yangon, Myanmar, April 25 and May 10, 2017.

61 Fortify Rights interviews with D.O., F.A., F.D., and F.E., Waingmaw Townships, Kachin State, and Yangon, Myanmar, November 18, 2016 to May 11, 2017.

62 Fortify Rights interview with F.I., Yangon, Myanmar, November 11, 2017.

63 "Myanmar: ICRC President Concludes Official Visit," International Committee of the Red Cross, news release, May 16, 2017, https://www.icrc.org/en/document/myanmar-icrc-president-concludes-official-visit (accessed August 9, 2018).

64 Shoon Naing, "Tatmadaw to Assist ICRC in Conflict Areas," *The Myanmar Times*, May 15, 2017, https://www.mmtimes.com/national-news/yangon/25967-tatmadaw-to-assist-icrc-in-conflict-areas.html (accessed August 9, 2018).

65 Document on file with Fortify Rights, July 2018. The document notes: "Restricted approval refers to approvals given to access the main urban / town area and not the surrounds / outskirts. In the main, the vast majority of displaced

to KIA-controlled areas, most humanitarian aid organizations have stopped requesting formal permission. For example, between May 2017 and June 2018, no humanitarian aid organization formally attempted to access the 40,000 displaced persons in areas under the control of the KIA.[66] One humanitarian aid worker explained that feelings of futility with the travel authorization process discourage organizations from seeking permission:

> At this point, we're not applying for [travel authorization] in [KIA-controlled areas]. We've applied to some [government-controlled area] camps, but even those, we get feedback from our line ministry and they say, 'That's not going to happen.' They say, 'Why don't you reapply just for the town?' . . . There's a certain degree of restriction from the government, but then there's also a certain degree of self-censorship or self-protection . . . It's not that the application is rejected, but we're advised that if we want to go to these areas at all in the next month, our best bet is to remove all areas that are sensitive.[67]

When approval is granted, the government often imposes overly burdensome conditions that effectively limit access to populations in need. One humanitarian worker whose organization works with displaced populations in both KIA-controlled and government-controlled areas described these limitations to Fortify Rights, saying:

> Sometimes we'll have [travel authorization], but only for Myitkyina town or [the government will] give [approval for] Waingmaw or Mansi [townships], but we're not allowed to go there by road. They're putting in these interesting clauses that make it impossible to actually go. It's not real access.[68]

Another aid worker further explained how government-imposed restrictions on routes and broad geographical locations effectively limit aid, saying:

> Mai Na camp is just across the bridge in Waingmaw [Township] and, for a long time, we couldn't get across that bridge. Even though it's in the urban or peri-urban setting, that was off limits even though it was in [the government-controlled area]. So that entire township, they'll decide, 'No, you can't go there', because in the eastern part of Waingmaw there was conflict, so the whole township then was off limits.[69]

Some aid workers reported government-imposed restrictions on particular types of aid, including medical supplies. For example, one aid worker told Fortify Rights: "Since the end of 2015, it has been forbidden to transport medical items, especially through Loi Je road [in Momauk Township]. At the Sinlum checkpoint, [the Myanmar military] stops all the medical supplies."[70]

In February 2018, UNOCHA noted that Myanmar authorities severely restricted humanitarian access to Tanai Township where an estimated 900 people were living in four churches after armed clashes broke out there in June 2017.[71] Similarly, fighting on January 22, 2018 displaced more than 700 people living in Ndup Yang IDP camp and surrounding villages in Sumprabum Township.[72] UNOCHA reported that authorities also restricted humanitarian access, including the use of waterways, in this area.[73]

people are in settings outside the main town / urban area."

66 Documents on file with Fortify Rights, November 2017 and July 2018.

67 Fortify Rights interview with F.N., Yangon, Myanmar, November 21, 2017.

68 Fortify Rights interview with F.G., Yangon, Myanmar, November 9, 2017.

69 Fortify Rights interview with F.E., Yangon, Myanmar, May 11, 2017.

70 Fortify Rights interview with C.U., Waingmaw Township, Kachin State, Myanmar, November 15, 2016.

71 UNOCHA, *Humanitarian Update on the Situation in Kachin State*, February 2, 2018, https://reliefweb.int/report/myanmar/myanmar-ocha-humanitarian-update-situation-kachin-state-2-february-2018 (accessed August 9, 2018).

72 Nang Lwin Hnin Pwint, "IDPs Flee Camp During Ongoing Clashes in Kachin," *The Irrawaddy*, January 24, 2018, https://www.irrawaddy.com/news/burma/idps-flee-camp-ongoing-clashes-kachin.html (accessed August 9, 2018).

73 UNOCHA, *Humanitarian Update on the Situation in Kachin State*.

In April and May 2018, a consortium of 19 humanitarian aid organizations called on the Myanmar authorities and military to cease hostilities in civilian areas, guarantee civilians safe passage out of conflict areas, and lift restrictions on humanitarian assistance after reporting civilian casualties by Myanmar military airstrikes.[74] The organizations also reported that more than 2,000 civilians were trapped in conflict zones in Tanai Township and in Kamai sub-township, noting that "repeated requests for safe passage and access to deliver life-saving humanitarian assistance continue to be denied."[75] On May 1, the U.N. Special Rapporteur on the situation of human rights in Myanmar Yanghee Lee noted that, "Any willful impediment of relief supplies may amount to war crimes under international law."[76]

As a result of the restrictions, some local humanitarian aid workers rely on suppliers in China to obtain aid for the estimated 40,000 IDPs residing on the Myanmar-China border.[77] In 2017, a Kachin aid worker described this process, saying:

> We contact a supplier inside China for whatever materials we need. We will contact them from the border area, like Laiza. We cannot cross any official gates, but there are many spaces in between the gates. Normally, staff from humanitarian groups don't cross with the suppliers . . . The suppliers are responsible for getting the goods to the border. After that, the goods change hands and humanitarian groups deliver them.[78]

The trade of humanitarian aid into Myanmar is largely unauthorized by the Chinese authorities, and suppliers face risks for coordinating with humanitarian aid organizations in Myanmar.[79] One aid worker coordinating with suppliers in China to facilitate the delivery of aid to KIA-controlled areas described to Fortify Rights the risks faced by suppliers, saying:

> The Chinese [authorities] say that all the activities in China relating to IDPs are not official. They don't support these activities. Even though [our supplier] has an office in [China], they have to keep a very low profile. Sometimes the police come to check [their office]. Then they have to hide the papers. Working for IDPs is not official work. Whenever you cross the border, you cannot say [what you are doing].[80]

In 2013, "Seng Htoi," a Kachin humanitarian aid worker operational in KIA-controlled territory, told Fortify Rights:

> We have had problems transporting aid over the China border. The Chinese don't want to allow it, so we have to take small roads. It's a lot of aid. Usually, if we wear our [organization] shirts and show a lot of paperwork, they know it is for the IDPs, and they let us go through. But we avoid checkpoints altogether because there is no way they would allow it. We have a driver who has a Chinese driver's license and speaks Chinese.[81]

74 "Humanitarian NGOs Call for Immediate Cessation of Hostilities, Protection of Civilians and Humanitarian Access in Kachin and Northern Shan, Myanmar," Joint statement by national and international NGOs, May 2, 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Orgs%20Statement%20on%20Kachin-N%20Shan%2C%20May%202nd%202018.pdf (accessed August 9, 2018).

75 *Ibid.*

76 "Myanmar: UN Expert Says Civilians Must be Protected as Kachin Violence Mounts," United Nations Office of the High Commissioner for Human Rights, news release, May 1, 2018, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23015&LangID=E (accessed August 9, 2018).

77 Fortify Rights interviews with F.E., F.F., and F.I., Yangon, Myanmar, May 11 to November 11, 2017. *See also,* UNOCHA, "*Myanmar: IDP Sites in Kachin and Northern Shan States (as of May 31 2018).*

78 Fortify Rights interview with F.H., Yangon, Myanmar, November 10, 2017.

79 Fortify Rights interview with F.F. and F.I., Yangon, Myanmar, May 12 and November 11, 2017.

80 Fortify Rights interview with F.F., Yangon, Myanmar, May 12, 2017.

81 Fortify Rights interview with A.F., Momauk Township, Kachin State, Myanmar, September 10, 2013.

Humanitarian aid workers from Myanmar who cross into China to facilitate aid deliveries to displaced populations in KIA-controlled areas also risk arrest by the Chinese authorities. In 2017, a Myanmar-national aid worker described the risks, saying: "There's been an increase in arrests of [Myanmar] national staff in China . . . There are increasing patrols and checks. People are facing increased drug checks, such as urine tests to see if anyone has been using drugs."[82]

Kachin aid workers told Fortify Rights that much of their difficulty in acquiring aid through China was due to the Myanmar authorities restricting access for humanitarian groups to KIA-controlled territory. Some Kachin aid workers perceived that the Chinese and Myanmar authorities were like-minded with respect to denying aid to the Kachin people. For instance, in 2013, a senior camp administrator of Nhkawng Pa IDP camp in KIA-controlled territory told Fortify Rights: "The Chinese are very similar to the Burmese government. They aren't very different in this regard."[83]

In 2013, two years into the renewed conflict, U.N. agencies and international humanitarian aid organizations were able to access KIA-controlled territory a handful of times to provide limited, one-off aid deliveries.[84] In 2013, a Kachin aid worker in Laiza working with IDPs and Refugees Relief Committee (IRRC) told Fortify Rights:

> On the government side, the IDPs get regular assistance from INGOs, U.N., and local groups . . . The U.N. convoy just distributed food items for 3,000 IDPs [in KIA-controlled territory], but they only brought food items for one month and various kinds of medicine. When the convoy arrived, they brought very few items for the IDPs. People thought the U.N. would be the one to provide adequate assistance, but it seems like it doesn't work that way. They just said they would come back again, but we don't know how or when. It depends on the government policy and government permission . . . In Laiza, there are no other organizations providing continued support, particularly food items. IRRC is the one that is really filling gaps when there is no international assistance from humanitarian organizations.[85]

However, Kachin aid workers also acknowledged that access for the U.N. and international humanitarian aid organization would not necessarily solve the problems of displaced communities. In some cases, local and national organizations are better positioned to negotiate with the military to navigate around restrictions to facilitate aid delivery, particularly to remote camps and displaced populations within the KIA-controlled areas. For example, one Kachin aid worker based in Myitkyina explained a recurring negotiation with the Myanmar military to access KIA-controlled areas, saying: "The drivers have to pay soldiers to take us. It's very expensive. Then we can go straight from Myitkyina to Laiza . . . [We] have to stay inside the jungle or the forest, sometimes for three or four hours. When the road is clear, the soldiers say go."[86]

This same aid worker explained the payment system for facilitating aid deliveries in some KIA-controlled areas. He said:

> For each bag of rice, we have to give [the soldiers] 2,000 or 3,000 Myanmar Kyat (around US$1.50 to $2.15) . . . [The Myanmar military] has closed the gate up [to access Mali Yang in Sumprabum Township], so when we try to cross, we have to pay 2,000 Myanmar Kyat (US$1.50) per bag of rice. We carry the rice up to one place, then we drive by car. Then we

82 Fortify Rights interview with F.G., Yangon, Myanmar, November 9, 2017. For more information on Chinese soldiers' subjecting Kachin refugees to abusive roadside drug testing and arbitrary detention, see the section of this report entitled, "Protection Concerns in China."

83 Fortify Rights interview with Z.F, Momauk Township, Kachin State, Myanmar, September 6, 2013.

84 *See, for example,* Lawi Weng, "UN to Provide Rare Aid to Kachin Refugees," *The Irrawaddy*, May 28, 2012, https://reliefweb.int/report/myanmar/un-provide-rare-aid-kachin-refugees (accessed August 9, 2018).

85 Fortify Rights interview with B.I., Waingmaw Township, Kachin State, Myanmar, September 13, 2013.

86 Fortify Rights interview with A.B., Myitkyina Township, Kachin State, Myanmar, June 8, 2016.

> have to pay at the gate. Then from the gate to the boat, we have to pay again. There are many checkpoints. At every gate, we have to give 2,000 Myanmar Kyat (US$1.50). By the time a bag of rice reaches to the IDP camp, it has cost 6,000 Myanmar Kyat (around US$4.50) in checkpoints alone.[87]

In 2013, an aid worker of a Kachin- aid organization told Fortify Rights: "The international groups should support the local relief effort and work through us. We know the situation on the ground, we have the relationships, and we know the community."[88]

87 *Ibid.*

88 Fortify Rights interview with A.F., Momauk Township, Kachin State, Myanmar, September 10, 2013.

II. IMPACTS OF AID RESTRICTIONS ON DISPLACED POPULATIONS IN KACHIN STATE

LACK OF ACCESS TO ESSENTIAL AID AND ASSISTANCE

The restrictions imposed on humanitarian aid organizations by the Government of Myanmar amount to a near-total block on aid to displaced populations in parts of Kachin State. For upwards of seven years, displaced populations in various locations in KIA-controlled and government-controlled areas have experienced avoidable deprivations in adequate food, healthcare, shelter, essential items, water, and sanitation. Without ready access to basic and lifesaving aid and assistance, IDPs are forced to take significant risks to find alternative sources of provisions and services, heightening protection concerns.

Lack of Adequate Access to Food

"We rely on food rations. We do not waste a single grain of rice here. We can't make any money. We don't have anything to sell in the market. We can't afford anything for ourselves, that's why food rations are so important."

—62-year old man, Woi Chyai IDP camp, KIA-controlled areas, 2016

Since 2013, displaced civilians in Kachin State told Fortify Rights of food shortages in the IDP camps.[89] For example, a 57-year-old woman living in Pa Kahtawng IDP camp in KIA-controlled areas told Fortify Rights in 2016:

> Last month, I didn't have any rice to eat. Even if we have money, there is no shop selling rice, so it is very difficult to buy . . . My daughter sent 100 Chinese Yuan (about US$14.50), but nowhere is selling rice. My neighbor helped me with three packets of rice, and another neighbor helped me too. It's only possible to survive by helping each other. If we have extra food, we look around to see who is in need because food doesn't arrive regularly. It's a big problem.[90]

89 Fortify Rights interviews with B.G., B.H., B.M., C.Q., C.V., D.B., D.D., D.H., D.I., D.V., and E.D., Momauk and Waingmaw townships, Kachin State, Myanmar, March 22 to November 21, 2016. Fortify Rights interviews with A.E., C.C., C.E., C.I., and E.C., Chipwi, Myitkyina, Waingmaw, and Bhamo townships, Kachin State, Myanmar, September 2013 to November 2014.

90 Fortify Rights interview with B.G., Momauk Township, Kachin State, Myanmar, March 22, 2016.

In some areas, displaced communities wait in vain for physical food deliveries. A 64-year old woman, displaced since November 2011 and now living in Nhkawng Pa IDP camp in KIA-controlled areas, told Fortify Rights: "Sometimes food rations don't arrive in time. It arrives very late. Because we have a few family members, it is difficult to cover everyone from time to time. For adults, everyone eats only limited portions, so it's difficult to cope with gaps in rations."[91]

The manager of the food stocks in Je Yang Hka camp—which houses an estimated 8,500 IDPs in a KIA-controlled area—explained to Fortify Rights how he prepares for food shortages. He said:

> We keep reserve [food] supplies for emergencies, but the reserves can't cover the whole population. Whenever there is a food crisis, IDPs come here and ask for more, and I distribute some small quantities. I can't provide assistance for the whole month. It's just a temporary measure . . . When there are food shortages, we worry so much.[92]

The restrictions on humanitarian aid organizations providing food aid has also resulted in a reduction in the availability of diverse food products, such as meat, eggs, and vegetables. In an assessment undertaken from November to December 2016, a humanitarian aid organization found that a significant percentage of households in the more remote camps in the KIA-controlled areas, such as Border Post 6 and 8, had poor or borderline dietary diversity.[93] A Kachin aid worker based in the KIA-controlled town of Maijayang in Momauk Township told Fortify Rights:

> At first when I arrived, IDPs were receiving full rations, but now they only receive rice, salt, and oil . . . This causes nutritional and health problems . . . We used to give them potatoes, fish, dried beef, and other things, but they don't have those things anymore. They can't afford to eat fish and meat. This lack of protein is a problem for the children.[94]

In January 2017, the World Food Programme (WFP) reported that government-imposed restrictions limited their ability to deliver food aid to 21,000 displaced persons across nine camps in government-controlled areas of Waingmaw, Mansi, and Momauk townships.[95]

In the government-controlled IDP camps, the WFP replaced their rations program with a cash assistance program in 2016.[96] Fortify Rights spoke to several IDPs who said that the change in programming amounted to a cutback in the variety and volume of food they consume. In June 2016, Fortify Rights spoke to 43-year old Marip Lu, the mother of Kachin Baptist Convention

91 Fortify Rights interview with E.F., Momauk Township, Kachin State, Myanmar, November 21, 2016.

92 Fortify Rights interview with C.Y., Waingmaw Township, Kachin State, Myanmar, November 15, 2016.

93 The document on file with Fortify Rights, December 2016 notes: "The World Food Programme-designed Food Consumption Score (FCS) assesses dietary diversity at the household level in order to support a wider examination of the levels of food access across a certain population group. To do so, it looks at the extent to which households have a diverse and nutritionally-balanced diet, assessing consumption of a range of food types at the household level in the preceding 7-day period. It assesses levels of consumption of cereals/tubers, pulses, vegetables, fruit, meat/fish, dairy, fat/oils and sugars, and rates households as having either 'poor,' 'borderline' or 'adequate' food consumption levels . . . The WFP-approved ration (rice, oil, salt and pulses) meets Sphere calorific requirements, and helps to support IDPs in reaching 'adequate' standards of food consumption, but does not on its own ensure 'adequate' levels on the FCS. If households only consume the provided food basket on a daily basis in the 7 days preceding the assessment, this household will score on the very upper end of the 'borderline' scale; 'adequate' food consumption would indicate a more diverse and balanced diet and indicate that the household has access to other sources of food." The document does not define what "poor" or "borderline" means.

94 Fortify Rights interviews with C.A. and C.M., Momauk Township, Kachin State, Myanmar, November 8 and November 11, 2016.

95 World Food Programme (WFP), *World Food Programme Myanmar Operational Report, Release #1/2017*, January 2017, https://www.wfp.org/sites/default/files/WFP%20Myanmar%20Operational%20Report__Release%201_2017.pdf (accessed August 9, 2018).

96 WFP, *Cash Based Transfers WFP Myanmar*, https://www.wfp.org/sites/default/files/Cash%20Based%20Transfer.pdf (accessed August 9, 2018), p. 1.

volunteer teacher Tangbau Hkawn Nan Tsin who Myanmar army soldiers raped and killed on January 19, 2015.[97] Now living in Jan Mai government-controlled camp, Marip Lu said: "I have eight family members, and we each receive 9,000 Myanmar Kyat (about US$7), but it's only enough to buy rice. Before [WFP] gave us rice and salt and other things, but now we have to earn money by ourselves to get those items."[98]

Commenting on the challenges associated with replacing direct food aid with cash assistance in KIA-controlled areas, one aid worker told Fortify Rights:

> There are a large number of areas, particularly in [the KIA-controlled areas], where people don't have access to markets, so cash is essentially useless to them because they can't buy anything. What we see is people becoming food insecure as a result or diverting [cash] to other uses like healthcare or education because those things are extremely difficult to access, especially in [the KIA-controlled areas].

Displaced Kachin have worried about food security for several years. In 2013, a 29-year-old Kachin man from Hka Wan Bang, Momauk Township—whom Myanmar soldiers tortured in 2011 after killing Thein Htun, a local fisherman, in front of him—told Fortify Rights: "Now we can't cultivate our fields and cannot go to our hometowns. We have been displaced like this for a long time. They give us food, but if they didn't give food to us, what would happen? We worry about that."[99]

Lack of Access to Adequate Healthcare

Due to restrictions on aid, access to adequate healthcare for displaced populations in Kachin State is limited. In 2016, fewer than half of all large IDP camps in rural settings throughout Kachin and northern Shan states had access to a clinic or hospital.[100] In camps where clinics do exist, shortages of medicine, supplies, and trained medical staff result in a lack of effective treatment for illnesses or provisions of psycho-social support. A 35-year old mother in Hpun Lum Yang IDP camp in KIA-controlled areas explained: "We can receive medical assistance in the camp, but it also depends on the pharmacy stock because sometimes they don't have sufficient medicine for every disease."[101]

Other displaced Kachin told Fortify Rights that the clinics in the camps are generally only equipped to address minor illnesses and have a limited variety of medicines available.[102] For example, "Nang," 53, told Fortify Rights of the situation of healthcare in Dum Bung IDP camp in KIA-controlled areas, saying: "For minor cases, like diarrhea, [the clinic doesn't] have enough medicine. They just give analgesics or paracetamol."[103]

97 Fortify Rights interview with A.E., Myitkyina Township, Kachin State, Myanmar, June 9, 2016.

98 *Ibid. See also,* Fortify Rights interview with A.K., Waingmaw Township, Kachin State, Myanmar, June 9, 2016; *KWAT and Legal Aid Network, Justice Delayed, Justice Denied: Seeking Truth about Sexual Violence and War Crime Case in Burma (With a Special Focus on the Kawng Kha Case, in Kachin Land)*, January 2016, http://www.burmalibrary.org/docs21/KWAT-2016-01-Justice_Delayed_Justice_Denied-en-red.pdf (accessed August 9, 2018).

99 Fortify Rights interview with D.F., Momauk Township, Kachin State, Myanmar, November 21, 2014.

100 Shelter/NFI/CCCM Cluster for the Kachin and Northern Shan States and the Joint IDP Profiling Service, Myanmar, *Kachin and Northern Shan States Camp Profiling, Rounds 1-3, Cross-Camp and Trend Analysis Report, 2013 – 2015*, January 2016, http://reliefweb.int/sites/reliefweb.int/files/resources/original_Myanmar_Report_final.pdf (accessed August 9, 2018), p. 17.

101 Fortify Rights interview with D.K., Momauk Township, Kachin State, Myanmar, November 17, 2016.

102 Fortify Rights interview with B.G., D.U., and D.Y., Momauk and Waingmaw townships, Kachin State, Myanmar, March 22 and November 20, 2016.

103 Fortify Rights interview with D.Y., Momauk Township, Kachin State, Myanmar, November 20, 2016.

Without access to adequate treatment, minor problems can become major problems for IDPs. For example, "Za Nor," 20, from Pa Kahtawng IDP camp in KIA-controlled areas, told Fortify Rights how her grandmother died from high blood pressure after regarding treatment in the camp clinic as futile. She said: "My grandmother used to go to the clinic very often, and all they gave her was paracetamol, so she stopped going . . . Her health got worse, and she passed away. She was about 80-years-old."[104]

A senior nurse at the Je Yang Hka IDP camp clinic in the KIA-controlled areas explained the challenges around providing effective treatment without adequate supplies. She said:

> We deliver about two children a month. The challenge is that we don't have many instruments, and we can't control hygiene. We can't sterilize the place very effectively, so sometimes babies get sick or jaundice. We don't have supplies to treat jaundice. In those cases, we refer to Laiza.[105]

She went on to describe deaths in childbirth due to easily treatable conditions. She said:

> Some children die of severe jaundice. Some mothers give birth in their house, so they get infected. After that, they are referred to the hospital, but we can't save them. Those people come here very late . . . The most recent case was a mother who gave birth to twins prematurely. The younger twin was very weak and died after two days. This happened during October [2016].[106]

When the camp clinic is not equipped to provide treatment, IDPs must travel to clinics or hospitals located outside the camp.[107] As 46-year-old "Nang Raw" in Pa Kahtawng IDP camp explained:

> There is a clinic here, and when we get sick, we can go there. When it is a serious case, like pregnancy, [the clinic staff] transfer us to Maijayang Hospital [located almost two miles from Pa Kahtawng IDP camp]. If it is a very serious case, we can go to Mangshi Hospital [located in Yunnan Province, China], which takes around three hours of travel.[108]

The costs of treatment and travel create additional challenges for IDPs that require treatment outside the camp.[109] For example, a 52-year-old man in Hpunlum Yang IDP camp told Fortify Rights: "Two years ago, my wife got sick, so we spent a lot of money to cure her. We used all our finances, and now we are broke, and she died. She died of stomach cancer. We had to spend a lot on travel to reach the hospital in Myitkyina and Laiza."[110]

"Gam Awng," 53, explained how an absence of effective treatment for one of his children at the camp clinic in Dum Bung IDP camp forced the family to undertake costly travel to Laiza to seek medical care:

> [One of my children] got a rash on their whole body, but the clinic didn't have any medicine for it, so we had to go to Laiza. The clinic provided 50,000 Myanmar Kyat (about US$37) for transportation to Laiza, but it wasn't enough. We had to spend a lot of money.[111]

104 Fortify Rights interview with C.L., Momauk Township, Kachin State, Myanmar, November 10, 2016.

105 Fortify Rights interview with C.X., Waingmaw Township, Kachin State, Myanmar, November 15, 2016.

106 *Ibid.*

107 Fortify Rights interview with F.P., Yangon, Myanmar, December 12, 2017.

108 Fortify Rights interview with B.H., Momauk Township, Kachin State, Myanmar, March 22, 2016.

109 Fortify Rights interviews with C.J., D.J., and F.P., Momauk Township, Kachin State and Yangon, Myanmar, November 10, 2016 to December 12, 2017.

110 Fortify Rights interview with D.J., Momauk Township, Kachin State, Myanmar, November 17, 2016.

111 Fortify Rights interview with D.Y., Momauk Township, Kachin State, Myanmar, November 20, 2016.

Even cases that are referred to the hospital or outside clinic may not receive effective treatment. For example, a 32-year-old mother of four living in Dum Bung IDP camp in KIA-controlled areas told Fortify Rights:

> During the last year, my eldest son became severely sick. It was very difficult for me. He had to go to the clinic several times, and I am responsible for the family. He was suffering from beri beri [a disease caused by a vitamin B-1 deficiency]. For this kind of sickness, we tried to go to the hospital, but the treatment was not suitable, so we changed to herbal medicine. He was almost paralyzed from the sickness . . . If [the hospital] has the medicine, they can provide a cure. But in my son's case, they didn't have effective treatment.[112]

Camp clinics and hospitals in KIA-controlled areas do not receive funding from the Government of Myanmar and are supported entirely by the KIO and humanitarian aid organizations.[113] The Director of Laiza Hospital explained the challenges they are facing in providing healthcare to the estimated 40,000 IDPs in KIA-controlled areas:

> During the last two or three months [the KIO] reduced the budget a little because of the conflict. At that time, the supply from the NGOs could not reach here, so we have to buy the supplies ourselves. If it goes on for a long time, it will be a problem for us. We buy supplies from China, and we do not know the quality of the drugs . . . If the other NGOs are blocked for six months or a year and there is conflict around here, the budget will be reduced further than before.[114]

There is evidence that lack of adequate food provisions and healthcare is impacting the health of IDPs. For example, a June 2016 report by the Durable Peace Programme Consortium—a coalition of seven humanitarian aid organizations—found in a study of 80 IDP camps and villages across 12 townships of Kachin State indications of "poor health across all interviewed groups with sickness being common and prolonged, suggesting a strong need to address health issues."[115]

Fortify Rights also documented how displaced Kachin, including survivors of violent human rights violations, were unable to access medical care for symptoms associated with severe depression, anxiety and post-traumatic stress disorders, and untreated physical pain and other complications from torture by Myanmar authorities.

For instance, "Bawk Li," 45, is a mother of five from Mung Ding Pa village in Mansi Township and lives in Robert IDP camp in government-controlled territory. Myanmar Army soldiers killed her husband in 2014. In November 2014, she told Fortify Rights:

> He was climbing down from the house, and the Burmese soldier shot him on the spot, and he died there. Until now, I don't know what happened to my mother and father. I am so depressed and lonely . . . I worry about my children now. Even though I have a body, I feel like I don't have a mind. I am so sad.[116]

Despite her stated depression and traumatic-stress, Bawk Li had no access to medical care at the time she spoke to Fortify Rights.[117] Only one survivor of torture interviewed by Fortify Rights from 2013 to 2014 reported having seen a medical professional, and some reported confusion about whether they would be able to access medical attention in camps for the displaced.[118]

112 Fortify Rights interview with D.T., Momauk Township, Kachin State, Myanmar, November 20, 2016.

113 Fortify Rights interview with F.Q., Yangon, Myanmar, January 27, 2018.

114 Fortify Rights interview with D.S., Waingmaw Township, Kachin State, Myanmar, November 19, 2016.

115 Durable Peace Programme Consortium, *Durable Peace Programme Baseline Report, Kachin, Myanmar*, June 2016, https://myanmar.oxfam.org/sites/myanmar.oxfam.org/files/file_attachments/Durable%20Peace%20Programme%20Baseline%20Report.pdf (accessed August 9, 2018), p. 33.

116 Fortify Rights interview with E.F., Bhamo Township, Kachin State, Myanmar, November 23, 2014.

117 *Ibid.*

118 Fortify Rights, *"I Thought They Would Kill Me."*

Some Kachin survivors expressed a range of suicidal ideations and had not accessed medical professionals.[119] A 42-year-old Kachin mother of seven children fled her village along with her family one month after the armed conflict resumed in 2011. Due to deprivations in humanitarian aid, her husband went to Hpakant town in Hpakant Township to work in jade mines, leaving her alone to care for their children, which she said prevented her from earning a living.[120] She told Fortify Rights: "My husband and I are living away from each other and now I am fearful because I have no one to support me, no one to depend on. When I look around me, all I see are young children. I have thought about killing myself."[121]

She had not seen a mental health medical professional and expressed concerns about the available medical services in the camp:

> Even though there is a medical provider in this site, the right varieties of medicines are not provided here. When my young girl is ill, she is not able to get medicine here. The clinic does not have the medicines to cure the illnesses here, so I have to go outside to get medicine to cure the baby's illness, and I can't afford that. One doctor told me the youngest baby needs to go to general hospital and is showing symptoms of lung cancer that needs to be treated in the general hospital. I can't afford that.[122]

Several internally displaced survivors of human rights violations expressed a desire to seek treatment and consult medical professionals but had no previous access to medical professionals or the resources to do so.[123] Displaced Kachin with whom Fortify Rights spoke expressed a variety of understandings that suggested they regarded health care as an out-of-reach privilege rather than a right.[124]

Lack of Access to Adequate Shelter

Fortify Rights documented inadequate shelter for internally displaced Kachin in camps located in government and KIA-controlled territory from 2013 to 2018 due in large part to government-imposed restrictions on the delivery of humanitarian aid to Kachin State.

A 42-year-old Kachin mother of four in Je Yang Hka IDP camp in KIA-controlled territory explained to Fortify Rights in 2016:

> These shelters have been here for three years. The materials used for construction are not good for building a home. This is not real bamboo, so most of the house posts are rotten or destroyed by mold. We have to fix them. In the dry season, I worry about the strong winds. The shelter doesn't have strong footage in the ground. In some blocks, they are trying to replace these poles, but we haven't received [them] yet."[125]

Most of the displaced in Kachin State live in shelters constructed with metal or tin roofing and plywood walls.[126] Some shelters for the displaced in Kachin State have plywood floors, but many

119 In 2014, Fortify Rights referred mental health cases to organizations working in IDP camps and relevant vicinities. Fortify Rights also conducted research in accordance with the methods and ethical standards outlined in the Istanbul Protocol, which provides international guidelines for the effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment or punishment.

120 Fortify Rights interview with C.E., Myitkyina Township, Kachin State, Myanmar, November 17, 2014.

121 *Ibid.*

122 *Ibid.*

123 Fortify Rights interviews with displaced Kachin, Kachin State, Myanmar, 2013-2014, 2016-2018. *See also,* Fortify Rights, *"I Thought They Would Kill Me".*

124 *Ibid.*

125 Fortify Rights interview with C.V., Waingmaw Township, Kachin State, Myanmar, November 15, 2016.

126 Durable Peace Programme Consortium, *Durable Peace Programme Baseline Report,* p. 32.

shelters have dirt floors, increasing the likelihood of communicable disease.[127] These shelters do not adapt well to seasonal extremes in the weather, creating further hardships for their residents.[128] As a 38-year-old resident of Pa Kahtawng IDP camp explained to Fortify Rights in 2016: "In winter, it's very cold because the roof collects condensation and it falls on us. In the summer, it's very, very hot."[129]

The estimated 97,000 IDPs in Kachin State—as opposed to the 106,000 estimated in Kachin and northern Shan states combined—are largely housed in multi-family block shelters, referred to as "long shelters," with each family sharing an eight-foot by eight-foot room. "Cecilia," 39, living in Pa Kahtawng IDP camp described the challenges of living in the shelters, saying:

> The house is very small and very close to neighbors, and there are a lot of family members here . . . Everywhere there are people. There are always people. Even when you take a bath or you need to change your clothes, you don't even have space to do that. Where is our dignity?[130]

She went on to describe the impact the lack of privacy has on the Kachin culture: "In our culture, we cannot change clothes in front of our parents. But here, if you don't change clothes in here, where can we? This affects how we pay respect to our children and pay respect to each other."[131]

"Ze Dau," 37-year old father of six who lives in Woi Chyai IDP camp in Waingmaw Township also described the adjustment to life in the IDP camp, telling Fortify Rights in 2016: "We [Kachin] are accustomed to living in big compounds, but here, everybody is stuck together. It's very difficult to get used to it. In this long shelter, we have five families."[132]

Humanitarian groups operational in Kachin State corroborated these findings. On July 11, 2018, the Joint Myanmar Shelter/Non-Food Items/Camp Coordination and Camp Management Cluster—a group of U.N. agencies and humanitarian aid organizations operational in Kachin State—published data detailing the inadequate provision of shelter in camps for the displaced in Kachin State.[133] According to the data, only 20 percent of IDPs lived in shelters that met basic standards in Waingmaw Township, while 28 percent of the almost 12,800 IDPs in Myitkyina Township lived in adequate shelters.[134] Humanitarian agencies are currently unable to provide any shelter coverage to the more than 3,500 individuals displaced in Momauk, Sumprabum, Shwe Gu, and Puta-O townships.[135]

In December 2016, the Myanmar Humanitarian Country Team noted: "Many of the IDP shelters that were put up in 2011 are in desperate need of repair, particularly in the more remote areas bordering China where they are exposed to severe weather condition [sic]."[136]

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127 *Ibid.*

128 Fortify Rights interviews with C.R. and D.K., Momauk Township and Waingmaw Township, Kachin State, Myanmar, November 12 and 17, 2016.

129 Fortify Rights interview with C.R., Momauk Township, Kachin State, Myanmar, November 12, 2016.

130 Fortify Rights interview with C.D., Momauk Township, Kachin State, Myanmar, November 9, 2016.

131 *Ibid.*

132 Fortify Rights interview with D.F., Waingmaw Township, Kachin State, Myanmar, November 16, 2016.

133 Rakhine and Kachin/Shan Shelter NFI CCCM Cluster, *Shelter-NFI-CCCM Kachin Northern Shan Cluster Analysis Report June 2018*, July 11, 2018, https://www.sheltercluster.org/kachinshan/documents/shelter-nfi-cccm-kachin-northern-shan-cluster-analysis-report-june2018 (accessed August 9, 2018).

134 *Ibid.*

135 *Ibid.*

136 Myanmar Humanitarian Country Team (United Nations and Partners), *2017 Humanitarian Needs Overview: Myanmar*, p. 10.

Lack of Access to Essential Items

"We don't have many warm sheets or bedding or blankets. We depend on what we have . . . In earlier years, there were some groups providing warm clothes and blankets. We rely on donations for this. It has been about two years since we stopped getting this support."

> —"Lu Ja," a 56-year-old Kachin woman living in Nhkawng Pa IDP camp—a high altitude camp in KIA-controlled territory where temperatures can drop below freezing

Displaced Kachin living in camps in Kachin State told Fortify Rights of shortages in essential items, notably bedding, blankets, clothing, and firewood.[137] For example, a mother of four living in Dum Bung IDP camp explained the situation for her family: "For my family, clothes are okay, but we don't have a lot of blankets or beds. We arrived here very late, but those who arrived early received sufficient items for warmth. No one is supporting for these items now."[138]

Another 53-year old woman living in Dum Bung IDP camp since December 2011 told Fortify Rights in 2016: "We're still hoping someone will provide warm clothes for us and bedding and blankets. For elderly people, it's difficult to stand the cold in this area."[139]

A 43-year-old woman also living in Dum Bung IDP camp described the need for warm clothing and blankets: "Because we are near the stream, the wind carries the chill from there. We can't say there's enough bedding, blankets, or warm clothes. As long as we don't have these items, we have to make do. There is no one providing for this."[140]

A child protection officer working with a humanitarian aid organization told Fortify Rights of the effect of the shortages on children. She said:

> Children don't have enough winter clothes. They wear the same clothes for many years. The clothes are getting small, and they don't change their winter clothes. They have to wear the same clothes for months because they only have one shirt, so they can't wash it. This affects their hygiene and health. Every camp I visit in the winter, there are children in this situation.[141]

A teacher from Pa Kahtawng IDP camp in the KIA-controlled area similarly shared the impact on children, saying:

> Now winter is coming. Some children don't even have long clothes. Some children can't even wear slippers. They are just bare foot all day. I think this is because we are not receiving support anymore . . . Children come to class in t-shirts in the winter. They have to put their hands inside their shirt to keep warm. They need to carry a blanket to go to school. They have to do whatever they can to keep themselves warm.[142]

In May 2017, the Global Shelter Cluster published data stating that more than 80 percent of IDPs in Kachin and northern Shan states in need of winter clothes were not receiving them.[143]

137 Fortify Rights interviews with C.K., C.M., D.T., D.V., D.Y., D.Z., E.F., and E.G., Waingmaw and Momauk townships, Kachin State, Myanmar, November 10 to November 21, 2016; Fortify Rights interviews with D.Z., F.C., and F.D., Waingmaw and Myitkyina townships, Kachin State, Myanmar, 2014.

138 Fortify Rights interview with D.V., Momauk Township, Kachin State, Myanmar, November 20, 2016.

139 Fortify Rights interview with D.Y., Momauk Township, Kachin State, Myanmar, November 20, 2016.

140 Fortify Rights interview with E.G., Momauk Township, Kachin State, Myanmar, November 21, 2016.

141 Fortify Rights interview with C.M., Momauk Township, Kachin State, Myanmar, November 11, 2016.

142 Fortify Rights interview with C.K., Momauk Township, Kachin State, Myanmar, November 10, 2016.

143 *See,* Global Shelter Cluster, *Shelter-NFI-CCCM Kachin Northern Shan Cluster Analysis Report 1st March 2017,* May 19, 2017, http://www.sheltercluster.org/kachinshan/documents/shelter-nfi-cccm-kachin-northern-shan-cluster-analysis-report-1st-march-2017 (accessed August 9, 2018).

Kachin residents of IDP camps in government-controlled territory also told Fortify Rights they faced difficulty in obtaining firewood—an essential non-food item. A Kachin pastor in Mai Na IDP camp, displaced from Aung Ja village in 2012, told Fortify Rights in 2014: "If we stay long in this camp, we will need firewood. Private companies occupy most areas around here, so it's very difficult to get firewood."[144]

Displaced Kachin women reported on the risks of collecting firewood from outside the camp—in many cases, a daylong task—saying that they would sometimes be subject to theft.[145]

Lack of Access to Adequate Water

Fortify Rights documented a lack of access to adequate water in IDP camps in Kachin State. Water shortages are largely the result of poor plumbing and the inability of camp residents to replace or repair damaged piping, which are exacerbated by restrictions on humanitarian aid.[146]

A member of the camp Water, Sanitation, and Hygiene (WASH) Committee in the largest IDP camp in KIA-controlled territory, Je Yang Hka IDP camp in Laiza, explained the challenges with maintaining adequate water supplies in the camp:

> The biggest challenge we have is the water pipes. They are plastic. They were intended for temporary use, and there are a lot of leakages because of this. We don't know how long we will stay here, so we haven't set up metal pipes. If we could afford them, the leakages and problems would be solved.[147]

An aid worker with an international humanitarian aid organization operational in Kachin State also noted that a lack of technical support exacerbated challenges with maintaining water supplies, saying: "There's a capacity issue. Engineering is difficult, and there's not a ton of engineers in Kachin and Shan [states] who can work on these issues and maintain certain standards."[148]

"Tu Sin," 46, is a resident of Pa Kahtawng IDP Camp in KIA-controlled areas and explained that water shortages pervade all aspects of daily life for IDPs: "There is a problem with the water—water for the toilets, to take baths, and for drinking water. There is not enough water."[149]

Displaced Kachin told Fortify Rights how they rely on rivers and streams for water when there are shortages. For example, a 35-year old mother from Hpun Lum Yang IDP camp in the KIA-controlled area, said:

> We take water from the mountain stream for the water supply system, but sometimes it breaks down. If there is heavy rain, there are landslides and it blocks the pipe, so we get a shortage for two or three days. At that time, we can rely on the stream nearby, but we have to spend a lot more time washing things. For the elderly, it is very difficult to do that.[150]

In June 2018, the Myanmar WASH Cluster—a group of humanitarian aid organizations supporting water, sanitation, and hygiene programs for displaced populations in Kachin State—reported that none of the displaced persons targeted for assistance in Sumprabum Township had access to adequate water and that 51 percent and 45 percent of IDPs in Tanai and Chipwi townships, respectively, lacked access to adequate water.[151]

144 Fortify Rights interview with D.Z., Waingmaw Township, Kachin State, Myanmar, November 14, 2014.

145 *See, for example,* Fortify Rights interview with C.B., Myitkyina Township, Kachin State, Myanmar, November 17, 2014.

146 Fortify Rights interviews with D.D. and D.K., Waingmaw and Momauk townships, Kachin State, Myanmar, November 16 and November 17, 2016.

147 Fortify Rights interview with C.Z., Waingmaw Township, Kachin State, Myanmar, November 15, 2016.

148 Fortify Rights interview with F.N., Yangon, Myanmar, November 21, 2017.

149 Fortify Rights interview with B.H., Momauk Township, Kachin State, Myanmar, March 22, 2016.

150 Fortify Rights interview with D.K., Momauk Township, Kachin State, Myanmar, November 17, 2016.

151 See WASH Cluster, *Kachin State (2018-Qtr 1- 4W Analysis, as of 31 March 2018),* June 2018, http://themimu.info/sites/themimu.info/files/documents/4W_Snapshot_Kachin_WASH_Cluster_Q1_2018.pdf (accessed August 9, 2018).

These problems have persisted for years. In 2014, "La Luk," a 45-year-old Kachin mother of four in a displacement camp in government-controlled Myitkyina told Fortify Rights: "Now we really need water. There is not enough water . . . Water is the most important need now."[152]

"Ah Lu," 36, in Shwe Zet IDP camp in government-controlled territory, similarly told Fortify Rights in 2014:

> Water is the biggest problem here because we all depend on one well. We use it for cooking food and everything else. In March and April, we had no water; the well was dry. In the corner, we have one well, and in another area, there is one well. We have two options. For cooking, we use this well. For clothes and washing, we use the river.[153]

Displaced Kachin in Bhamo Township also told Fortify Rights in 2013 and 2014 that they lacked access to adequate water and had no alternative sources.[154]

In 2014, when displaced Kachin in government-controlled territory explained the lack of water to Fortify Rights, U.N. agencies and humanitarian aid organizations had access to their camps. A 31-year-old displaced Kachin man in Myitkyina Township told Fortify Rights in 2014:

> The problem here is water. Now, we have more people, and there is a problem with water and toilets. We have a water tank, and we draw water, but the problem is, we have to use a lot of water here. When we want water and there is nothing left in the tank, it's a problem. We explained the problem with water here to people and, up to now, there has been no solution. We talk about that within our committee. We also spoke with UNHCR [the U.N. High Commissioner for Refugees]. They said they would do it for us. Every time they come here, they say, 'We will do it. It will be fine', but then nothing happens.[155]

Lack of Access to Proper Sanitation

From 2013 to 2018, displaced Kachin described to Fortify Rights how they lacked adequate toilets and the necessary equipment to keep toilets functioning properly.[156] For example, a 39-year old mother of four in Pa Kahtawng IDP camp in Momauk Township explained in 2016: "The toilets are not enough. We only have about 20 toilets, but there are hundreds of people."[157]

A 27-year old mother living in Woi Chyai IDP camp in Waingmaw Township similarly told Fortify Rights in 2016: "In the toilets, the sink holes are very small and get full very quickly. We have only four toilet cells for this whole block. It's insufficient."[158]

Another displaced Kachin woman, "Ma Ki," 37, explained that many of the toilets in Nhkawng Pa IDP camp are in need of repair and upkeep, but the community lacks the necessary tools. She said:

> Some toilets were built in 2014, so now they are getting old . . . When the toilets were built, there were separate ones for men and women. But when some toilets were ruined, we couldn't continue the separation. We just share the good ones. Now, the toilets are getting full, and we need to evacuate them. But we don't have the machine to do it. When a toilet gets full, we just abandon it."[159]

152 Fortify Rights interview with C.B., Myitkyina Township, Kachin State, Myanmar, November 17, 2014.

153 Fortify Rights interview with C.C., Myitkyina Township, Kachin State, Myanmar, November 17, 2014.

154 *See,* Fortify Rights interview with E.Z., Myitkyina Township, Kachin State, Myanmar, November 22, 2014. *See also,* Fortify Rights interviews with C.B., C.C., C.D., C.F., C.I., D.F., E.Z., and E.C., Myitkyina and Bhamo townships, Kachin State, Myanmar, November 17 to 22, 2014.

155 Fortify Rights interview with E.C., Myitkyina Township, Kachin State, Myanmar, November 22, 2014.

156 Fortify Rights interviews with C.D. and E.A., Momauk Township, Kachin State, Myanmar, November 9 to 21, 2016.

157 Fortify Rights interview with C.D., Momauk Township, Kachin State, Myanmar, November 9, 2016.

158 Fortify Rights interview with D.E., Waingmaw Township, Kachin State, Myanmar, November 16, 2016.

159 Fortify Rights interview with E.A., Momauk Township, Kachin State, Myanmar, November 21, 2016.

When Fortify Rights met "La Luk," 45, in 2014, she had been living in an IDP camp in Myitkyina Township for two years. She told Fortify Rights: "We don't have enough toilets here and we have just one water well, so in the summer we have no water. There are over 400 people living here."[160]

A 31-year-old Kachin woman, displaced to a camp in government-controlled territory in Myitkyina Township following Myanmar Army attacks near Inpon village in 2011, told Fortify Rights:

> There is an imbalance between the toilets and people here. We have to wait a long time to go to the toilet. The old ones need to be moved, and we need new toilets but there is no space to build new toilets. No one has come to discuss this with us.[161]

In 2014, displaced Kachin in Jan Mai Kawng IDP Camp in Myitkyina Township estimated there were approximately two toilets for every 60 residents.[162]

The camp leader in Mai Na IDP camp in Myitkyina Township reported in 2014 that they had approximately 70 toilets for nearly 2,000 residents:

> We have two things that are challenging. The first is water. This camp has a big population, and we need more water . . . and we have a problem with the toilets . . . We have no experience with these things, so we had a big problem with diarrhea. In one day, we had 30 people with diarrhea. The population size and number of toilets is not balanced. The cleaning of the toilets is also insufficient. We have no time to clean the toilets. Some of the children can't wait for the toilet to be free, so most just go outside. We have a problem with the flies. Right now, there are 70 toilets. At first, we had only five toilets and then 15, and then we built more.[163]

As with other items, displaced Kachin reported an irregular supply of essential personal hygiene products, such as soap, shampoo, toothpaste, and feminine hygiene products.[164] A 45-year-old displaced Kachin woman from Woi Chyai IDP camp in KIA-controlled areas explained:

> If METTA [a national humanitarian aid organization] can provide supplies in a timely manner, we get hygiene items. But for several months, they have stopped . . . Earlier this year [in 2016], there was a gap of about four months, and then after that, they supplied and there was another gap of three months, and now we recently received supplies again. It's not regular.[165]

Some camps have experienced longer gaps in supplies. For example, "Bawk Ja," a mother of seven children living in Hpunlum Yang IDP camp in Momauk Township, said:

> It has been two years since anyone provided personal hygiene items. [When humanitarian aid organizations do provide items], children are prioritized, so they just give to the children. The parents have to save money for these things. We don't have sufficient money for this, so we are just using what we have.[166]

A 32-year old mother of four in Dum Bung IDP camp in Momauk Township similarly described the need to share scarce hygiene items. She said:

> For personal hygiene items, they are scarce, and they don't come regularly . . . We have simple soap for the shower and for washing clothes and toothpaste, but not much. It is not sufficient for everybody. At one time, we will have one shower-soap, one stick of washing soap, and one toothpaste for everyone.[167]

160 Fortify Rights interview with C.B., Myitkyina Township, Kachin State, Myanmar, November 17, 2014.

161 Fortify Rights interview with C.D., Myitkyina Township, Kachin State, Myanmar, November 17, 2014.

162 Fortify Rights interview with C.F., Myitkyina Township, Kachin State, Myanmar, November 18, 2014.

163 Fortify Rights interview with C.I., Waingmaw Township, Kachin State, Myanmar, November 18, 2014.

164 Fortify Rights interviews with D.K. and D.T., Momauk Township, Kachin State, Myanmar, November 17 and November 20, 2016.

165 Fortify Rights interview with D.D., Waingmaw Township, Kachin State, Myanmar, November 16, 2016.

166 Fortify Rights interview with E.G., Momauk Township, Kachin State, Myanmar, November 21, 2016.

167 Fortify Rights interview with D.T., Momauk Township, Kachin State, Myanmar, November 20, 2016.

When supplies are not provided in the camp, residents must spend limited resources on essential items outside the camp. For example, a former teacher in Pa Kahtawng IDP camp described the financial burden of purchasing feminine hygiene products outside the camp. She told Fortify Rights: "It's expensive. I have three daughters and myself. Every month we need to use these things, so we have to spend a lot . . . All women's things, we need to buy from outside. No one is helping with that."[168]

There are no indications these problems have improved over time. In June 2018, the Myanmar WASH Cluster found that 63 percent of the displaced population in Tanai Township lacked access to adequate sanitation and that none of the more than 39,000 IDPs in Chipwi, Hpakant, Mogaung, Mohnyin, Myitkyina, Sumprabum, Tanai, and Waingmaw townships had access to adequate sanitation or hygiene materials.[169]

PROTECTION CONCERNS

Without necessary aid and assistance in IDP camps, displaced residents take risky journeys, including through active armed-conflict zones and across the border to China, in search of food and essential items.[170] These IDPs on the move are at a heightened risk of being caught in the crosshairs of fighting, detonating landmines, extortion and arrest by Myanmar Army soldiers, exploitation by employers in China, and arbitrary arrest and detention by Chinese authorities.

Landmines

"The landmine doesn't know who is an enemy or friend."

—KIA Officer, Maijayang, Kachin State, 2016

Landmines pose a serious threat to Kachin and Shan civilians, particularly to displaced persons traveling outside the camps. Despite the signing of the NCA in October 2015, which committed all parties to end the use of landmines and cooperate on mine-clearance operations, new landmines continue to be laid in Kachin and Shan states.[171]

Fortify Rights documented the use of landmines in Kachin State since 2013. "Moon" is a 43-year-old Kachin who lost her left leg on November 3, 2016 after stepping on a landmine while working as a cattle trader outside the Woi Chyai IDP camp in the KIA-controlled area. She said:

> Previously, we had some cattle trade in [Namsanyang village], but since May or June [2016], the conflict intensified, so no one traveled on that road anymore . . . The trade only started again in November. I was wounded on November 3 . . . In that area where it happened, it was west of Namsanyang, which means it is a mixed situation. Both sides [to the armed conflict] are there, but no one is there permanently.[172]

"Moon" told Fortify Rights that neither she nor others working in the area were aware of the presence of landmines prior to her injury: "In earlier times, they used to give us warnings or signs, but it was a long time [since the conflict] in that area, and we didn't expect that landmines would still exist."[173]

168 Fortify Rights interview with C.R., Momauk Township, Kachin State, Myanmar, November 12, 2016.

169 WASH Cluster, *Kachin State (2018 Qtr 1-4W Analysis, as of 31 March 2018).*

170 Fortify Rights interviews with D.Q. and D.R., Waingmaw Township, Kachin State, Myanmar, November 18 and November 19, 2016. *See also,* Myanmar Humanitarian Country Team (United Nations and Partners), *2017 Humanitarian Needs Overview,* p. 9-10. Protection Sector Kachin, *Update Note Humanitarian Access in Kachin State*, p. 2.

171 Htoo Thant, *"Tatmadaw Insists Landmine Use Kept Within Reasonable Minimum,"* The Myanmar Times, September 13, 2016, https://www.mmtimes.com/national-news/22475-tatmadaw-insists-landmine-use-kept-within-reasonable-minimum.html (accessed August 9, 2018).

172 Fortify Rights interview with D.R., Waingmaw Township, Kachin State, Myanmar, November 19, 2016.

173 *Ibid.*

She also described the lack of services and support for landmine survivors in the camp, saying:

> No one has talked to me about the recovery and rehabilitation process. We have to face the situation. It happened when I was trying to make money to survive. I don't have anyone to blame, but I don't know what my future looks like. We have to accept the situation, strengthen ourselves, and overcome the hardship.[174]

"Sai Kam," 33, an ethnic Shan living in Shatapru IDP camp in government-controlled territory since 2012 also injured his leg after stepping on a landmine when he returned to his home village of Kandowyang in Waingmaw Township. His injury compromised his ability to continue his work as a truck driver and support his family of 11. He said:

> One of my legs has been damaged because of a landmine, so it's difficult for me to drive. It happened in February 2015. I went back to my village last year, and I wanted to go to my farm, and I stepped on the landmine there. I was in the orange orchard, and I stepped across a wire and it exploded . . . I saw another three people in the hospital who had stepped on landmines.[175]

Fear of landmines prevents many displaced Kachin and Shan from returning to their homes, as 20-year-old "Brang San," explained: "Even if we are allowed to go back, villagers could get injured by landmines. I miss my home. All the places where I played when I was young are now mine fields."[176]

Landmines are indiscriminate. They not only affect displaced persons, but they also complicate operations for humanitarian aid organizations, whose work is already overburdened due to government travel restrictions. As one humanitarian aid worker explained:

> If we go the short way, it is very risky. We don't know where the landmines are. We have to go through the forest, and the car that takes us to Laiza is waiting on the other side. We have to walk through the forest for nearly 30 to 40 minutes. The way is not [always] the same—sometimes this way, sometimes that way. We don't know whether landmines are there or not. These landmines are on the Myitkyina-Laiza route. Because of the military post, every time they change their route. It's very risky for the staff and people.[177]

Fortify Rights documented the use of landmines in Kachin State since 2013. "Hpau N.," 31, a displaced Kachin in government-controlled Bhamo Township, told Fortify Rights in 2014:

> Even if we get peace and a ceasefire, it will still be difficult to go back. We need to clear the areas, so we can go home. They should clear the landmines. Not just from the KIO, but also from the Myanmar troops. The Myanmar troops also use a lot of landmines here. When I say clearing the areas, I also mean we want all soldiers to be gone from our place. I worry about the landmine problem in the upper part of Mansi Township. The KIO removes them when there is no danger from the government troops, but unfortunately, if the one who planted the landmines is killed, they lose the locations and that is very dangerous. We don't know who keeps track of where the landmines are located.[178]

Demonstrating the indiscriminate nature of landmines, in Bhamo Hospital in 2013, Fortify Rights documented two separate landmine casualties—a 17-year-old ethnic Kachin boy from Mung Ding Pa village in Mansi Township and an eight-year-old ethnic Burman boy from Kawng village

174 *Ibid.*

175 Fortify Rights interview with A.M., Myitkyina Township, Kachin State, Myanmar, June 11, 2016.

176 Fortify Rights interview with C.L., Momauk Township, Kachin State, Myanmar, November 10, 2016.

177 Fortify Rights interview with A.B., Myitkyina Township, Kachin State, Myanmar, June 8, 2016.

178 Fortify Rights interview with E.C., Bhamo Township, Kachin State, Myanmar, November 22, 2014.

in Bhamo Township.[179] Both boys sustained serious injuries and were being treated at the hospital on November 24, 2013, where the children's parents spoke separately to Fortify Rights.[180]

Most displaced Kachin interviewed by Fortify Rights in 2013 and 2014 said no one had spoken to them about protecting themselves against landmines—not aid workers, Myanmar officials or soldiers or KIA officials. "No one has come to talk about getting rid of the landmines," said the camp leader in Jan Mai Kawng IDP Camp, Myitkyina Township in 2014.[181] However, three displaced Kachin and an ethnic Burman resident of Kachin State told Fortify Rights in 2013 and 2014 that Myanmar Army soldiers and KIA soldiers warned them about landmines in particular areas while they were in their villages or in transit on foot.[182] These warnings appeared to have been happenstance—for example, as residents passed soldiers on foot—and not communicated systematically to civilians.[183]

In April 2016, the U.N. Secretary General attributed half of the child casualties of war in Myanmar to landmines and other explosive remnants of war.[184] In May 2017, the International Committee of the Red Cross identified the continued use of antipersonnel landmines and unexploded ordnance as a key obstacle preventing displaced communities from returning to their places of origin in northern Myanmar.[185] In a survey undertaken by the Durable Peace Programme Consortium more than 95 percent of IDPs in the KIA-controlled areas and more than 90 percent of IDPs in government-controlled areas said they wanted to return to their homes or land.[186] The report also noted that, "it may be unsafe to return due to landmines, close proximity to military bases and/or ongoing skirmishes. Therefore, addressing safety issues is paramount for supporting returns."[187]

Despite the indiscriminate nature of landmines, their unlawfulness, and significant impacts landmines have on civilians, the Myanmar Army and KIA continue to lay new landmines. In September 2016, the Government of Myanmar's Deputy Minister of Defense Major General Myint Nwe told the Myanmar Parliament that the Myanmar Army continued to use landmines in armed conflicts in the country.[188] In 2013, former Myanmar President Thein Sein said the military needed "to use landmines in order to safeguard the life and property of people and self-defense."[189] Representatives from the KIA also confirmed to Fortify Rights that they use antipersonnel landmines.[190]

179 Fortify Rights interview with F.A., Bhamo Township, Kachin State, Myanmar, November 24, 2013.

180 *Ibid.*

181 Fortify Rights interview with C.G., Myitkyina Township, Kachin State, Myanmar, November 18, 2014.

182 Fortify Rights interviews with Z.G., A.I., F.A., and E.E., Momauk and Bhamo Townships, Kachin State, Myanmar, September 7, 2013 to November 13, 2014.

183 *Ibid.*

184 U.N. Secretary-General (UNSG), *Children and Armed Conflict: Report of the Secretary-General*, U.N. Doc. A/70/836–S/2016/360, April 20, 2016, http://www.refworld.org/docid/575535f04.html (accessed August 9, 2018), para. 103.

185 "For Myanmar's Displaced, Landmines Stand In The Way Of Returning Home," International Committee of the Red Cross (ICRC), article, May 8, 2017, https://www.icrc.org/en/document/myanmars-displaced-landmines-stand-way-returning-home (accessed August 9, 2018).

186 Durable Peace Programme Consortium, *Durable Peace Programme Baseline Report*, p. 27.

187 *Id.* at p. 28.

188 Htoo Thant, "Tatmadaw Insists Landmine Use Kept Within Reasonable Minimum," *The Myanmar Times*.

189 "Establishment of ASEAN Community is Not Ultimate Goal of ASEAN But a Milestone Towards Stable, Peaceful and Prosperous Region," *New Light of Myanmar*, November 19, 2012, http://www.burmalibrary.org/docs14/NLM2012-11-19.pdf (accessed August 9, 2018).

190 Fortify Rights interviews with B.B. and B.S., Momauk Township, Kachin State, Myanmar, March 20 and March 30, 2016.

Fortify Rights was unable to speak to any Myanmar Army soldiers regarding the use of landmines in Kachin State. However, a senior ranking officer of the KIA explained the KIA's rationale for the continued use of landmines:

> We have an imaginary line. When the [Myanmar Army] are getting too aggressive and try to cross the line, there will be landmines and explosives. It is a very effective tactic if used properly. In the past, some of our troops have lost their lives using landmines. But if used properly, it's very effective to stop the Tatmadaw from crossing the line.[191]

The officer went on to describe the inadequacies of their protocol for mapping of landmines:

> There is a bomb squad. They are specially trained in these kinds of explosives, but they don't always follow discipline. Sometimes, they drink and that's when accidents happen. Sometimes they test the bombs and it's okay, but other times, they die with the bombs. The problem is when they die, no one knows where the bombs are being planted. That's why there are so many still unexploded bombs.[192]

KIA soldiers also receive little training or information on landmines. A 35-year former KIA soldier whose left leg was amputated at the knee after he stepped on a landmine in Loh Htan village, Waingmaw Township during fighting with the Myanmar army, told Fortify Rights:

> We didn't get any information about whether there would be landmines. We just had to go and find out. The place I was in was not considered serious. They didn't think the threat of landmines was big. We got some basic training, but we still didn't know how to deal with the situation.[193]

In 2013, a senior KIA official in the 3rd Brigade defended the KIA's use of landmines, telling Fortify Rights:

> I have three points to make on the issue of landmines. First, the KIA uses battery-operated landmines, and this battery only lasts a maximum of six months. But in reality, the batteries die after two months. Second, we know where they are located. We have maps where we put them. If we want to clear them, we can burn the area and that will clear them. Third, we have to fear the landmines from the Myanmar Army. They last a long time and will remain active, and we don't know where they put them . . . No one has come to talk about demining. It is not possible to do demining here yet.[194]

Fortify Rights has no evidence that KIA landmines are automatically deactivated after six months.

One official working with a U.N. agency explained to Fortify Rights the challenges ahead to address the problem of landmines in Kachin State, saying: "Everything needs to be done—there is no demarcation, no mapping, nothing. The only thing [being done] is humble steps on building more awareness for children and families on risks related to roaming around certain areas."[195]

Protection Concerns in China

Due to armed conflict, human rights violations, and inadequate humanitarian aid in displacement camps, some displaced Kachin undertake risky journeys to China seeking protection, food, medicine, healthcare, and other essential items. The Government of China has failed to provide protection to Kachin refugees in Yunnan Province, and Chinese border guards have committed human rights violations against Kachin refugees and forced refugees back into conflict zones in Kachin State.[196]

191 Fortify Rights interview with B.B., Momauk Township, Kachin State, Myanmar, March 20, 2016.

192 *Ibid.*

193 Fortify Rights focus group discussion with B.S., Momauk Township, Kachin State, Myanmar, March 30, 2016.

194 Fortify Rights interview with B.F., Momauk Township, Kachin State, Myanmar, September 12, 2013.

195 Fortify Rights interview with A.R., Myitkyina Township, Kachin State, Myanmar, June 14, 2016.

196 *See,* Matthew Smith, "How China Fuels Myanmar's Wars," *New York Times*. See "Urgent Humanitarian Situation Update in Kachin State," Joint Strategy Team.

Kachin civilians who hold a Myanmar National Registration Card are able to apply for border passes, which are valid for a year and allow for stays of up to seven days in China.[197] To officially migrate to China for employment, Myanmar nationals must obtain a work visa, which requires a recommendation and guarantee from a Chinese employer.[198]

Kachin refugees in China without the necessary documentation risk arrest, imprisonment, and *refoulement*. For example, a 27-year old man living in Pa Kahtawng IDP camp in Momauk Township told Fortify Rights that when Chinese border guards find Kachin refugees who lack documents, the refugees are often subject to seven days in jail and then returned to Kachin State.[199] He also told Fortify Rights that in some cases, Chinese border guards reportedly handed over refugees to Myanmar immigration officials.[200]

Kachin refugees in China face exploitative treatment by employers and working conditions. "Min Htay," a 52-year-old Kachin man living in Hpun Lum Yang IDP camp in Momauk Township explained the challenges of working in China, saying:

> My wage is 50 Chinese Yuan (about US$7) per day. That's for strong men who can work hard. Women get less . . . Sometimes Chinese employers promise that they will pay a certain amount of money for everybody, but when we finish the day, they never fully pay. They always break their promise . . . Even if we wanted to approach the Chinese authorities about this, we don't have any documents to do so. All these business deals are verbal agreements, not written documents. That's the problem.[201]

Kachin refugees in China also face forced labor by Chinese soldiers. For example, "Roi," 33, brought his motorbike from Kachin State to Yunnan Province, China, fleeing armed conflict. He told Fortify Rights:

> The Chinese army took me and my motorbike and forced me to work for three hours, and then I had to give 400 Chinese Yuan (US$61) to get my motorbike back. Whenever the army needed work, they would just take us to their place and make us work and then they would release us. I had to take down their chicken coup. They just said, 'Come with me.'[202]

A 56-year-old Chinese-speaking Kachin woman who often helps negotiate with Chinese authorities for the release of Kachin in China or lower extortion payments, told Fortify Rights: "When they force the men to work, they make them clean the toilets, the chicken compounds, and the chicken feces. They make them cut the grass around the office."[203]

Chinese soldiers arrested "Law D.," 43, in Yunnan Province along with a group of displaced Kachin civilians in 2013. He had been living in an IDP camp in Kachin State. He told Fortify Rights:

> There were three women and five men in our group, ages 17 to 50. The Chinese police arrested us for crossing the border without documents. They brought us to the police station and forced us to carry bamboo. There was a lot of bamboo there. They already cut it. We had to carry it for two hours to another place. Two of us were beaten. The youngest was beaten, injuring his right hand, and he couldn't walk right for one week. They used batons.[204]

197 Fortify Rights interview with C.F., Momauk Township, Kachin State, Myanmar, November 9, 2016.

198 *Ibid.*

199 *Ibid.*

200 *Ibid.* Fortify Rights was unable to independently verify or corroborate this allegation.

201 Fortify Rights interview with D.J., Momauk Township, Kachin State, Myanmar, November 17, 2016.

202 Fortify Rights interview with A.H, Momauk Township, Kachin State, Myanmar, September 10, 2013.

203 Fortify Rights interview with A.I., Momauk Township, Kachin State, Myanmar, September 10, 2013.

204 Fortify Rights interview with B.H., Momauk Township, Kachin State, Myanmar, September 13, 2013.

Chinese soldiers have also forcibly returned or *refouled* Kachin refugees back to Myanmar since the war in Kachin State resumed in June 2011. For instance, in 2013, Chinese soldiers burned down a Kachin refugee camp called Layin camp in Yunnan Province.[205] A 39-year-old Kachin woman living in the camp at that time told Fortify Rights what happened, saying:

> I cannot count how many times the Chinese came, group-by-group, and told us to go back to Kachin. Every time they came, we worried so much and talked to each other. 'Here they come again', we would say . . . Many times, the Chinese came and tried to force us to leave. Each time, we said, 'Please let us stay here! Please! It is not safe back home and our children go to school at Loi Je. Please let us stay until the children finish their school this year.' But they just kept coming and finally forced us out and burned down our camp. Sometimes they wore uniforms, and sometimes they wore plain clothes. They never brought guns with them, but they had sticks. They had notebooks, and they wrote in their books, but we don't know what they wrote. They told us we had to leave because there was no more fighting and that we had to go back to our country. They said we were very dirty, had no hygiene, and had many diseases.[206]

Fortify Rights also documented how Chinese soldiers subjected Kachin refugees to involuntary roadside drug tests, extortion, and arbitrary arrest and detention in Yunnan Province, China.[207] Those whom the authorities said tested positive for drug use had an option to pay 2,000 Chinese Yuan (US$310) on the spot or face a same-day sentence of up to two years in a Chinese "reeducation through labor" center, beginning on the day of the drug test.[208] "Maru Maw," 22, fled Zin Lum village in Bhamo Township, and in February 2013 Chinese soldiers tested him for drug use in Yunnan Province. He told Fortify Rights:

> I was told I would have to stay in jail for two years if I didn't pay the money. I was in Kong Sa village in China. I was alone . . . When they tested my urine, they said they found drugs in it, and then they said nothing and just put me in handcuffs. They brought me to the office and then to the jail and that was it.[209]

Maru Maw was fortunate: he spent only six days and six nights in jail in Yunann Province before his relatives in Kachin State paid the Chinese authorities 5,000 Chinese Yuan (US$780) to secure his release.[210]

A 56-year-old Chinese-speaking Kachin woman in KIA territory told Fortify Rights:

> [The Chinese soldiers] often force people to urinate in a cup, and then they test it, say they found drugs in the urine, and then demand money or threaten jail time. They do this all the time. They say, 'Call your family and relatives and tell them to bring money.' If the family members can't come and pay, they take the people away. We don't always know where they take them. After being in jail, some are released because they can pay money, and some they take away. We don't know where they are now.[211]

205 Human Rights Watch, *Isolated in Yunnan: Kachin Refugees from Burma in China's Yunnan Province*, June 25, 2012, https://www.hrw.org/report/2012/06/25/isolated-yunnan/kachin-refugees-burma-chinas-yunnan-province#15eaa3 (accessed August 9, 2018).

206 Fortify Rights interview with A.G., Momauk Township, Kachin State, Myanmar, September 10, 2013.

207 Fortify Rights interviews with A.E., A.G., A.H., A.I., and C.Z., Chipwi and Momauk Townships, Kachin State, Myanmar, 2013.

208 *Ibid.*

209 Fortify Rights interview with C.Z., Kachin State, Myanmar, September 2013.

210 *Ibid.*

211 Fortify Rights interview with A.I., Momauk Township, Kachin State, Myanmar, September 10, 2013.

Human Rights Watch reported in 2012 that Chinese authorities forced thousands of Kachin, Shan, and ethnic Lisu prisoners from Myanmar—who were told they failed drug tests and sentenced to two-years in prison on the same day—to cut jade, presumably sourced from Kachin State, in reeducation through labor centers in Yunnan Province for the Chinese state.[212] Refugees said that they believed the Yunnan authorities would fine them or lock them up regardless of the results of the roadside urine-tests.[213]

212 Human Rights Watch, *Isolated in Yunnan.*

213 Fortify Rights interviews, Kachin State, Myanmar, 2013. *See also,* Human Rights Watch, *Isolated in Yunnan.*

III. LEGAL ANALYSIS

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The Government of Myanmar's failure to ensure adequate humanitarian aid to displaced civilians in Kachin and northern Shan states violates both international human rights law and international humanitarian law, known as the laws of war.

INTERNATIONAL HUMANITARIAN LAW

International humanitarian law requires all parties to armed conflicts to ensure the protection of civilians. The Geneva Conventions of 1949 and its protocols provide the framework for international humanitarian law.[214] In situations of non-international conflict, such as in Kachin State, Common Article 3 to the Geneva Conventions of 1949, Protocol II to the Geneva Conventions, and customary international law are particularly applicable.[215] The 1998 U.N. Guiding Principles on Internal Displacement also provide an authoritative articulation of the minimum standards required "to provide protection and humanitarian assistance to internally displaced persons."[216]

214 International humanitarian law is largely defined by the Geneva Conventions. Though Myanmar is not a party to Protocol II, the Geneva Conventions are considered part of customary international law and thus binding on all states. Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950, ratified by Myanmar August 25, 1992, Art. 3 [Common Article 3]. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978, not signed by Myanmar.

215 Common Article 3 and Protocols I and II. The norms enshrined in Protocols I and II represent an important codification of customary law rather than treaty obligations. Customary humanitarian law in relation to the conduct of hostilities is now recognized as largely the same in situations of both international and non-international armed conflict. Although Common Article 3 does not define "non-international armed conflict," the International Criminal Tribunal for the former Yugoslavia defined it as 'protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.' *See, Prosecutor v. Dusko Tadic*, International Criminal Tribunal for the former Yugoslavia (ICTY), Case No. IT-94-1-AR72, Decision (Appeals Chamber), October 2, 1995, para. 70.

216 UNOCHA, *Guiding Principles on Internal Displacement*, January 2003, http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html (accessed August 9, 2018), Principle 3(1), 18.

Under international humanitarian law, all parties to the conflict are obligated to "facilitate the free passage of humanitarian assistance" and ensure aid workers have "rapid and unimpeded access to the internally displaced."[217]

Blocking access to humanitarian aid is a serious violation of international humanitarian law. For example, "willfully impeding relief supplies" as a method of warfare to starve civilians is considered a war crime.[218] While authorities may implement measures to control the content and delivery of humanitarian aid, international law prohibits acts to deliberately impede the delivery of aid.[219] Any measures imposed by authorities to control humanitarian operations must not result in undue delays to the delivery of aid, impede deployments, or frustrate implementation.[220] Measures that have a disproportionate impact on the civilian population or are carried out to starve or deny civilians essential aids necessary for survival contravene the laws of war and can be considered war crimes.

International humanitarian law also protects the right to freedom of movement for humanitarian aid workers.[221] Parties to a conflict are obligated to provide protection to aid workers to facilitate access to displaced populations.[222] While this right extends only to aid workers who are authorized by the authorities, international law prohibits authorities from arbitrarily refusing to recognize aid workers.[223] In addition, the authorities may only restrict the right to freedom of movement for aid workers in cases of "imperative military necessity."[224] Such restrictions must be limited and imposed only on a temporary basis.[225]

The government-imposed travel authorization process in Myanmar, as it is implemented against humanitarian aid organizations, effectively acts as a restriction on aid and the freedom of movement of aid workers in violation of international humanitarian law. The onerous and vague measures

217 Guiding Principle 25(3). *See also,* ICRC, *Customary International Law,* Rule 55. These principles are also regarded as part of customary international law. See Rebecca Barber, *Facilitating Humanitarian Assistance In International Humanitarian and Human Rights Law*, International Review of the Red Cross, Vol. 91, No. 874, June 2009, p. 387.

218 Rome Statute of the International Criminal Court (Rome Statutes), adopted July 17, 2998, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9 (2002), Art. 8(2)(b)(xxv). *See also,* Resolutions of the U.N. Security Council, U.N. General Assembly, and U.N. Commission on Human Rights condemning impediments to aid delivery, including U.N. Security Council, Resolution 758, *Bosnia and Herzegovina (8 June),* U.N. Doc. S/RES/758, June 8, 1992; U.N. Security Council, Resolution 761, *Bosnia and Herzegovina (29 June),* U.N. Doc. S/RES/761, June 29, 1992; U.N. Security Council, Resolution 836, *Bosnia and Herzegovina (4 June),* U.N. Doc. S/RES/836, June 4,1993; U.N. Security Council, Resolution 945, *Extension of the mandate of the UN Angola Verification Mission II,* U.N. Doc. S/RES/945, September 29, 1994; UN Security Council, Resolution 1132, *The Situation in Sierra Leone*, U.N. Doc. S/RES/1132, October 8, 1997; U.N. General Assembly, Resolution 46/242, *The Situation in Bosnia and Herzegovina,* U.N. Doc. A/RES/46/242, August 25, 1992; U.N. General Assembly, Resolution 52/145, *Situation of Human Rights in Afghanistan,* U.N. Doc. A/52/644/Add.3, December 12, 1997; U.N. Commission on Human Rights, Resolution 1994/72, *Situation of Human Rights in the Territory of the Former Yugoslavia,* U.N. Doc. E/CN.4/RES/1994/72, March 9, 1994; U.N. Commission on Human Rights, Resolution 1995/77, *Situation of Human Rights in the Sudan,* U.N. Doc. E/CN.4/1995/77, March 8, 1995; U.N. Commission on Human Rights, Resolution 1996/73, *Situation of HumanRrights in the Sudan,* U.N. Doc. E/CN.4/1996/73, April 23, 1996.

219 Consent in the context of relief operations is intrinsically linked to state sovereignty. As noted by the International Committee of the Red Cross, "consent is to be sought from the State on the territory of which the non-international armed conflict takes place, and this also with regard to relief activities which are to be undertaken in areas over which the State in question has lost control to the opposing party." *See,* ICRC, *Customary International Law,* Rule 55, p. 198.

220 *See,* ICRC, *ICRC Q&A and Lexicon on Humanitarian Access*, Vol. 96, No. 893, 2014, p. 368-9, https://www.icrc.org/en/international-review/article/icrc-qa-and-lexicon-humanitarian-access (accessed August 9, 2018).

221 *See,* ICRC, *Customary International Law,* Rule 56, citing Additional Protocol I, Art. 71(3).

222 *See,* Common Art 3. *See also,* ICRC, *Customary International Law*, Rule 56.

223 *See,* ICRC, *Customary International Law,* Rule 56, citing Additional Protocol I, Art. 71(3).

224 *Ibid.*

225 *Ibid. See also,* ICRC, ICRC Q&A and Lexicon on Humanitarian Access.

imposed through the travel authorization process have not only led to undue delays in the delivery of aid but have completely obstructed humanitarian operations in some cases. The government has not provided an "imperative military necessity" that might justify restrictions on freedom of movement for aid workers. Regardless, the restrictions imposed are not limited or temporary, as required by international humanitarian law. They have been imposed since June 2011.

As a result of the restrictions on aid and freedom of movement of aid workers, displaced populations in Kachin State lack access to essential aid necessary for their survival. International humanitarian law protects the right of civilians to receive essential humanitarian aid.[226] Under the Guiding Principles, authorities must provide IDPs with safe access to "essential food and potable water; basic shelter and housing; appropriate clothing; and essential medical services and sanitation.[227]

Although all parties to a conflict, including non-state armed groups such as the KIA, are obligated to abide by the provisions of international humanitarian law, states bear primary responsibility to provide for the humanitarian needs of IDPs.[228] The U.N. General Assembly affirmed this obligation, saying "the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory."[229] When a government is unable to meet its obligations, it must rely on impartial humanitarian aid organizations to facilitate humanitarian assistance to displaced populations.[230]

Fortify Rights documented the lack of adequate food, water, shelter, clothing, medical services, and sanitation in displaced communities throughout Kachin State.[231] Due to the lack of this essential aid, IDPs in Kachin State reported avoidable health-related deaths, increased food insecurity, depletion of financial resources, and protection concerns.[232] By failing to provide assistance and imposing restrictions on humanitarian aid organizations seeking to assist displaced populations in need, the Myanmar government has failed to meet its obligations under international humanitarian law to ensure civilians receive essential aid. Certain authorities responsible for willfully denying lifesaving aid to Kachin civilians may be liable for war crimes.

International humanitarian law also prohibits the use of landmines in armed conflict.[233] Humanitarian law prohibits the use of weapons in armed conflict that "cause superfluous injury or unnecessary suffering" and "are by nature indiscriminate."[234] Landmines are considered an example of a weapon that causes unnecessary suffering.[235] Landmines are also considered weapons that are by nature indiscriminate given that landmines are unable to

226 *See,* ICRC, *Customary International Law,* Rule 55. *See also,* U.N. Security Council, Resolution 824, *Abkhazia, Georgia (6 Aug),* U.N. Doc. S/RES/854, August 6, 1993; U.N. General Assembly, Resolution 55/2, *United Nations Millennium Declaration*, U.N. Doc. A/RES/55/2, September 18, 2000; U.N. Commission on Human Rights, Resolution 1995/77, *Situation of Human Rights in the Sudan,* U.N. Doc. E/CN.4/1995/77, March 8, 1995.

227 Guiding Principle 18(2).

228 This obligation on the State stems from the principle of sovereignty. *Charter of the United Nations and the Statute of the International Court of Justice*, 1945, Art. 2(1). *See also,* Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law,* Vol. I, (Cambridge: Cambridge University Press, 2005).

229 U.N. General Assembly, Resolution on the Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations, GA Res. 46/182, December 19, 1991, Annex, para. 4.

230 Rebecca Barber, *Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law*, International Review of the Red Cross, Vol. 91, No. 874, June 2009, p. 394.

231 *See,* "Impacts of Aid Restrictions on Displaced Populations in Kachin State" Chapter.

232 *Ibid.*

233 *See,* Guiding Principle 10(2)(e). *See also,* ICRC, *Customary International Law,* Rule 70, p. 237-244; Rule 71, p. 244-250; and Rule 81, p. 280-283.

234 *See,* ICRC, *Customary International Law,* Rule 70, p. 237-244; Rule 71, p. 244-250.

235 *Id.* at Rule 70, p. 237-244.

discriminate between civilians and combatants.[236] International humanitarian law requires parties to a conflict that use landmines to take measures to minimize the indiscriminate effects of landmines, record the placement of landmines, and remove or deactivate landmines at the end of the conflict.[237]

The military and KIA are both responsible for using landmines and failing to implement measures to mitigate the impact of landmines on civilians. Fortify Rights documented civilian deaths and injuries as the result of landmines in Kachin State. The use of these weapons by the military and the KIA amount to violations of international humanitarian law.

INTERNATIONAL HUMAN RIGHTS LAW

The Government of Myanmar is a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), which include provisions guaranteeing rights to food, health, housing, water, and sanitation. In addition, many of these rights are also part of customary international law.[238] Based on its treaty commitments and customary international law, the Government of Myanmar is legally obligated to protect and promote the rights to food, health, housing, water, and sanitation for displaced populations in the country.[239]

Right to Food

International human rights law guarantees the right to food as an aspect of the right to an adequate standard of living as well as the right to be free from "hunger and malnutrition."[240] States are required to facilitate access to sufficient and nutritionally adequate food or means for the procurement of such food and provide food to those who are unable to secure adequate food by their own means. [241]

236 *Id.* at Rule 71, p. 244-250.

237 *Id.* at Rule 82 and 83. Further, the U.N. General Assembly has adopted numerous resolutions regarding the need to record the placement of landmines – in which no distinction is made between international and non-international armed conflicts. *See,* U.N. General Assembly, "Assistance in Mine Clearance," U.N. Doc. A/RES/49/215, December 23, 1994; U.N. General Assembly, "Assistance in Mine Clearance," U.N. Doc. A/RES/50/82, December 14, 1995; U.N. General Assembly, "Assistance in Mine Clearance," U.N. Doc. A/RES/53/26 December 31, 1998.

238 *See,* Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), Art. 25 ("Everyone has the right to a standard of living adequate for the health and well-being of his family, including food, clothing, housing and medical care and necessary services…"). *See, for example,* Montreal Statement of the Assembly for Human Rights, 1968, attached to UN Doc. A/ CONF.32/28, pt. I, at 2 (UDHR "constitutes an authoritative interpretation of the Charter of the highest order, and has over the years become a part of customary international law."); Final Act of the International Conference on Human Rights, para. 2, U.N. Doc. A/CONF.32/41, UN Sales No.E.68.XIV.2 (1968) (UDHR states "a common understanding of the peoples of the world concerning the inalienable and inviolable right of all members of the human family and constitutes an obligation for the members of the international community."); Henry J Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals,* 2nd ed, (Oxford: Oxford University Press, 2000).

239 International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, entered into force January 3, 1976, ratified by Myanmar October 6, 2017, Art. 2(1). ICESCR acknowledges capacity constraints by the state to fulfill all aspects of these rights and allows for the progressive realization of rights. However, States must, at minimum, show they are making every possible effort, within available resources, to demonstrate the protection and promotion of these rights. Available resources include through international cooperation.

240 ICESCR, Art. 11(1); U.N. Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 12: The Right to Adequate Food*, U.N. Doc. E/C/12/1999/5, 1999; Convention on the Rights of the Child (CRC), adopted September 2, 1990, G.A. Res. 44/25, U.N. Doc. A/44/49 (1990), ratified by Myanmar July 15, 1991, Article 24(c); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), G.A. Res. 34/180, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Myanmar July 22, 1997, Art. 12.

241 CESCR, General Comment 12, paras. 6, 8, 14, and 15. Human Rights Council, *Report of the Special Rapporteur on the Right to Food, Jean Ziegler, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/7/5, January 10, 2008, Art. 18. *See also, Food and Agriculture*

IDPs in Kachin State lack access to sufficient and nutritionally adequate food. Restrictions on humanitarian access to Kachin State have led to reductions and delays in food aid deliveries as well as a lack of the lack of diverse food supplies in the camps. IDPs reported having insufficient or irregular food supplies. Some IDPs undertake risky journeys outside the camp to secure food or means for securing food through employment in China or elsewhere. By failing to ensure IDPs in Kachin have access to adequate food provisions or a means to secure food, the Government of Myanmar has failed to meet its obligations under international human rights law.

Right to Health

Article 12 of the ICESCR obligates States to recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" and to create "conditions which would assure to all medical service and medical attention in the event of sickness."[242] Health is considered an inclusive right that requires not only "timely and appropriate health care" but also the protection of "underlying determinants of health." These include: "access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing…and access to health-related education and information, including on sexual and reproductive health."[243] The right to health is reiterated by CEDAW and CRC. [244]

Interpreting the right to health, the Committee on Economic, Social and Cultural Rights specified that the right requires healthcare that is available, accessible, acceptable to individuals, and of good quality.[245] The U.N. Special Rapporteur on the Right to Health confirmed these conditions, noting specifically that states are obligated to extend this right to "groups rendered vulnerable by conflict" and should take concrete steps to provide protection for individuals seeking health-care services in areas beyond their control.[246]

International standards place a duty of action on states to ensure that health services are available and accessible to all children and that all essential medicines on the World Health Organization *Model Lists of Essential Medicines* are available and affordable.[247] CEDAW also specifies specific protections for women with regard to the right to health, including ensuring facilities are available for pregnant and lactating mothers.[248] The CEDAW Committee has also noted that it is the duty of the state to ensure women's right to safe motherhood and emergency obstetric services.[249]

The Government of Myanmar is failing to uphold its obligations under international human rights law by failing to ensure the right to health for IDPs in Kachin State. For example, IDPs in the KIA-controlled areas largely rely on poorly equipped camp clinics and hospitals for healthcare. The camp clinics and hospitals in KIA-controlled areas do not receive funding from the Government of

Organization of the United Nations, The Right to Food Guidelines: Information Papers and Case Studies, 2006, http://www.fao.org/docs/eims/upload/214344/RtFg_Eng_draft_03.pdf (accessed August 9, 2018).

242 UDHR, Article 25 (i); ICESCR, Articles 12(1) and 12(2)(d).

243 CESCR, *General Comment 14: The Right to the Highest Attainable Standard of Health*, U.N. Doc. E/C.12/2000/4, 2000, Art. 11, p. 3.

244 CEDAW, arts. 12 and 14. CRC, Art. 24.

245 CESCR, *General Comment 14*, Article 12, p. 4.

246 U.N. General Assembly, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, U.N. Doc. A/68/297, August 9, 2013, Art. 11.

247 CRC, *General comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24)*, U.N. Doc. CRC/C/GC/15, April 17, 2013.

248 CEDAW, arts. 12 and 14.

249 CEDAW, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, U.N. Doc. CEDAW/C/GC/30, November 1, 2013, arts. 57(d), 38(e), 57(g), and 41(b). *See also,* CEDAW, *General Recommendation No. 19: Violence Against Women*, U.N. Doc. A/47/38, Art. 24.

Myanmar and are subject to restrictions on aid deliveries engineered by Myanmar authorities. As a result, many of these camps lack necessary medicines, equipment, and trained staff. IDPs and health workers reported avoidable deaths, particularly during childbirth, due to inadequate healthcare provisions in camps. The cost of treatment and travel for adequate healthcare—to hospitals in Myanmar or China—is prohibitively expensive for most IDPs, making it largely inaccessible.

Right to Housing

The Committee on Economic, Social and Cultural Rights recognized that the right to adequate housing "is of central importance for the enjoyment of all economic, social and cultural rights."[250] CRC notes that children have the right to "a standard of living adequate for the child's physical, mental, spiritual, moral and social development" and obligates States to take appropriate measures to provide material assistance—specifically, nutrition, clothing, and housing—to implement this right.[251] CEDAW obligates States parties to ensure that women—on a basis of equality with men—enjoy "adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."[252]

For the minimum standards of housing to be met, residents must have access to adequate privacy, space, security, and appropriate proximity to work and basic facilities.[253] Adequate housing includes facilities essential for health, security, comfort, and nutrition, and must be habitable, accessible, and culturally appropriate.[254] The U.N. Principles on Housing and Property Restitution for Refugees and Displaced Persons ("The Pinheiro Principles") reiterate these minimum standards as required in the context of providing adequate housing for refugees and displaced persons. In addition, the Pinheiro Principles require housing for displaced populations to provide: sufficient space and protection from threats to health, including structural hazards and disease; availability of services, facilities, materials and infrastructure; sustainable access to natural and common resources, including safe drinking water, energy for cooking, sanitation and washing facilities, and; construction appropriate for enabling the expression of cultural identity.[255]

Displaced civilians in KIA and government-controlled areas told Fortify Rights that shelters in the IDP camps fail to provide adequate privacy, space, security, and other basic features necessary to meet the standards of adequate housing. The overcrowding of shelters for multiple families results in a lack of space, privacy, and comfort. Many shelters are several years old and in disrepair. The materials used for shelters in Kachin State sites of displacement make the physical integrity of shelters susceptible to seasonal extremes, including high temperatures in the summer, low temperatures in the winter, and water leaks during the monsoon season. Many of the shelters are not considered culturally appropriate or proximate to basic facilities as required under human rights law. Given the nature and limitation of the shelters of IDPs in Kachin, the Government of Myanmar is not fulfilling its obligation to realize the right to housing for the displaced.

Right to Water

ICESCR requires states to provide access to water, which is adequate for human dignity, life and health.[256] The right to water entitles everyone "to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, such as drinking sanitation, bathing, washing

250 CESCR, *General Comment No. 4: The Right to Adequate Housing*, E/1992/23, para. 1.

251 CRC, Art. 27.

252 CEDAW, Art. 14.2(h).

253 CESCR, General Comment No. 4: The Right to Adequate Housing, Article 7.

254 *Id*. at Art. 8.

255 The Sphere Project, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 2011, p. 243.

256 ICESCR, arts. 11(1) and 12.

clothes, and cooking."[257] This right is affirmed by ICESCR, CEDAW, and CRC and is recognized as realized only when a person has physical and economic access to adequately safe water.[258] The Committee on Economic, Social and Cultural Rights specifically noted the obligation on states to ensure rights to water for persons fleeing armed conflict or displaced for other reasons.[259]

Available data indicates that significant proportions of the displaced population in Kachin State lack access to adequate water. IDPs reported inconsistent access to and frequent shortages of water for drinking, bathing, cooking, and sanitation. Limitations on infrastructure supplies and aid workers to construct or repair plumbing have exacerbated the situation resulting in many IDPs going without water. By failing to ensure all IDPs in Kachin State have access to water, the Government of Myanmar has failed to uphold its obligations under international human rights law.

Right to Sanitation

The right to sanitation is derived from the right to an adequate standard of living, and the Committee on Economic, Social and Cultural Rights has confirmed this right as "integrally related . . . to the right to health, … the right to housing, … as well as the right to water."[260]

The U.N. General Assembly provides that the right to sanitation entitles everyone "to have physical and affordable access to sanitation . . . that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity."[261] The Committee on Economic, Social and Cultural Rights also specifically noted the obligation on states to ensure the right to sanitation for persons fleeing conflict or displaced for other reasons.[262]

The right to sanitation includes not only ensuring the availability of toilets but also providing holistic systems to facilitate the collection, transport, treatment, and disposal or reuse of human excreta and associated hygiene.[263]

Displaced civilians in Kachin State reported not only a lack of sufficient toilets in the IDP camps, but also insufficient systems to maintain and clear toilets. Restrictions on humanitarian aid deliveries to Kachin State have also led to shortages in essential hygiene supplies, including soap, toothpaste, and shampoo. Available data indicates that significant proportions of the internally displaced population in Kachin State lack access to adequate sanitation. The Government of Myanmar has failed to fulfill its obligations under international human rights law to ensure the right to sanitation for IDPs in Kachin State.

257 CESCR, *General Comment No. 15: The Right to Water*, U.N. Doc. E/C.12/2002/11, 2003.

258 ICESCR, arts. 11(1) and 12. CEDAW, Art. 14, para. 2; CRC, Art. 24, para. 2. CRC, *General Comment No. 15*, para. 12.

259 CESCR, *General Comment No. 15, para. 16(f). See also, Guiding Principle 18; International Labour Organization, R115 – Workers' Housing Recommendation*, 1961 (No. 115), *Recommendation concerning Workers' Housing, Suggestions Concerning Methods of Application*, No. 7 and 8.

260 CESCR, *Statement on the Right to Sanitation*, U.N. Doc. E/C.12/2010/1, 2010, para. 7. *See also,* Human Rights Watch, *"Going to the Toilet When You Want" Sanitation as a Human Right*, April 2017, https://www.hrw.org/sites/default/files/report_pdf/wrdsanitation0417_web_0.pdf (accessed August 9, 2018), p. 8.

261 U.N. General Assembly, *The Human Rights to Safe Drinking Water and Sanitation*, U.N. Doc. 70/169, February 22, 2016, Art. 2.

262 CESCR, *General Comment No. 15, para. 16(f). See also, Guiding Principle 18; International Labour Organization, R115 – Workers' Housing Recommendation*, 1961 (No. 115), No. 7 and 8.

263 Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation*, U.N. Doc. A/HRC/12/24, July 1, 2009, para. 62.

IV. HUMAN RIGHTS DEFENDERS IN KACHIN STATE

With limited resources and at great personal risk, ethnic-Kachin human rights defenders have been integral to filling humanitarian gaps and building community in war-affected areas of Kachin State. While there are many Kachin-led civilian society organizations that have played integral roles in documenting human rights violations and delivering lifesaving aid, three organizations have made sustained and particularly significant impacts: Wunpawng Ninghtoi (WPN), Bridging Rural Integrated Development and Grassroots Empowerment (BRIDGE), and the Kachin Women's Association Thailand (KWAT). These organizations are all led by Kachin women.

KACHIN WOMEN'S ASSOCIATION THAILAND (KWAT)

The Kachin Women's Association Thailand (KWAT) is a community-led women's organization working to promote women's human rights, women's participation in political and public life at local, national and international levels, and the human rights of children in Kachin State.

Since KWAT began its work in 1999, the organization has documented extensive human rights violations against Kachin civilians by the Myanmar Army and led advocacy efforts to bring perpetrators to account. Their capacity-building programs have developed the skills of more than 50 women to document human rights violations across Kachin and northern Shan States. KWAT's work has helped shine a light on serious concerns affecting the Kachin community, including human trafficking, the drug trade, sexual violence, and conflict-related human rights violations.

KWAT General Secretary Moon Nay Li explained to Fortify Rights the importance of the organization's documentation work:

> We are working to document human rights abuses, because we need to know what is really happening in Kachin areas. We need to find the truth. If we can document what is happening, we can also educate others about the human rights situation in Kachin areas. We need this kind of education in our society.[264]

264 Fortify Rights interview with Moon Nay Li, Yangon, Myanmar, August 29, 2017. KWAT's human rights documentation is available online at https://kachinwomen.com/

BRIDGING RURAL INTEGRATED DEVELOPMENT AND GRASSROOTS EMPOWERMENT (BRIDGE)

Bridging Rural Integrated Development and Grassroots Empowerment (BRIDGE) is a Kachin-women-led civil society group based in Maijayang and working with communities affected by the conflict in Kachin State. BRIDGE encourages participatory community development through livelihood programs, health and hygiene awareness trainings, and environmental education. Since 2010 BRIDGE has promoted the sustainable development of local communities by responding to the needs of those affected by the conflict in a way that allows communities to sustain themselves.

The Director and founder of BRIDGE Hkaw Lwi explained the importance of sustainable responses to displacement crises, saying:

> Relief work can only support IDPs for a short time. In IDP camps aid groups can give support for basic food, but IDPs need proper nutrition, so livelihood activities are one of the most important things for IDPs. At BRIDGE, our mission is to strengthen IDPs to stand on their own.[265]

BRIDGE has helped refugees safely cultivate organic farms in armed conflict zones and engage in income-generating projects, enabling Kachin women to provide for their families. BRIDGE is a women-led and women-focused organization. BRIDGE's former Program Director Lu Seng explained to Fortify Rights the reason for their focus on women, saying:

> Women play a main role in families. They take responsibility for children's food, security, health, and education. If women have enough income, they can arrange everything for the family. If this happens, education improves, community participation improves, religious issues improve. We need to invest more in women's programs.[266]

WUNPAWNG NINGHTOI (WPN)

Wunpawng Ninghtoi (WPN) grew out of the work of civil society organizations involved in responding to the humanitarian needs of those displaced following the resumption of the conflict in Kachin State in 2011. Explaining the origins of WPN and WPN's work, Director Mary Tawm told Fortify Rights:

> Small is beautiful. WPN started with small donations from the community. At first, we donated our strength and collected our strength together and volunteered together . . . WPN is receiving and distributing [aid donations] among IDPs . . . Because of this conflict, many people have shown they understand what humanitarianism is, and they have shown their love and kindness and shared to the Kachin people. This has really made the community stronger. We make sure we tell people in the camps that this donation is coming from people we don't know. It is coming from diversity, from different countries, and different people. They are sharing their love and humanitarianism.[267]

In addition to providing direct humanitarian aid, WPN supports sustainable-livelihood programs for IDPs. Sharing about WPN's livelihoods programs, Mary Tawm said:

> In Pa Kahtawng camp, we organized a sweater-making training. We provide sewing machines and other materials to make [the sweaters] . . . There is a woman who runs the business [now], and she is doing it professionally. Also, this year we provided more than 200 pigs to IDPs. One household sold the pigs last month, and she made more than 2,000 [Chinese] Yuan (around US$300). That was just in profit, not including [the initial] investment. That has happened with other IDPs also. We have provided seeds to IDPs in other camps, and people have been able to grow corn and other crops, which they have been able to sell.[268]

265 Fortify Rights interview with Hkaw Lwi, Yangon, Myanmar, September 14, 2017.

266 Fortify Rights interview with Lu Seng, Momauk Township, Kachin State, Myanmar, November 13, 2016.

267 Fortify Rights interview with Mary Tawm, Momauk Township, Kachin State, Myanmar, November 8, 2016.

268 Fortify Rights interview with Mary Tawm, Momauk Township, Kachin State, Myanmar, November 11, 2016.

V. RECOMMENDATIONS

TO THE GOVERNMENT OF MYANMAR

- **ENSURE** all internally displaced persons in Myanmar have access to the rights and protections guaranteed by international humanitarian and human rights law, including the right to food, health, housing, water, and sanitation.
- **PROVIDE** the United Nations, national and international humanitarian aid organizations, and human rights monitors safe, sustained, and unfettered access to all areas with internally displaced populations in Myanmar, and make an explicit long-term commitment to authorize relief, recovery, and eventual development support to populations in all conflict-affected areas. In line with this recommendation:
  - Process all travel authorization requests by humanitarian aid organizations without delay to facilitate the unfettered delivery of urgent and essential aid to displaced populations.
  - Identify and implement an explicit and transparent process for obtaining travel authorization to deliver aid or obtain access to displaced populations.
  - Provide timely written reasons for rejecting travel authorizations to humanitarian aid organizations seeking to deliver aid or obtain access to displaced populations. Ensure reasons for refusing travel authorization requests are not arbitrary.
- **ENSURE** the military ceases attacks on civilian populations, prevents violations of international human rights and humanitarian law, and ensures protections for conflict-affected civilians.
- **COOPERATE** fully with international investigations into alleged crimes in Kachin and northern Shan states. Implement recommendations from credible independent advisory and investigatory bodies, including the U.N. Fact-Finding Mission, to address violations of international law.
- **INVESTIGATE** credible allegations of violations of international human rights and humanitarian law in Myanmar and prosecute those responsible, regardless of rank or position in proceedings that meet international fair trial standards.

- **ENSURE** the end of the use of anti-personnel landmines by all armed forces in Myanmar, begin the process of removing landmines from contaminated areas, destroy stockpiles of anti-personnel landmines, and ensure that survivors can access healthcare, rehabilitation, and psycho-social support.
- **ISSUE** a standing invitation to the U.N. special procedures, in particular the Special Rapporteur on the Human Rights of Internally Displaced Persons and the Special Rapporteur on the situation of human rights in Myanmar.
- **FINALIZE,** without delay, an agreement with the U.N. Office of the High Commissioner for Human Rights to establish a Country Office in Myanmar with a full mandate for human rights protection, promotion, and technical support.
- **ACCEDE** to the International Covenant on Civil and Political Rights, the Optional Protocols of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction as well as other key human rights treaties.

TO THE KACHIN INDEPENDENCE ORGANIZATION AND KACHIN INDEPENDENCE ARMY

- **ENSURE** all internally displaced persons in Kachin State have access to the rights and protections guaranteed by international humanitarian and human rights law, including the right to food, health, housing, water, and sanitation.
- **PROVIDE** the United Nations, national and international humanitarian aid organizations, and human rights monitors safe, sustained, and unfettered access to all areas with internally displaced populations in Kachin State.
- **END** the use of anti-personnel landmines, begin the process of removing landmines from contaminated areas, destroy stockpiles of anti-personnel landmines, and ensure that survivors can access healthcare, rehabilitation, and psycho-social support.
- **COOPERATE** fully with international investigations into alleged crimes in Kachin and northern Shan states. Implement recommendations from credible independent advisory and investigatory bodies, including the U.N. Fact-Finding Mission, to address violations of international law.

TO THE INTERNATIONAL COMMUNITY AND UNITED NATIONS MEMBER STATES

- **EXERCISE** collective and bilateral leverage to encourage all U.N. Security Council member states to support a referral of Myanmar to the International Criminal Court.
- **IMPOSE** targeted sanctions against those found to be responsible for human rights violations in Kachin State.
- **IMPOSE** an arms embargo on the Myanmar military.
- **APPLY** effective pressure on the Government of Myanmar to ensure internally displaced persons in Myanmar have access to the rights and protections guaranteed by international humanitarian and human rights law, including the right to food, health, housing, water, and sanitation.

- **APPLY** effective pressure on the Government of Myanmar to facilitate free and unfettered access for humanitarian and human rights groups to all displaced populations in Myanmar. Encourage the government to make an explicit long-term commitment to authorize relief, recovery, and eventual development support to populations in all conflict-affected areas.
- **SUPPORT** the Government of Myanmar to establish an explicit, transparent, and streamlined travel authorization process to support humanitarian aid agencies with the timely delivery of aid and access to displaced populations.
- **APPLY** effective pressure on the Government of Myanmar and ethnic armed groups to end violations of international human rights and humanitarian law and ensure protections for conflict-affected civilians.
- **APPLY** effective pressure on the Government of Myanmar to cooperate fully with international investigations into alleged crimes in Kachin and northern Shan states. Support the government to implement recommendations from credible independent advisory and investigatory bodies, including the U.N. Fact-Finding Mission, to address violations of international law.
- **APPLY** effective pressure on the Government of Myanmar to investigate credible allegations of violations of international human rights and humanitarian law and prosecute those responsible, regardless of rank or position in proceedings that meet international fair trial standards.
- **EXPAND** financial, technical, and advocacy support to national and community-based organizations undertaking humanitarian and human rights work in Myanmar.
- **SUPPORT** the Government of Myanmar with efforts to end of the use of anti-personnel landmines by all armed forces in Myanmar, and support Kachin communities to take a lead in the process of removing landmines from contaminated areas, and ensuring that survivors can access healthcare, rehabilitation, and psycho-social support.
- **SUPPORT** the mandate and recommendations of the U.N. Special Rapporteur on the Situation of Human Rights in Myanmar and the establishment a U.N. Office of the High Commissioner for Human Rights Country Office in Myanmar.

TO THE UNITED NATIONS SECURITY COUNCIL

- **URGENTLY** refer Myanmar to the International Criminal Court to investigate, prosecute, and sentence those responsible for international crimes against civilians in Kachin and Shan states.
- **IMPOSE** a global arms embargo on Myanmar and the Myanmar military.
- **IMPOSE** targeted sanctions against those found to be responsible for human rights violations in Kachin State.
- **SUPPORT** and ensure the implementation of the forthcoming recommendations of the Independent International Fact-Finding Mission on Myanmar, including all recommendations geared toward holding perpetrators of mass atrocities accountable.

ANNEX A

LETTER FROM FORTIFY RIGHTS TO THE MYANMAR GOVERNMENT

August 8, 2018

President Win Myint
Office of the President
Naypyitaw
Republic of the Union of Myanmar

Dear President Win Myint,

Fortify Rights is a nongovernmental organization based in Southeast Asia. We investigate human rights violations, engage governments and others on solutions, and strengthen the work of human rights defenders, affected communities, and civil society.

Fortify Rights is preparing a report about humanitarian aid deliveries and access to displaced populations in Kachin State. Our research examines the travel-authorization process for humanitarian aid organizations and access to humanitarian aid and services in internally displaced person camps in Kachin State. Our findings are based on first-person interviews with displaced civilians, local and international humanitarian workers, and others.

We are writing to ensure that our report accurately represents the policies and practices of the Myanmar government with regard to the issuance of travel authorizations, facilitating aid and services to displaced populations in Kachin State, and the general situation in Kachin and northern Shan states.

Fortify Rights endeavors to produce objective human rights publications based on all available information. We hope your office will respond at your earliest opportunity to the attached questions so that we may reflect your views in our reporting. Please also feel free to include any additional information, materials, or statistics that might be relevant to our research.

To fully incorporate your views in our forthcoming publication, we would appreciate a response no later than August 18, 2018. If an in-person meeting would be preferable, we would be happy to discuss our research in detail at a time that is most convenient for your schedule.

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Fortify.Rights@FortifyRights.org

Thank you for your time and consideration of this matter. We look forward to engaging with your office to further advance human rights protections in Myanmar.

Matthew F. Smith
Chief Executive Officer

cc:

State Counselor Aung San Suu Kyi
Ministry of the Office of the State Counsellor
Naypyitaw
Republic of the Union of Myanmar

Commander Major General Teza Kyaw
Office of the Northern Commander of the Myanmar Army's Bureau of Special Operations
Myitkyina
Republic of the Union of Myanmar

Dr. Win Myat Aye
Minister of Social Welfare, Relief and Resettlement
Department of Social Welfare
Naypyitaw
Republic of the Union of Myanmar

U Win Mra
Chair of the Myanmar National Human Rights Commission
27 Pyay Road
Hlaing Township, Yangon
Republic of the Union of Myanmar

Enclosures (1)

QUESTIONS FROM FORTIFY RIGHTS TO THE GOVERNMENT OF THE REPUBLIC OF THE UNION OF MYANMAR

Questions from Fortify Rights to the Government of the Republic of the Union of Myanmar

1. Could you please explain the full process for issuing travel authorizations to humanitarian aid organizations seeking to operate in Kachin State? Which government agencies are responsible for overseeing this process?

2. What is the criteria for approving or rejecting requests for travel authorization for humanitarian aid organizations seeking to operate in Kachin? Who is ultimately responsible for making these decisions?

3. How many requests for travel authorization for humanitarian aid organizations seeking to operate in Kachin have been received on an annual basis since 2011?

4. How many requests for travel authorization for humanitarian aid organizations seeking to operate in Kachin have been approved on an annual basis since 2011? How many have been rejected on an annual basis since 2011?

5. Are reasons for rejecting a travel authorization request recorded? What are the reasons for rejecting a travel authorization request?

6. What evidence, if any, does the Myanmar government and/or military have to indicate that humanitarian organizations operating in Kachin State are directly or indirectly supporting the Kachin Independence Army?

7. Is the government of Myanmar providing aid or assistance to displaced communities throughout Kachin and northern Shan State? If not, why not?

8. If the government of Myanmar is providing aid or assistance to displaced communities throughout Kachin and northern Shan State, please specify what form of aid and/or service and to which communities.

9. What efforts has the Myanmar government made to ensure displaced populations in Kachin and northern Shan states have access to essential aid and assistance, including but not limited to food, healthcare, adequate shelter, essential items, adequate water, and proper sanitation?

10. What measures have the Myanmar government and military taken to end the use of landmines, clear mined areas, and provide assistance to landmine survivors? What measures are being taken to protect civilians from landmines in Kachin and northern Shan states?

11. In 2014, Fortify Rights published a report detailing the use of torture in Kachin and northern Shan States by the Myanmar military. What steps have the Myanmar government taken to prevent and/or investigate war crimes and other human rights violations allegedly committed by the Myanmar military in Kachin and Shan states?

12. How many Myanmar citizens are currently detained in Yunnan Province, China and for what reason? What type of assistance has the Myanmar government provided to Myanmar citizens detained in China?

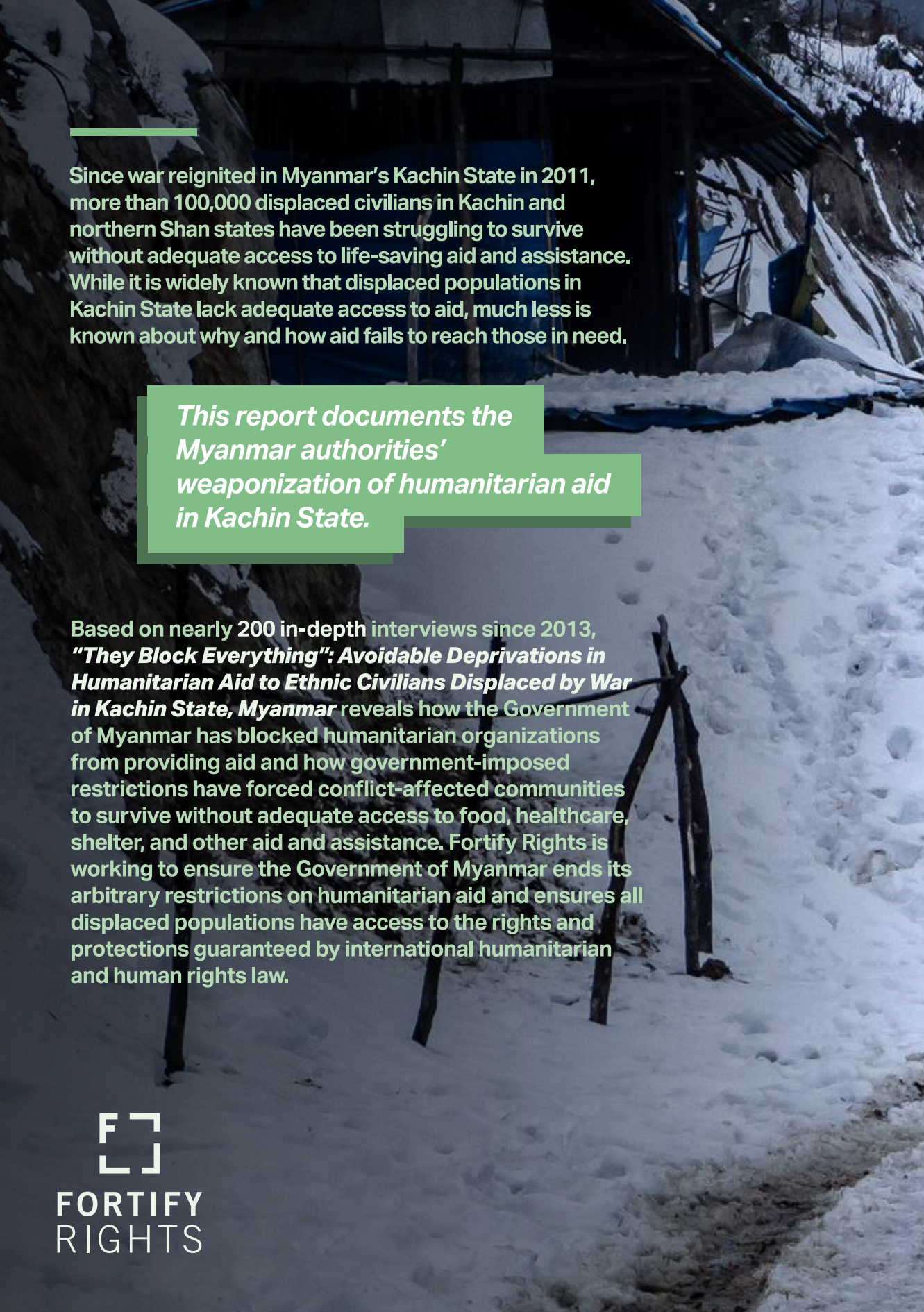
ACKNOWLEDGEMENTS

This report is based on research conducted by Fortify Rights from 2013 to 2018. Fortify Rights' Myanmar Human Rights Specialist David Baulk is the primary author and conducted the research for this report. Chief Executive Officer Matthew Smith also contributed research to this report and supported the writing and editing process. Executive Director Amy Smith provided research oversight and supported the writing and editing process. Kate Vigneswaran also provided research and writing support. Associate Human Rights Specialist John Quinley III provided administrative support. Graphic Design Associate Iuri Kato created the layout and design of the report. Kachin Independent photojournalist Hkun Lat and James Higgins from Partners Relief and Development provided the photographs.

Fortify Rights extends a special thanks to the witnesses, displaced persons, survivors, humanitarian aid workers, and others who generously shared their time, energy, and experiences. Fortify Rights also extends solidarity to Kachin humanitarian aid workers who overcome significant obstacles to assist displaced populations in Kachin and northern Shan states.

Fortify Rights' work would not be possible without the support of our funding partners and gifts from individuals. Thank you for sponsoring this work.

ACKNOWLEDGEMENTS



Since war reignited in Myanmar's Kachin State in 2011, more than 100,000 displaced civilians in Kachin and northern Shan states have been struggling to survive without adequate access to life-saving aid and assistance. While it is widely known that displaced populations in Kachin State lack adequate access to aid, much less is known about why and how aid fails to reach those in need.

This report documents the Myanmar authorities' weaponization of humanitarian aid in Kachin State.

Based on nearly 200 in-depth interviews since 2013, ***"They Block Everything": Avoidable Deprivations in Humanitarian Aid to Ethnic Civilians Displaced by War in Kachin State, Myanmar*** reveals how the Government of Myanmar has blocked humanitarian organizations from providing aid and how government-imposed restrictions have forced conflict-affected communities to survive without adequate access to food, healthcare, shelter, and other aid and assistance. Fortify Rights is working to ensure the Government of Myanmar ends its arbitrary restrictions on humanitarian aid and ensures all displaced populations have access to the rights and protections guaranteed by international humanitarian and human rights law.

FORTIFY RIGHTS