SUBMISSION TO THE

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23rd Session, November 2015

FORTIFY RIGHTS

COVER PHOTO: Kachin Independence Army soldiers on patrol in northern Myanmar, site of active armed conflict with the Myanmar Army since June 2011. ©Jason Motlagh/Blackbeard Films 2012

FORTIFY RIGHTS works to end and remedy human rights abuses. We investigate human rights violations, engage people with power, and strengthen responses to abuses through trainings and collaborative support for human rights defenders.

We are an independent, nonprofit organization based in Southeast Asia and registered in the United States and Switzerland.

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Rohingya women and girl in an internally displaced person camp, Sittwe Township, Rakhine State, 2014.

Fortify Rights has documented forced labor, rape and sexual violence, and other abuses against Rohingya women and girls by Myanmar authorities.

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SUMMARY

This report was originally submitted by Fortify Rights to the United Nations Office of the High Commissioner for Human Rights on March 21, 2015 for consideration in the Universal Periodic Review (UPR) of Myanmar's human rights performance, which will take place November 9 at the U.N. Human Rights Council.

Myanmar underwent its first UPR in January 2011, when the country was experiencing unprecedented political changes. Four years later, this report documents ongoing impunity and human rights abuses by the Myanmar government and armed forces, including abuses that Fortify Rights believes constitute war crimes and crimes against humanity.

This report draws primarily on several hundred eyewitness and survivor testimonies collected by Fortify Rights staff since 2013 in various locations in Myanmar.

In 2011, Myanmar's delegation to the U.N. accepted recommendations to address sexual violence, end forced labor and the recruitment of child soldiers, resolve internal armed conflict, protect the rights of minorities, and accede to and implement core human rights treaties, among others. In his inaugural address two months later, President Thein Sein committed to safeguarding human rights, strengthening the judiciary, and reforming undemocratic laws.

Since the 2011 UPR process, the government of Myanmar has failed to satisfy its commitments and the human rights situation in the country remains dire. This report documents extrajudicial killings, forced labor, human shielding, torture, and other abuses by the Myanmar Army in Kachin and northern Shan states. It also documents targeted abuses and persecution against Rohingya and other Muslims in Rakhine State, including state-sponsored pogroms, widespread and systematic forced labor, avoidable deprivations in humanitarian aid, and restrictions on movement, marriage, childbirth, home repairs and construction of houses of worship, and other aspects of everyday life of the Rohingya.

This report also includes information about prisoners of conscience, and documents shortcomings in the judiciary and national human rights framework, including the existence of several laws that conflict with international human rights standards or are used by Myanmar authorities to impermissibly restrict or violate human rights.

Lastly, this report makes a number of detailed recommendations for the government of Myanmar to promote, protect, and fulfil human rights. The government of Myanmar should make clear commitments at the Human Rights Council and take concrete actions to end and remedy these and other ongoing abuses.

Torture survivor and father of three, Brang Shawng, 26, at a camp for displaced persons in government-controlled territory, Kachin State. Brang Shawng was arbitrarily arrested and tortured for days by the Myanmar Army.

“I was laid on the ground and they put bamboo across my shins and my head, and they stood on it. They also rolled the rods down my shins. ‘Admit you are a KIA soldier!’ they said.”

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Universal Periodic Review Submission:

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SUBMITTED MARCH 21, 2015

1. When Myanmar underwent its first Universal Periodic Review (UPR) in January 2011, the country was experiencing unprecedented political changes. Myanmar's delegation accepted recommendations to address sexual violence, end forced labor and the recruitment of child soldiers, resolve internal armed conflict, protect the rights of minorities, and accede to and implement core human rights treaties, among others. In his inaugural address two months later, President Thein Sein committed to safeguarding human rights, strengthening the judiciary, and reforming undemocratic laws. Unfortunately, the Myanmar government has failed to satisfy its commitments and the human rights situation in the country remains dire.

War Crimes and Crimes Against Humanity in Northern Myanmar

2. In June 2011, fighting resumed between the Myanmar Army and the Kachin Independence Army (KIA), an ethnic armed group, ending a 17-year ceasefire agreement and resulting in protracted armed conflict in northern Myanmar. Fortify Rights documented extrajudicial killings, torture, indiscriminate attacks on civilians, forced labour, and the use of human shields by Myanmar military personnel in conflict areas. Fortify Rights believes these acts constitute war crimes and crimes against humanity under international law.

3. In February 2014, the Myanmar Army and Myanmar National Democratic Alliance Army (MNDAA) commenced fighting in the Kokang region of northern Shan State, forcing tens of thousands of civilians to flee. The Myanmar Army has been implicated in attacks on civilians and extrajudicial killings in the area.

4. In June 2014, Fortify Rights published, *I Thought They Would Kill Me: Ending Wartime Torture in Northern Myanmar*, documenting the systematic use of torture and other cruel and inhuman treatment of more than 60 civilians in Kachin State and northern Shan State by the Myanmar Army, Military Intelligence, and Myanmar Police Force between June 2011 and April 2014. Kachin civilians described severe beatings during prolonged interrogation sessions. Civilians were subjected to sexual assault, burnings, stabbings, and other practices calculated to cause severe physical pain. For example, a Kachin father of three children, 26, was detained in an internally displaced persons (IDP) camp and later tortured by Myanmar authorities at a government facility in Myitkyina. Military Intelligence officers stood on bamboo rods laid across his shins and head before rolling the rods down his shins in an attempt to force him to confess an association with the KIA. A 45-year-old Kachin farmer told Fortify Rights how the Myanmar Army tied wire around his neck, hands, and feet, denied him food and water, and beat him severely before shooting him in the head during an attempted escape in October 2013. He survived the attack and was then subjected to more torture. Those who spoke with Fortify Rights described mock executions, deprivation of food and water, and various forms of psychological torture.

5. Fortify Rights identified eight Myanmar Army infantry and light infantry battalions and divisions with soldiers who committed torture since June 2011, identified by numbers 21, 37, 99, 242, 271, 437, 438, and 567. Many more units were likely involved in committing torture.

6. Fortify Rights documented attacks by the Myanmar Army on civilians and non-military targets in Kachin State and northern Shan State between 2011 and 2013. In these areas, the Myanmar Army shelled numerous villages and razed civilian homes, attacked makeshift camps for displaced persons, and opened fire on fleeing villagers. Several attacks documented by Fortify Rights occurred in civilian-populated areas with no presence of soldiers from the KIA or other non-state armed groups. For example, villagers from Mung Ding Pa village, Kachin State told Fortify Rights that Myanmar Army soldiers attacked their village on October 22, 2013, opening fire on villagers as they ran away and sought shelter. Neither the KIA nor any other armed group besides the Myanmar Army was present at the time.

7. Fortify Rights also documented evidence of alleged extrajudicial killings in Kachin State and northern Shan State since 2011, including the killing of Sumlut La Gun on July 28, 2013 in Hka Len village, Shan State; Lum Awng from Nawng Heng village, Shan State on June 14, 2013; and Maraw Gum in Mung Ding Pa village, Kachin State in 2013. Fortify Rights believes the Myanmar Army executed these individuals after taking them into custody. In another case, two Kachin men told Fortify Rights they witnessed Myanmar Army soldiers kill Thein Htun, an unarmed ethnic-Shan civilian male, while he was driving a motorbike near Hka Wan Bang village, Kachin State in October 2011. The two men were then forced to pose with the body in a photograph taken by soldiers. Fortify Rights also documented unlawful killings of several civilians, including children, by Myanmar army soldiers in Namlimpa village, Mansi Township, Kachin State in November 2012 as well as alleged unlawful killings in other villages in Mansi Township in 2013.

8. Fortify Rights documented unlawful forced labor exacted by the Myanmar Army in Kachin State and northern Shan State since June 2011, including soldiers forcing villagers to guide them or carry military materials through areas littered with landmines. For example, in October 2013, the Myanmar Army entered Mung Ding Pa village, tied two brothers by their wrists, beat them, and forced them to act as guides for the Army for three days without food or water. Fortify Rights also documented the use of civilians as human shields by the Myanmar Army in conflict zones in northern Myanmar. After occupying Mung Ding Pa village, Myanmar Army soldiers confined a large group of civilians to a centrally located church for an extended period of time in October 2013—villagers thought this was to fend off an otherwise imminent attack by the KIA. Other villagers were forced to walk with columns of Myanmar Army soldiers between villages for no discernable purpose other than to discourage KIA attacks.

9. Fortify Rights documented widespread and systematic pillaging and destruction of civilian property by Myanmar Army soldiers in Kachin State and northern Shan State between 2011 and 2013. Upon entering villages, soldiers routinely pillaged food, valuables, and other property, and willfully destroyed civilian property.

10. The continuing conflict and abuses in Kachin and Shan states has displaced more than 150,000 people. The Myanmar government continues to restrict humanitarian groups from delivering assistance to displaced communities in Kachin and northern Shan states, particularly those in areas controlled by non-state ethnic armed groups. Fortify Rights visited remote and isolated displaced communities in 2013 and 2014 that were in need of adequate shelter, medicine and health care, access to education and livelihoods, and other protections.

Targeted Abuses and Persecution against Ethnic Rohingya and other Muslim Communities

11. Ethnic Rohingya in Myanmar reside primarily in Rakhine State and are predominantly Muslim. Rohingya are particularly subject to abuses and state-sponsored persecution. In February 2014, Fortify Rights published Policies of *Persecution: Ending Abusive State Policies against Rohingya Muslims in Myanmar,* a report based on 12 internal government documents describing state policies targeting Rohingya. These documents outline restrictions on movement, marriage, childbirth, home repairs and construction of houses of worship, and other aspects of everyday life of the Rohingya. These restrictions are impermissible under international law have been in place for decades. For example, Rohingya must seek official government approval before marrying and are subject to restrictions on childbirth. The implementation of these policies leave Rohingya with few options but to flee the country. Fortify Rights believes these abuses amount to crimes against humanity under international law.

12. Rohingya are barred from equal access to citizenship under the 1982 Citizenship Law, making them the world's largest stateless population within any single country's borders, according to the UN High Commissioner for Refugees. In 2014, the government of Myanmar began a "citizenship scrutiny" process to "verify" the status of "Bengalis" in Rakhine State—a discriminatory process that requires Rohingya to disavow their ethnic identity in exchange for a type of citizenship that does not include the rights afforded to full citizens.

13. Based on firsthand testimony and other sources, Fortify Rights estimates that since 2012 the Myanmar Army and other security forces have used forced labor from several thousand Rohingya persons in northern Rakhine State, including children.

14. Rohingya Muslims and other Muslim communities in Myanmar have experienced significant state-sponsored violence and targeted attacks during the past four years. In 2012, violence in 13 of 17 townships in Rakhine State, mainly targeting Rohingya Muslims, resulted in deaths, widespread destruction of property, and the internal displacement of more than 150,000 people. State security forces failed to intervene to stop deadly attacks and, in some cases, participated in attacks—killing men, women, and children. Further state-sponsored anti-Muslim attacks erupted throughout the country following the 2012 violence. In January 2013, Fortify Rights called for an end to attacks and mass arrests of Rohingya men and boys in Du Char Yar Tan village and surrounding areas in Rakhine State's Maungdaw Township. The government sealed off the village for several weeks following reports of killings and property destruction in the area. There has yet to be a credible independent investigation into this incident or accountability for perpetrators of violence.

15. More than 150,000 people, mostly Rohingya Muslims, remain internally displaced in Rakhine State and confined to IDP camps. They are cut off from access to livelihood outside of the camps and have limited access to aid. The government continues to permit delivery of aid only to "registered IDPs," effectively denying aid to tens of thousands. Rohingya living in IDP camps and elsewhere in northern Rakhine State told Fortify Rights they were deprived of food, health-care, and livelihood opportunities. These avoidable deprivations create conditions of life that appear to be deliberately destructive to the Rohingya community.

16. Hundreds of thousands of Rohingya have fled Myanmar since 2012, mostly in boats bound for Bangladesh, Thailand, and Malaysia. In 2013 and 2014, Fortify Rights documented the complicity of Myanmar authorities in transnational trafficking and smuggling operations. Police, Navy, and Army officers demanded payments from transnational criminal syndicates to allow Rohingya individuals to depart Rakhine State, and Myanmar Navy ships at times escorted boats carrying asylum seekers to international waters. Fortify Rights documented killings, rape, torture, beatings, and deprivation of food, water, and space by human traffickers on modern-day slave ships.

Prisoners of Conscience

17. The government of Myanmar released more than 1,000 prisoners of conscience in 2011 and 2012 but has since imprisoned journalists, human rights defenders, ethnic and religious minorities, and peaceful protestors. In March 2015, authorities sentenced five Rohingya prisoners of conscience, including prominent community leaders, on trumped-up charges, adding to an unknown number of Rohingya prisoners of conscience in Rakhine State.

18. In March 2015, authorities violently suppressed public protests against the National Education Law, beating demonstrators in the street, arresting more than 100 people en masse, and later rounding up activists under the pretense of checking homes for unauthorized guests, which itself represents a violation of human rights.

19. There are hundreds of prisoners of conscience in Myanmar at the time of writing.

The National Human Rights Framework, the Judiciary, and Impunity

20. Several laws in Myanmar conflict with international human rights standards or are used by the authorities to impermissibly restrict or violate human rights. These include the Law Relating to Peaceful Assembly and Peaceful Procession, the Unlawful Associations Act, and the Ward or Village Tract Administration Law.

21. In March 2015, Fortify Rights released a report calling on the Myanmar authorities to immediately end warrantless searches of private homes and abolish the requirement that all residents register overnight houseguests with government officials. The report calls on Myanmar Parliament to repeal provisions of the *Ward or Village Tract Administration Law* of 2012 that require residents throughout the country to register overnight guests. Fortify Rights found that provisions in the law are enforced through warrantless night-time inspections that violate the rights to privacy, movement and residency, and association. The Myanmar authorities use these provisions to monitor, harass, and target low-income communities and individuals engaged in civil society and political activities.

22. Despite commitments made at its first periodic review, Myanmar has not acceded to core human rights treaties in the past four years. Although in 2011 Myanmar accepted a recommendation to engage with the Office of the High Commission for Human Rights (OHCHR), the Myanmar government has not invited OHCHR to establish an office in the country, despite promises by President Thein Sein.

23. The Myanmar National Human Rights Commission (MNHRC), initially created by Presidential decree in September 2011 and later backed by legislation in September 2014, fails to meet minimum international standards as articulated by the "Paris Principles." The MNHRC generally lacks autonomy and the ability to operate independently from the government. The MNHRC failed to appropriately respond to human rights complaints and to ensure the confidentiality of complainants.

24. In December 2014, Fortify Rights and five other prominent human rights organizations raised concern about the prosecution of Shayam Brang Shawng, an ethnic Kachin man charged by the military with making "false charges" in a letter submitted to the MNHRC alleging that Myanmar Army soldiers killed his 14-year-old daughter, Ja Seng Ing. Not only did the MNHRC fail to support an independent and impartial investigation into the death of Ja Seng Ing, it also declined to provide assistance to Brang Shawng and his legal team to achieve a just resolution. The Hpakant Township Court convicted Brang Shawng on February 13, 2015. The conviction of Brang Shawng violates the MNHRC's enabling law, which prohibits retaliatory action against those submitting complaints.

25. On January 28, 2015, the Myanmar military threatened legal action against anyone accusing the military of responsibility for the killings of two ethnic Kachin women on January 20, 2015. The office of the President extended the threat to members of the media.

26. Article 445 of Myanmar's constitution continues to shield authorities from legal action relating to "any act done in the execution of their respective duties," and the Myanmar government has not taken significant steps to address systemic impunity for human rights abuses committed by Myanmar officials and members of the military.

RECOMMENDATIONS

- Support an impartial, independent, international investigation, including Myanmar partners, into alleged violations of international human rights law, international criminal law, and international humanitarian law in Kachin, Shan, and Rakhine states as well as elsewhere in the country.

- Provide United Nations and national and international humanitarian agencies with safe, sustained, and unfettered access to all areas with internally displaced populations, including in Kachin, Shan, and Rakhine states.

- Ensure all national laws, legislation, and policies are publicly available and in line with international human rights laws and standards. In particular:

    - Repeal provisions of the Ward or Village Tract Administration Law that require the registration of overnight guests and empower public officials to enforce the registration requirement through household inspections.

    - Amend the 1982 Citizenship Law to reduce statelessness and ensure equal access to citizenship rights. Ensure all citizens and residents have access to government-issued documents, including birth certificates, national registration cards, identity cards, and residency documents. Remove indications of ethnic origin and religious affiliation from national identification cards, further to the 2012 recommendation of the UN Committee on the Rights of the Child.

- Accede to the ICCPR, ICESCR, and their Option Protocols as well as other key human rights treaties. Finalize, without delay, an agreement with OHCHR to establish a Country Office in Myanmar with a full mandate for human rights protection, promotion, and technical support, and extend a standing invitation to UN Special Procedures.

- Reform the MNHRC to bring it in line with international standards as articulated by the Paris Principles. Ensure that individuals, particularly individuals from minority groups, can safely file confidential complaints with the MNHRC and obtain effective redress for human rights abuses.

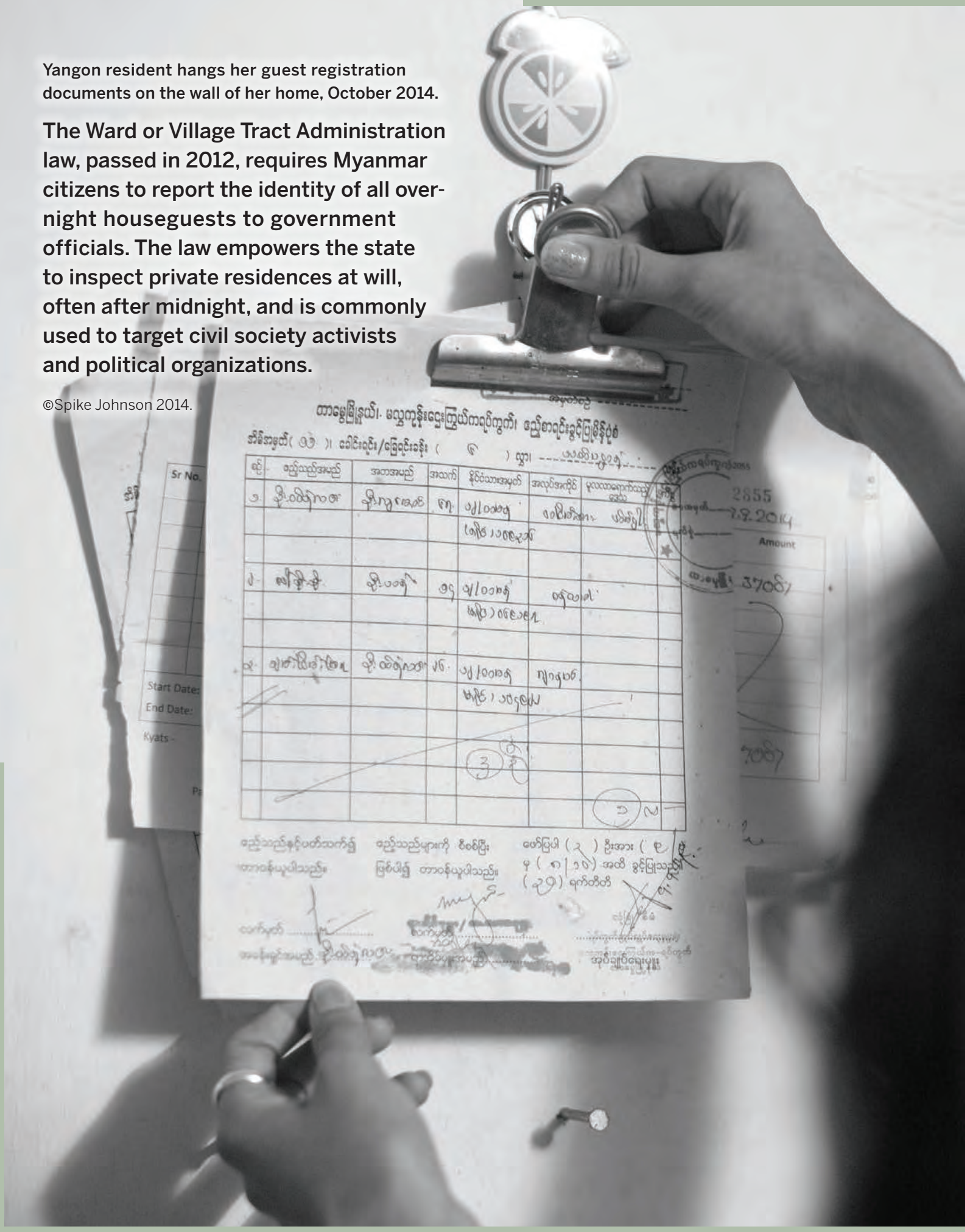
- Overturn the conviction of Shayam Brang Shawng and publicly affirm and protect the rights to freedom of expression and effective remedy as well as the right to implicate government authorities, including military personnel, in human rights abuses without fear of retaliation.

- Immediately and unconditionally release all prisoners of conscience, including Rohingya prisoners of conscience, and ensure that only individuals charged under laws compatible with international law and tried in proceedings that meet international fair trial standards are detained.

- Repeal article 445 of the Myanmar Constitution and ensure all perpetrators of human rights violations and discriminatory acts, regardless of rank, are held accountable.

- End violations of international humanitarian law, international human rights law, and international criminal law—including torture, attacks on civilians, extrajudicial killings, rape, sexual violence, forced labor, and the use of human shields—by Myanmar military personnel, investigate credible allegations of violations, and ensure that perpetrators are held accountable.

- End all discrimination in law, policy, and practice against ethnic and religious minorities, including Muslims and the Rohingya minority. In particular, protect and ensure equal access to the rights to nationality, privacy, and freedom of movement, marriage, family, health, education, and religion.



Yangon resident hangs her guest registration documents on the wall of her home, October 2014.

The Ward or Village Tract Administration law, passed in 2012, requires Myanmar citizens to report the identity of all overnight houseguests to government officials. The law empowers the state to inspect private residences at will, often after midnight, and is commonly used to target civil society activists and political organizations.

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ANNEX: Select Fortify Rights Documentation of Human Rights Abuses in Myanmar

Policies of Persecution: Ending Abusive State Policies against Rohingya Muslims in Myanmar

February 25, 2014

This report is based primarily on the analysis of 12 leaked official documents and a review of public records, as well as interviews with Rohingya and others in Myanmar and Thailand. The documents published in the report reveal restrictions that deny Rohingya basic human rights, including the rights to non-discrimination, privacy, and freedom of movement, marriage, family, and health. It appears that all of the restrictions and enforcement methods described in the report are still being implemented.

"I Thought They Would Kill Me": Ending Wartime Torture in Northern Myanmar

June 9, 2014

This report describes the systematic use of torture and other cruel, inhuman, and degrading treatment or punishment against more than 60 civilians by Myanmar authorities from June 2011 to April 2014. Members of the Myanmar Army, Myanmar Police Force, and Military Intelligence deliberately caused severe and lasting mental and physical pain to civilians in combat zones, villages, and places of detention in Kachin State. None of the survivors interviewed by Fortify Rights had received adequate medical care.

Myanmar: End Military Attacks on Kachin and Shan Civilians

November 6, 2014

This press release and briefing describe indiscriminate attacks and extrajudicial killings by the Myanmar Army in 2011, 2012 and 2013 in Kachin State and northern Shan State. The press release and briefing are based on more than 100 interviews by Fortify Rights in conflict zones in northern Myanmar, where Myanmar Army soldiers have shelled villages, razed civilian homes, attacked makeshift camps for displaced persons, and entered villages while opening fire on civilians with small arms, leading to deaths, injuries and massive displacement of civilian populations.

Myanmar: Authorities Complicit in Rohingya Trafficking, Smuggling

November 7, 2014

This press release and briefing describes the role of Myanmar authorities in the maritime human trafficking and smuggling of Rohingya Muslims from Myanmar's Rakhine State. Since 2012, Myanmar state security forces in Rakhine State have collected payments from Rohingya asylum seekers fleeing Myanmar by ships operated by transnational criminal syndicates, according to information obtained by Fortify Rights. In some cases, the Myanmar Navy escorted boats operated by criminal gangs out to international waters.

Myanmar: Prosecute Perpetrators, Not Human Rights Defenders

February 3, 2015

This press release calls on Myanmar authorities to stop prosecuting and threatening journalists and human rights defenders for reporting and speaking out about human rights abuses. It highlights a statement by the Myanmar military threatening legal action against those alleging the involvement of military personnel with murder—and apparent rape—of two ethnic Kachin women.

Myanmar: Overturn Wrongful Conviction of Brang Shawng

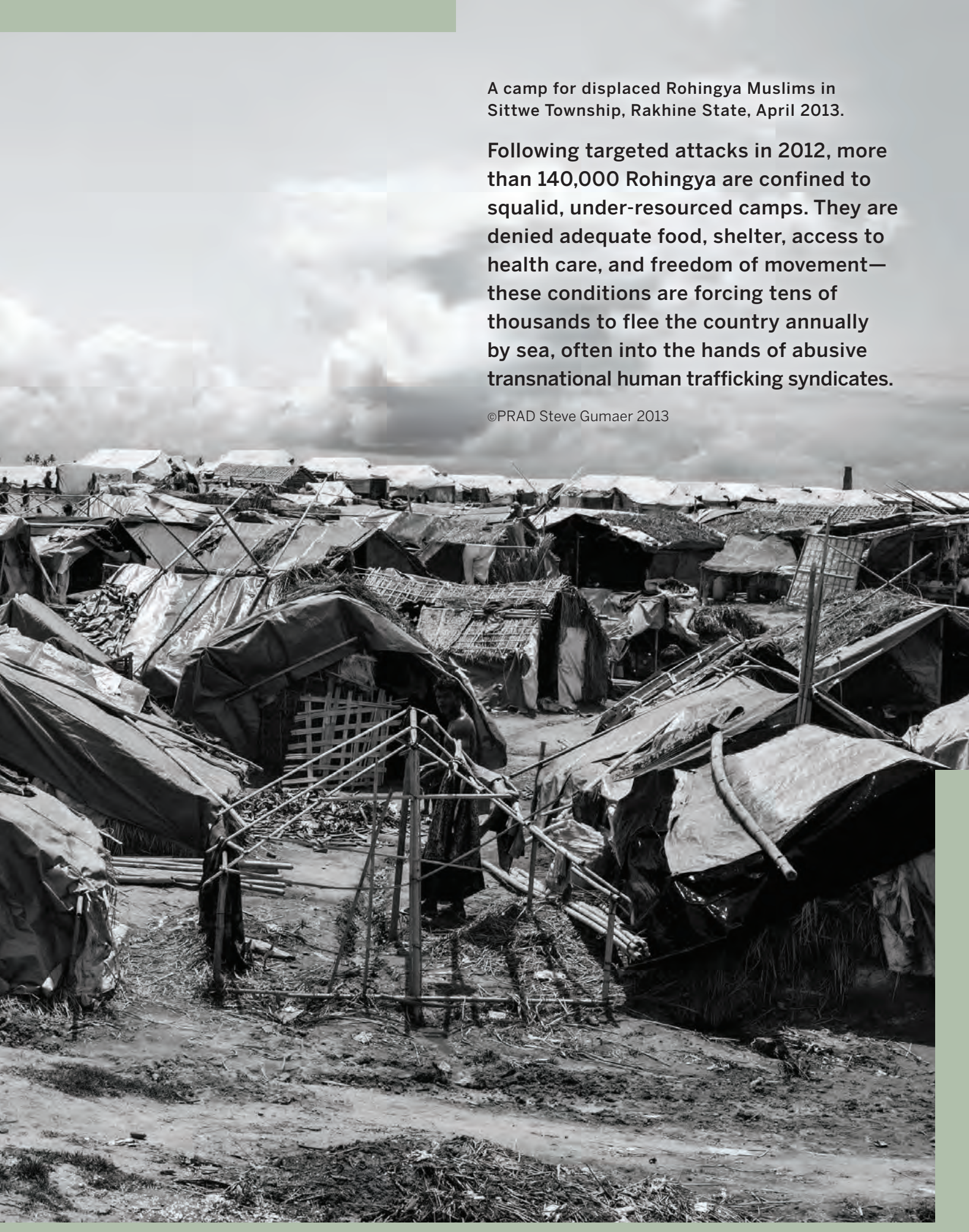
February 18, 2015

This joint press release with the Ja Seng Ing Truth Finding Committee calls on Myanmar authorities to overturn the conviction of Shayam Brang Shawng, an ethnic Kachin Man. Brang Shawng was convicted of making "false charges" in a letter he sent to the Myanmar National Human Rights Commission (MNHRC) which implicated Myanmar Army soldiers in the death of his daughter, Ja Seng Ing. Fortify Rights has investigated the death of Ja Seng Ing and believes that the prosecution of Brang Shawng was baseless, retaliatory, and unjust.

Midnight Intrusions: Ending Guest Registration and Household Inspections in Myanmar

March 19, 2015

This report describes the human rights impact of the provisions of the Ward or Village Tract Administration Law that require residents to register overnight guests with government authorities and empower officials to conduct household inspections to ensure compliance with the law. Through interviews and focus group discussions with 90 individuals, Fortify Rights documented the detrimental impact of the law on individuals throughout Myanmar and the particular application of the law against low-income communities, political activists and civil society representatives.



A camp for displaced Rohingya Muslims in Sittwe Township, Rakhine State, April 2013.

Following targeted attacks in 2012, more than 140,000 Rohingya are confined to squalid, under-resourced camps. They are denied adequate food, shelter, access to health care, and freedom of movement—these conditions are forcing tens of thousands to flee the country annually by sea, often into the hands of abusive transnational human trafficking syndicates.

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