
SUPPORTING HUMAN RIGHTS IN
MYANMAR:

Why the U.S. Should Maintain
Existing Sanctions Authority

MAY 2016



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GENOCIDE


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CONTENTS

SUMMARY 1

METHODOLOGY 5

I. U.S. SANCTIONS AND HUMAN RIGHTS IN MYANMAR 6

 The Establishment of U.S. Sanctions in Myanmar
 Due to Serious Human Rights Violations..... 7

 Calibrated Sanctions in the Context of Political Reforms and Ongoing Abuses..... 8

**II. THE CURRENT SANCTIONS REGIME AND ONGOING EGREGIOUS
HUMAN RIGHTS VIOLATIONS IN MYANMAR** 16

 Rakhine State 19

 Kachin and Shan States 27

**RECOMMENDATIONS: THE NEED FOR CONTINUED
SANCTIONS AUTHORITY** 31

ACKNOWLEDGEMENTS 34



Kachin women and children
displaced by ongoing war
and abuses in northern
Myanmar ©Ryan Roco 2013

SUMMARY

Is now the time for the U.S. Government to drop all sanctions on Myanmar (also known as Burma)? A network of corporate lobbyists and business associations are seeking to convince the administration of U.S. President Barack Obama to lift all remaining sanctions on the country by letting the existing sanctions authority expire this month.

At the core of their argument is the idea that the situation in Myanmar has fundamentally changed for the better and that economic sanctions are no longer necessary or productive.

Fortify Rights and United to End Genocide interviewed 43 eyewitnesses and survivors of human rights abuses as well as U.N. officials and others in Yangon Division, Rakhine State, and Kachin State in Myanmar in March and April 2016 to assess whether the U.S. Government should maintain its authority to sanction Myanmar or let it lapse this month.

Given the current political landscape in Myanmar and ongoing egregious human rights violations, this report recommends that President Obama renew the sanctions authority on Myanmar for at least another year.

Chapter I of this report tracks U.S. policy decisions over the years in relation to positive reforms and human rights abuses in Myanmar. Chapter II provides evidence for why it would be premature and counterproductive for the U.S. to forfeit existing sanctions authority over Myanmar at this time in light of ongoing egregious human rights violations in Rakhine, Kachin, and Shan states in particular.

Myanmar has undergone significant reforms over the past few years. In 2011, the military transferred power to the quasi-civilian administration of President Thein Sein, and in April this year, a new government led by President Htin Kyaw and State Counselor Aung San Suu Kyi and their party, the National League for Democracy (NLD), assumed control of portions of the government that the constitution places outside of the military's domain.

As important as these reforms are, the political environment in Myanmar remains fragile. The military that dominated the government for decades maintains disproportionate influence. With the authority to appoint 25 percent of parliamentary seats, the military enjoys an effective constitutional veto, and through the constitution, it controls three key government ministries—Defense, Home Affairs, and Border Affairs.



Kachin Independence Army soldier points in the direction of a nearby Myanmar Army outpost, Kachin State.
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Behind the scenes, the military and military-owned businesses maintain outsized economic influence as well. For example, the military has long profited through the illicit and highly corrupt jade trade, which is directly connected to armed conflict and wartime abuses in Kachin State.

Remaining U.S. sanctions on Myanmar ban imports of jade and rubies, and target Specially Designated Nationals (SDN) who have contributed to human rights abuses, with whom U.S. businesses are prohibited from doing business or completing transactions. Current U.S. sanctions policy also prohibits investments with Myanmar's Ministry of Defense as well as state and non-state armed groups, bans arms transfers, and applies other restrictions on military-to-military relations.

The U.S. has also implemented annual reporting requirements for U.S. investments in Myanmar exceeding \$500,000. U.S. firms invested in Myanmar are required to answer 11 questions focusing on human rights, environmental issues, community consultations, and other key indicators of responsible investment, and submit them to the U.S. Government.

The authority of existing U.S. sanctions is grounded in the International Emergency Economic Powers Act of 1997 (IEEPA), which requires an annual renewal by the President of the United States. The sanctions authority must be renewed in May 2016 in order for the sanctions on Myanmar to remain in place for the next 12 months.

Since reforms first began to take hold in Myanmar, the U.S. has responded by removing most economic sanctions against the country, including most investment bans and trade embargos. While rewards for positive reforms in Myanmar have been carefully calibrated, conditions for many ethnic nationalities in the country, particularly Rohingya Muslims and Kachin Christians, continue to worsen, not improve.

In Rakhine State, the authorities continue to confine more than 140,000 Rohingya, Kaman, and other Muslims—displaced by targeted attacks in 2012—to more than 40 squalid internment camps. Fortify Rights and United to End Genocide documented avoidable deprivations in food, shelter, and health care among the displaced due to restrictions enforced by state security forces and government officials.

Myanmar authorities continue to impose severe restrictions on more than one million stateless Rohingya and other Muslims throughout Rakhine State, particularly in the three townships comprising Northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung. Restrictions on movement, marriage, and childbirth as well as home repairs and construction of houses of worship severely impact daily life for Rohingya.

The authorities have failed to hold perpetrators accountable for killings, rape, arson attacks, forced labor, and other abuses perpetrated during two waves of targeted violence against Rohingya in 2012 and since. There is no evidence that a single state security official has been held to account or even investigated for wrongdoing with respect to ongoing, well-documented abuses against Rohingya.

United to End Genocide has repeatedly warned about the high risk of genocide against Rohingya in Myanmar, and in October 2015, a legal analysis prepared for Fortify Rights by Yale Law School's Lowenstein Human Rights Clinic found "strong evidence" of the elements of the crime of genocide with regard to the situation of Rohingya in Rakhine State.

This is hardly the time to ease pressure on Myanmar.

Likewise, armed conflict continues to rage in Kachin and Shan states. Myanmar Army soldiers have committed extrajudicial killings, rape, torture, indiscriminate attacks on civilians, forced labor, and used human shields against civilians in Kachin and northern Shan states according to eyewitnesses, survivors, and aid workers interviewed by Fortify Rights and United to End Genocide. These acts may constitute war crimes and crimes against humanity under international law.

The armed conflict and other abuses in Kachin and Shan states has resulted in the displacement of more than 100,000 ethnic civilians, and the basic humanitarian needs of thousands of them are still unmet five years after their initial displacement. The Ministry of Social Welfare and Regional Commanders of the Myanmar Army are particularly responsible for imposing restrictions on aid groups and creating avoidable deprivations in humanitarian aid to displaced Kachin and Shan communities. Many Kachin feel they are being punished for their ethnicity.

At the time of writing, Myanmar authorities are restricting humanitarian access to an estimated 1,600 displaced Kachin civilians, who remain isolated north of Sumprabum in northern Kachin State and are in desperate need of assistance and protection.

Despite these abuses, calls for the U.S. to lift all remaining sanctions on Myanmar have increased.

The U.S. could best support human rights in Myanmar by incentivizing progress and positive political reforms while maintaining targeted sanctions against those who commit or incite human rights violations.

President Obama should renew sanctions authority without delay and make clear that promoting human rights in Myanmar will remain a priority in U.S. foreign policy.



Empty lots in a Rohingya village razed in 2012, Sittwe Township, Rakhine State. Displaced Rohingya from this village are now confined to interment camps and denied World Food Program rations as the government does not classify them as "Internally Displaced Persons."

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METHODOLOGY

This report was researched and written by United to End Genocide and Fortify Rights. The team interviewed 43 eyewitnesses and survivors of abuses in Rakhine State, Kachin State, and Yangon Division in March and April 2015. The team also met several U.N. officials, aid workers, representatives from international and domestic nongovernmental organizations, and others in Yangon, Myanmar and Bangkok, Thailand.

Interviews were conducted in English or in Burmese with English interpretation. None of the interviewees received compensation and all were informed of the purpose of the interview, its voluntary nature, and the ways that the information they shared might be used. All of those interviewed provided informed consent or specified how the information shared ought to be used. For security purposes, names of interviewees and other identifying information are withheld from this report.

The aftermath of anti-Muslim attacks, Sittwe Township, 2012. Rohingya villages were razed in 13 of 17 townships in Rakhine State. In some areas, authorities bulldozed homes and mosques that remained standing after the attacks.

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I. U.S. SANCTIONS AND HUMAN RIGHTS IN MYANMAR

In recent years, policy discussions in Washington D.C. have centered around determining criteria for softening or removing existing U.S. sanctions on Myanmar in response to the changing political situation in the country.

Remaining U.S. sanctions on Myanmar include an import ban on jade and rubies from Myanmar; a prohibition on U.S. persons doing business or completing other transactions with individuals or entities listed as Specially Designated Nationals (SDN); and a prohibition on investments with Myanmar's Ministry of Defense and state and non-state armed groups.¹ The U.S. has also implemented annual reporting requirements for U.S. investments in Myanmar exceeding \$500,000.²

Much of the authority behind past and present sanctions is grounded in the International Emergency Economic Powers Act of 1977 (IEEPA), which requires an annual renewal by the U.S. President. The sanctions authority is due for renewal or dismissal in May 2016.³

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- 1 Regarding prohibition on U.S. persons doing business or completing other transactions with individuals or entities on the SDN list, *see*, Burmese Sanctions Regulations, 31 C.F.R. § 537.201 (2014); Exec. Order No. 13619, 3 C.F.R. 41243 (2012); Exec. Order No. 13464, 3 C.F.R. 24491 (2008); Exec. Order No. 13448, 3 C.F.R. 60223 (2007); and Exec. Order No. 13310, 3 C.F.R. 44853 (2003). These executive orders are authorized by the International Emergency Economic Powers Act of 1977, which requires a finding by the president of “any unusual and extraordinary threat” and a declaration of “a national emergency with respect to such threat” and must be renewed annually. One hundred fifteen individuals and entities in Myanmar are currently on the SDN list. Regarding the ban on import of jadeite and rubies from Myanmar, *see*, Burmese Sanctions Regulations, 31 C.F.R. 537.203 (2014) and Exec. Order No. 13651, 3 C.F.R. 48793 (2013). Regarding prohibitions on new investment in Myanmar by U.S. persons, *see*, Burmese Sanctions Regulations, 31 C.F.R. 537.204 (2014) and Exec. Order No. 13047, 3 C.F.R. 28301 (1997). An Office of Foreign Assets Control (OFAC) general license authorizing certain investment in Myanmar under compliance with State Department annual reporting requirements for investments over \$500,000 largely curtailed these restrictions in 2012. Investments with Myanmar's Ministry of Defense, state and non-state armed groups, and persons and entities on the SDN list are still prohibited.
 - 2 *See*, Burmese Sanctions Regulations, 31 C.F.R. 537.204 (2014) and Exec. Order No. 13047, 3 C.F.R. 28301 (1997).
 - 3 *See*, AmCham Myanmar Chapter, *et al.*, “U.S. Business Community Statement on U.S.-Myanmar Relations,” Letter to John Kerry, U.S. Secretary of State, *et al.*, February 18, 2016, https://www.uschamber.com/sites/default/files/u.s._business_community_statement_on_u.s.myanmar_relations.pdf (accessed May 2, 2016).

The Establishment of U.S. Sanctions in Myanmar Due to Serious Human Rights Violations

In 1988, the Myanmar military violently cracked down on pro-democracy protesters, killing thousands and imprisoning many more. During subsequent elections in 1990, the military further consolidated its rule by annulling national election results and placing Aung San Suu Kyi, the popular leader of the democratically elected party—the National League for Democracy (NLD)—under house arrest. These actions led to international condemnation and alienation of Myanmar.⁴ The U.S. suspended high-level diplomatic meetings and cut off economic and military aid, including arms sales.⁵

Continued human rights abuses—including another nationwide crackdown on pro-democracy protests in 2007, dubbed the “Saffron Revolution”—led the U.S. to impose a series of additional sanctions.⁶ Executive Orders and U.S. Congressional actions, including the Burmese Freedom and Democracy Act of 2003 and the Tom Lantos Block Burmese JADE Act of 2008, imposed bans on U.S. investment in Myanmar, denied financial services from U.S. banks, prohibited importation of goods from Myanmar, and blocked U.S. support for loans from international financial institutions.

Targeted sanctions further froze assets and restricted travel for senior military officials and their families as well as individuals connected to persons or entities listed on the U.S. Department of the Treasury’s SDN list.⁷

4 See, Christina Fink, *Living Silence: Burma Under Military Rule* (London: Zed Books, 2001), p.51-52; Bertil Lintner, *Outrage: Burma’s Struggle for Democracy* (Bangkok: White Lotus, 1990), p. 94-103.

5 On September 23, 1988, the U.S. President Ronald Reagan suspended all U.S. aid to Myanmar, including counter-narcotics programs, and stopped all arms sales. See, Michael F. Martin, U.S. Sanctions on Burma, Congressional Research Service, October 19, 2012, <http://www.fas.org/sgp/crs/row/R41336.pdf> (accessed May 3, 2016), p.12.

6 See, for example, Exec. Order No. 13464, 3 C.F.R. 24491 (2008); Exec. Order No. 13448, 3 C.F.R. 60223 (2007); Exec. Order No. 13310, 3 C.F.R. 44853 (2003); Burma Freedom and Democracy Act of 2003, 50 U.S.C. 1701, §§ 3(a)(2), 6 (2003); Exec. Order No. 13047, 3 C.F.R. 28301 (1997); USA PATRIOT Act of 2001, 18 U.S.C. 1, § 311 (2001); Tom Lantos Block Burmese JADE Act of 2008, 50 U.S.C. 1701 (2008); Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1997, H.R. 3057, § 570(a)(1) (1997); Foreign Relations Authorization Act, Fiscal Year 2003, 22 U.S.C. 2651 (2003); Trafficking Victims Protection Act of 2000, 22 U.S.C. 7101, §§ 11(d)(1)(A) and (B), (2000); Arms Export Control Act of 1976, 22 U.S.C. 2778 (1976); International Traffic in Arms Regulations, 22 C.F.R. § 126.1 (1993); International Religious Freedom Act of 1998, 22 U.S.C. 6401 (1998); Export Administration Regulations, 15 C.F.R. § 744.22 (2014). See also, Martin, *U.S. Sanctions on Burma*, p.13-14.

7 Burmese Sanctions Regulations, 31 C.F.R. 537.203 (2014), Exec. Order No. 13619, 3 C.F.R. 41243 (2012); Exec. Order No. 13464, 3 C.F.R. 24491 (2008); Exec. Order No. 13448, 3 C.F.R. 60223 (2007); and Exec. Order No. 13310, 3 C.F.R. 44853 (2003). A “U.S. person” as referenced in the International Emergency Economic Powers Act includes, “any person, or with respect to any property, subject to the jurisdiction of the United States.” See International Emergency Economic Powers Act, 50 U.S.C. § 1702 (1977).

Calibrated Sanctions in the Context of Political Reforms and Ongoing Abuses

Beginning in 2009, a combination of diplomatic, economic, and geo-political factors led to an opening for dialogue between the U.S. and the military-ruled Government of Myanmar.⁸ The U.S. based initial dialogue on maintaining sanctions as well as the possibility of new, targeted sanctions “until we see concrete progress towards reform.”⁹

In March 2011, the government of Myanmar transitioned from direct military rule to quasi-civilian rule under former military general President Thein Sein and his military-dominated party—the Union Solidarity and Development Party. President Thein Sein’s administration included other former military officials who maintained high-level positions and effective political control. The government eased media censorship and released some political prisoners, including Aung San Suu Kyi, while continuing to commit abuses that characterized previous military regimes.

The U.S. Government responded to these positive reforms with a “calibrated” or “action for action” policy through which reforms by the Myanmar leadership were met with diplomatic and economic overtures, including the lifting of several sanctions.¹⁰ In November 2011, then U.S. Secretary of State Hillary Clinton became the first U.S. Secretary of State to visit Myanmar in 50 years and announced an increase in humanitarian aid and a willingness to lift the block on assistance through international financial institutions.¹¹

In April 2012, Myanmar held parliamentary by-elections, in which Aung San Suu Kyi won a seat in Parliament. In response, the U.S. appointed the first U.S. Ambassador to Myanmar in 22 years—Derek Mitchell—and reestablished foreign assistance through the U.S. Agency for International Development (USAID) after a 23-year absence.¹² The U.S. Government

8 Myanmar’s military elite sought to offset increasing Chinese influence and attract western investment, while President Obama expressed willingness to engage with the military on national security and human rights issues.

9 See, Arshad Mohammed, “U.S. Keeps Myanmar Sanctions, Plans More Talks,” *Reuters*, September 23, 2009, <http://www.reuters.com/article/us-un-assembly-myanmar-usa-idUSTRE58N0LL20090924> (accessed May 2, 2016).

10 See, U.S. Department of State, *U.S. Relations with Burma – Fact Sheet*, Bureau of East Asian and Pacific Affairs, May 4, 2016, <http://www.state.gov/r/pa/ei/bgn/35910.htm> (accessed May 2, 2016). See also, Martin, *U.S. Sanctions on Burma*, p.3-4.

11 “USAID Project to Expand to Myanmar,” *Myanmar Times*, December 5, 2011, <http://www.mmmtimes.com/index.php/national-news/1640-usaid-project-to-expand-to-myanmar.html> (accessed May 4, 2016); See also, Michael F. Martin, *U.S. Policy Towards Burma: Issues for the 113th Congress*, Congressional Research Service, March 12, 2013, <https://www.fas.org/sgp/crs/row/R43035.pdf> (accessed May 3, 2016), p.8.

12 See, Tom McCarthy, “Barack Obama Appoints Derek Mitchell as First US Ambassador to Burma,” *The Guardian*, May 17, 2012, <http://www.theguardian.com/world/2012/may/17/obama-administration-burma-ambassador> (accessed May 3, 2016). See also, U.S. Department of State, *U.S. Relations with Burma – Fact Sheet*.

also granted select Myanmar officials travel visas and relaxed restrictions on U.S. financial services. Further, the U.S. Government lifted the ban on new investments, with the exception of new investments with Myanmar's Ministry of Defense or entities on the SDN list, which remained prohibited.¹³

Meanwhile, political reforms and progress on human rights in Myanmar were inconsistent and uneven. In June 2011, armed conflict resumed between the Myanmar Army and the Kachin Independence Army (KIA)—a non-state ethnic armed group—ending a 17-year ceasefire agreement and resulting in protracted armed conflict in northern Myanmar. The armed conflict led to the displacement of at least 100,000 civilians.¹⁴ The conflict later spread to northern Shan State, involving several other ethnic armies and militias and displacing tens of thousands of additional civilians.¹⁵ In December 2012 and January 2013, the Myanmar military used air strikes that the U.S. described as “extremely troubling,” while also eliciting a rare response from U.N. Secretary General Ban Ki-moon, who called for the airstrikes to cease.¹⁶ On the day Aung San Suu Kyi won her parliament seat in April 2012, the Myanmar Army shelled targets in Kachin State.¹⁷

13 In 2012, the Office of Foreign Assets Control (OFAC) in the U.S. Department of the Treasury issued a general license authorizing investment in Myanmar. See, U.S. Secretary of State Hillary Rodham Clinton, “Recognizing and Supporting Burma’s Democratic Reforms,” Remarks, April 4, 2012, <http://www.state.gov/secretary/20092013clinton/rm/2012/04/187439.htm> (accessed May 3, 2016).

14 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 May 4, 2016). See also, Human Rights Watch, *Untold Miseries: Forced Displacement and Wartime Abuses in Burma’s Kachin State*, March 2012; Matthew Smith, “Where Myanmar Keeps Trampling Rights,” *New York Times*, March 15, 2012, http://www.nytimes.com/2012/03/16/opinion/where-myanmar-keeps-trampling-rights.html?_r=0 (accessed May 3, 2016); Matthew Smith, “How China Fuels Myanmar’s Wars,” *New York Times*, March 4, 2014, <http://www.nytimes.com/2015/03/05/opinion/how-china-fuels-myanmar-wars.html> (accessed May 4, 2016).

15 “Troops Deployed to Guard China Pipeline” *Democratic Voice of Burma*, January 27, 2012, <http://www.dvb.no/news/troops-deployed-to-guard-china-pipeline/19961> (accessed May 4, 2016). See also, Human Rights Watch, *Untold Miseries*, p. 39-40.

16 See, U.N. Secretary-General Ban Ki-Moon, “Statement Attributable to the Spokesperson for the Secretary-General on the Air Strikes in Kachin State in Myanmar,” January 2, 2013, <http://www.un.org/sg/statements/index.asp?nid=6535> (accessed May 2, 2016); Thomas Fuller, “Myanmar Military Admits to Airstrikes on Kachin Rebels,” *New York Times*, January 2, 2013, <http://www.nytimes.com/2013/01/03/world/asia/myanmar-military-admits-air-raids-on-kachin-rebels.html> (accessed May 4, 2016).

17 See, “Burma Postpones By-Elections in Troubled Kachin State,” *BBC*, March, 23, 2012, <http://www.bbc.com/news/world-asia-17491613> (accessed May 2, 2016). See also, Esmer Golluoglu, “Aung San Suu Kyi Hails ‘New Era’ for Burma After Landslide Victory,” *The Guardian*, April 2, 2012, <http://www.theguardian.com/world/2012/apr/02/aung-san-suu-kyi-new-era-burma> (accessed May 2, 2016).

Much of the armed conflict in Kachin State revolves around access to lucrative natural resources, including the annual multi-billion dollar jade trade. U.S. sanctions on the import of jade to the U.S. are in part due to corruption and abuses directly connected to the trade.¹⁸

In June 2012, an initial wave of widespread violence erupted in four townships in Rakhine State in western Myanmar between Rakhine Buddhists and Rohingya Muslims.¹⁹ Rather than protect the local population, state security forces either stood by and observed or participated in the violence, targeting Rohingya and other Muslims and killing men, women, and children. The violence led to the displacement of more than 100,000 people, including mostly Rohingya, whom authorities forced into internment camps.²⁰

In August 2012, as a show of reform, the Government of Myanmar removed more than 2,000 names from its own “blacklist”—a list of foreign human rights and pro-democracy activists, journalists, and others banned from the country.²¹ The government and ethnic armed groups also moved forward in tenuous ceasefire negotiations while continuing attacks in Kachin State—at this point, 11 ethnic armed groups had signed preliminary ceasefire agreements with the government.²²

18 Jade sales in 2014 alone are estimated to amount to \$31 billion, far exceeding the \$12 billion indicated by Chinese import data. This figure equates to roughly 48 percent of Myanmar’s official Gross Domestic Product and 46 times government expenditure on healthcare. See, Global Witness, *JADE: Myanmar’s ‘Big State Secret,’* October 2015, <https://www.globalwitness.org/en-gb/campaigns/oil-gas-and-mining/myanmarjade/> (accessed May 4, 2016).

19 The Rohingya are an ethnic and religious minority of more than 1 million in western Myanmar’s Rakhine State. The Government of Myanmar has long denied and rejected the existence of the Rohingya ethnic identity and instead regards them as “illegal migrants” from neighboring Bangladesh, despite that Rohingya have resided in Myanmar for generations. Human Rights Watch, “*The Government Could Have Stopped This: Sectarian Violence and Ensuing Abuses in Burma’s Arakan State*,” August 1, 2012, <https://www.hrw.org/report/2012/07/31/government-could-have-stopped/sectarian-violence-and-ensuing-abuses-burmas-arakan> (accessed May 2, 2016).

20 *Ibid.* Matthew Smith, “Burma Let’s the Rohingya Burn,” *Wall Street Journal*, August 7, 2012, <http://www.wsj.com/articles/SB10000872396390443792604577574731526546706#:iYXP1j5UvvVNJA> (accessed May 4, 2016). See also, Human Rights Watch, “*All You Can Do Is Pray: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma’s Arakan State*,” April 22, 2013, <http://www.hrw.org/reports/2013/04/22/all-you-can-do-pray> (accessed May 2, 2016).

21 Kocho Olarn, “Myanmar Removes Names from Blacklist,” *CNN*, August 31, 2012, <http://www.cnn.com/2012/08/30/world/asia/myanmar-blacklist-names/> (accessed April 28, 2016).

22 See, Euro-Burma Office, Political Monitor No. 25, August 18-31, 2012, https://euroburmaoffice.s3.amazonaws.com/filer_public/e4/b1/e4b16906-42fb-4c8e-bfb9-97c197cb7d40/pm_no_25_-_05-09-12.pdf (accessed May 3, 2016); International Crisis Group, “Appendix B: List of Ceasefire Agreements,” April 2012, <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/b136-reform-in-myanmar-one-year-on.pdf> (accessed May 4, 2016). See also, Seth Mydans, “Burmese Government and Ethnic Rebel Group Sign Ceasefire,” *New York Times*, <http://www.nytimes.com/2012/01/13/world/asia/myanmar-signs-truce-with-ethnic-rebel-group.html> (accessed May 4, 2016).

By September 2012, the U.S. Government removed President Thein Sein and Speaker of Parliament Shwe Mann from the SDN list, and Congressional action gave President Obama waiver authority on assistance to Myanmar through international financial institutions.²³

In October 2012—a month before President Obama’s first visit to Myanmar—another wave of violence erupted in Rakhine State, affecting nine additional townships. These attacks against Muslims by Rakhine Buddhist citizens and state security forces were more targeted, coordinated, and widespread than the violence in June. State security forces and crowds of Rakhine citizens armed with spears, sticks, knives, and Molotov cocktails conducted pre-dawn raids on Muslim villages and neighborhoods, killing unknown numbers and displacing tens of thousands more Muslims.²⁴

State and local officials, political operatives, and Buddhist monks helped organize or incite targeted arson attacks against Muslim villages, informing Naypyidaw in advance of their intentions to rid the state of Muslims.²⁵ The government failed to act to prevent the violence.

The U.N., Fortify Rights, United to End Genocide, Human Rights Watch and others documented how state security forces committed killings, rape, arbitrary arrests and detention, and other abuses against Muslims in such a way that would constitute an attack on the Muslim population.²⁶

In November 2012, a month after the violence in Rakhine State, President Obama became the first sitting president to visit Myanmar, and the U.S. Government subsequently lifted the import ban for all products from Myanmar except jade and rubies.²⁷

Prior to President Obama’s visit, President Thein Sein announced 11 commitments to deepen democracy and protect human rights in the country, which he reiterated during his visit to

23 See, U.S. Department of State, *U.S. Relations with Burma—Fact Sheet*.

24 *Ibid.*

25 Human Rights Watch, “All You Can Do Is Pray.”

26 *Ibid.* See also, Al Jazeera, “Genocide Agenda,” Film, October 26, 2015, <http://www.aljazeera.com/investigations/genocide-agenda.html> (May 3, 2016); Allard K. Lowenstein International Human Rights Clinic, Yale Law School, *Persecution of the Rohingya Muslims: Is Genocide Occurring in Rakhine State? A Legal Analysis*, October 2015, http://www.fortifyrights.org/downloads/Yale_Persecution_of_the_Rohingya_October_2015.pdf (accessed May 4, 2016); Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, February 2014, http://www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf (accessed May 4, 2016).

27 In November 2012, the U.S. issued a waiver and general license to ease the ban on the importation of products of Myanmar into the United States, with the exception of jadeite and rubies mined or extracted from Myanmar and articles of jewelry containing them, for the first time in almost a decade. See, U.S. Department of State, *U.S. Relations with Burma—Fact Sheet*.



Muslim-owned homes and businesses burn, Narzi Quarter, Sittwe, June 2012. State security forces opened fire on Rohingya who attempted to extinguish the flames, killing scores. ©Private 2012

the White House in May 2013.²⁸ Among these were commitments to have a more open and accountable government, to cease weapons trade with North Korea, to address the issue of political prisoners, to establish a ceasefire agreement in Kachin State, to invite the U.N. Office of the High Commissioner for Human Rights (OHCHR) to open an office in the country, and to take decisive action in Rakhine State.²⁹ To date, Myanmar has fully implemented only one of the 11 commitments: in 2013, President Thein Sein signed a U.N. nuclear protocol, addressing U.S. concerns about Myanmar trade with North Korea.³⁰

In July 2012, the U.S. continued to calibrate sanctions in response to the contrasting context of egregious human rights abuses and positive reforms. The U.S. expanded targeted sanctions to apply to those who “threaten the peace, security or stability of Burma” or who are responsible for or complicit in the commission of human rights abuses in the country.³¹ These sanctions blocked all property or interests in property in the U.S. of individuals responsible for human rights abuses in Myanmar. While punitive, these sanctions—like all others—were intended also to support genuine reformers in the Myanmar government.

28 For an analysis of President Thein Sein’s achievements in these areas of reform, see, Daniel Sullivan, “Burma’s Broken Commitments: Thein Sein’s 11 Promises to Obama,” *United to End Genocide*, November 5, 2014 (updated October 20, 2015), <http://endgenocide.org/burmas-broken-promises-thein-seins-11-commitments-obama/> (accessed May 2, 2016).

29 *Ibid.*

30 See, U.S. Department of State, “2015 Report on Adherence to and Compliance with Arms Control Nonproliferation, and Disarmament Agreements and Commitments,” June 5, 2015, <http://www.state.gov/t/avc/rls/rpt/2015/243224.htm#Burma> (accessed May 4, 2016).

31 U.S. President Barack Obama, “Executive Order—Blocking Property of Persons Threatening the Peace, Security or Stability of Burma,” July 11, 2012, <https://www.whitehouse.gov/the-press-office/2012/07/11/executive-order-blocking-property-persons-threatening-peace-security-or-> (accessed May 2, 2016).

Broader anti-Muslim campaigns led by firebrand extremist Buddhist monk Wirathu and others further stoked tensions. In March 2013, organized mobs in Meiktila in central Myanmar attacked Muslim students, teachers, and residents in the Mingalar Zayyone Quarter, massacring at least 20 children and four teachers.³² Video clips show police standing by and watching as Muslims burned to death.³³

In this context, extremist-nationalist Buddhist monks toured the Myanmar countryside delivering vitriolic anti-Muslim speeches to masses while distributing DVDs with messages that dehumanize Rohingya and other Muslims, painting them as a threat to Myanmar and Buddhism.³⁴ Wirathu has called Muslims “dogs” and “African carp” who “breed quickly, and they are very violent and they eat their own kind.”³⁵ The Government of Myanmar failed to denounce the growing hate speech campaigns or protect those under attack.³⁶

The U.N. Special Rapporteur for Human Rights in Myanmar in 2013 cited reports of “State involvement in some acts of violence, and of instances where the military, police and civilian law enforcement forces have been standing by while atrocities have been committed before their very eyes.”³⁷

Despite rampant abuses and the force of U.S. law to target those responsible for egregious human rights abuses in Myanmar, the U.S. has not added a single name to the SDN list since 2014 when it listed Aung Thaung. Aung Thaung was a senior government official and former Myanmar Army general regarded as a principal architect of the outbreak of violence in Rakhine State.³⁸ Sources close to Aung Thaung, citing in-person meetings with him, told Fortify Rights

32 Physicians for Human Rights, *Massacres In Central Burma: Muslim Students Terrorized and Killed in Meiktila*, May 2013, <http://physiciansforhumanrights.org/library/reports/meiktila-report-may-2013.html> (accessed May 2, 2016). See also, Todd Pitman, “Massacre of Muslims in Myanmar Ignored,” *Associated Press*, July 8, 2013, http://thesouthern.com/news/local/ap-impact-massacre-of-muslims-in-myanmar-ignored/article_2055e35e-e5c4-11e2-ac49-001a4bcf887a.html (accessed May 4, 2016).

33 Physicians for Human Rights, *Massacres In Central Burma*.

34 Sarah Kaplan, “The Serene-Looking Buddhist Monk Accused of Inciting Burma’s Sectarian Violence,” *Washington Post*, May 27, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/05/27/the-burmese-bin-laden-fueling-the-rohingya-migrant-crisis-in-southeast-asia/> (accessed May 3, 2016).

35 Tin Aung Kyaw, “Buddhist Monk Wirathu Leads Violent National Campaign Against Myanmar’s Muslims,” *Global Post*, June 23, 2013, <http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth-burma/buddhist-monk-wirathu-969-muslims-myanmar> (accessed May 3, 2016).

36 Human Rights Watch, “All You Can Do Is Pray.”

37 U.N. Office of the High Commissioner for Human Rights, “Religious Violence in Myanmar, the Consequences of Government Inaction in Tackling Prejudice and Discrimination – U.N. Expert,” March 28, 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13205&LangID=E%27LangID=E> (accessed May 2, 2016).

38 See, U.S. Department of the Treasury, “Announcement of Treasury Sanctions Against Aung Thaung,” October 31, 2014, <https://www.treasury.gov/press-center/press-releases/Pages/IL2680.aspx> (accessed May 2, 2016). See also, Wai Moe and Austin Ramzy, “U Aung Thaung, Burmese Politician Accused of Abuses, Dies at 74,” *New York Times*, July 23, 2015, <http://www.nytimes.com/2015/07/24/world/asia/u-aung-thaung-burmese-politician-accused-of-abuses-dies-at-74.html> (accessed May 2, 2016).



Kachin Independence Army (KIA) soldiers in routine drills near the Myanmar-China border. The Myanmar Army attacked the KIA in June 2011, breaching a 17-year ceasefire agreement, and reigniting the war.

©Jason Motlagh, *Blackbeard Films* 2013

that he was likewise an early architect of the systematic exclusion of Muslims and Rohingya from the 2015 elections.³⁹ Aung Thaung died in July 2015 at age 74.⁴⁰

Meanwhile, the U.S. Government removed few businesses from the SDN list in recent years, including Win Aung and his companies Dagon International and Dagon Timber, who were removed in 2015.⁴¹

The overall use of the SDN list has elicited criticism from international and domestic human rights groups as well as members of U.S. Congress. In November 2013, Fortify Rights, United to End Genocide, and other organizations sent a joint letter to President Obama urging his administration to “carefully calibrate its targeted sanctions on select individuals and entities” in Myanmar and to “implement unambiguous criteria for removing and adding persons to the list.”⁴² Nearly two years later, in August 2015, U.S. Representatives Ed Royce (R-CA) and Eliot Engel (D-NY), the Chairperson and Ranking Member of the House Foreign Affairs Committee, encouraged Secretary of the Treasury Jacob Lew “to use existing authorities to respond to the continued escalation of human rights abuses” in Myanmar, specifically citing the “horrific treatment of the Rohingya

39 Fortify Rights interview with M.S., via telephone, April 30, 2016; Fortify Rights interview with Z.Z., Yangon, Myanmar, March and August 2014.

40 Wai Moe and Austin Ramzy, “U Aung Thaung, Burmese Politician Accused of Abuses, Dies at 74,” *New York Times*, July 23, 2015, <http://www.nytimes.com/2015/07/24/world/asia/u-aung-thaung-burmese-politician-accused-of-abuses-dies-at-74.html> (accessed May 4, 2016).

41 See, U.S. Department of State, “Delisting of SDN Win Aung,” April 23, 2015, <http://www.state.gov/r/pa/prs/ps/2015/04/241034.htm> (accessed May 2, 2016).

42 Fortify Rights, United to End Genocide, *et al.*, “Joint Letter to President Obama Re. Updating the Specially Designated Nationals (SDN) List,” November 7, 2013, <https://www.hrw.org/news/2013/11/07/joint-letter-president-obama-re-updating-specially-designated-nationals-sdn-list> (accessed April 28, 2016).

Muslim minority.”⁴³ Rep. Royce and Engel recommended the U.S. Treasury add known abusers of human rights in Myanmar to the SDN list, concluding “these human rights abusers should have their bank accounts and other financial assets frozen.”⁴⁴

In February 2013, the U.S. Government further eased the ban on U.S. financial services when the Office of Foreign Asset Control (OFAC) in the U.S. Department of Treasury issued a General License waiving restrictions on conducting transactions with four main Myanmar banks—Asia Green Development Bank, Ayeyarwady Bank, Myanma Economic Bank, and Myanma Investment and Commercial Bank—with some limitations.⁴⁵ The U.S. intended these waivers to facilitate the operations of U.S. companies and non-governmental organizations in the country.

In May 2013, the U.S. Government implemented “Responsible Investment Reporting Requirements” on U.S. persons with new investments in Myanmar exceeding \$500,000.⁴⁶ This act introduced new reporting requirements for U.S. persons and businesses now open to operating in Myanmar, calling for more vigilant due diligence to ensure responsible business practices.⁴⁷ U.S. investors are now required to report on a variety of issues with respect to their interests in Myanmar, including “human rights, labor rights, land rights, community consultations and stakeholder engagement, environmental stewardship, anti-corruption, arrangements with security service providers, risk and impact assessment and mitigation, payments to the government, any investments with the Myanma Oil and Gas Enterprise (MOGE), and contact with the military or non-state armed groups.”⁴⁸ The reports are made public.

President Obama visited Myanmar a second time from November 12 to 13, 2014 to attend the 25th annual ASEAN Summit. He spoke strongly about the need to address human rights and humanitarian issues, especially the continued plight of the Rohingya.⁴⁹

43 House Committee on Foreign Affairs, “Chairman Royce, Ranking Member Engel Urge Treasury Department to Address Escalating Human Rights Abuses in Burma,” August 12, 2015, <https://foreignaffairs.house.gov/press-release/chairman-royce-ranking-member-engel-urge-treasury-department-address-escalating-human> (May 3, 2016).

44 *Ibid.*

45 See, Martin, *U.S. Policy Towards Burma*, p.22-23.

46 U.S. Department of State, “Burma Responsible Investment Reporting Requirements,” May 23, 2013, <http://www.state.gov/r/pa/prs/ps/2013/05/209869.htm> (accessed April 28, 2016).

47 See, U.S. Department of State, *Reporting Requirements on Responsible Investment in Burma*, July 11, 2012, <http://www.human-rights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf> (accessed May 2, 2016).

48 U.S. Department of State, “Burma Responsible Investment Reporting Requirements.”

49 The White House, “Remarks By President Obama and Daw Aung San Suu Kyi of Burma in Joint Press Conference,” November 14, 2014, <https://www.whitehouse.gov/the-press-office/2014/11/14/remarks-president-obama-and-daw-aung-san-suu-kyi-burma-joint-press-confe> (accessed May 2, 2016); Jared Ferrie, “Obama Calls on Myanmar to Protect Rohingya; Suu Kyi Urges Harmony,” *Reuters*, November 14, 2014, <http://www.reuters.com/article/us-myanmar-usa-rohingya-idUSKCN0IY0VN20141114> (accessed May 2, 2016).

II. THE CURRENT SANCTIONS REGIME AND ONGOING EGREGIOUS HUMAN RIGHTS VIOLATIONS IN MYANMAR

Myanmar's elections in November 2015 ushered in a new political era with the landmark victory of the NLD, which now controls those portions of the government outside of the domain of the Myanmar military, with a majority of seats in both houses of parliament.⁵⁰

On her second day in office as State Counselor, Aung San Suu Kyi and the new NLD-led government released nearly 200 political prisoners and a further 83 shortly thereafter.⁵¹ At the time of writing, an estimated 61 political prisoners remain in prison and another 138 are facing charges for political offenses.⁵² However, these figures do not account for the arbitrary detention of Rohingya and other Muslims in Rakhine State.⁵³

Despite well-founded optimism surrounding the NLD's transition to power, the Myanmar military continues to control certain key ministries—the ministries of Defense, Home Affairs, and Border Affairs—as well as the National Defense and Security Council, arguably the most powerful entity in the country.⁵⁴ Myanmar's 2008 Constitution also provides the military with the ability to appoint 25 percent of the parliamentary seats, guaranteeing effective veto power over any proposed constitutional amendments.⁵⁵ In addition, the Commander-in-Chief in Myanmar is by law the leader of the Myanmar Army—rather than an elected civilian—and has the authority to declare a state of emergency and suspend the elected government, the prospects of which are not unthinkable.⁵⁶

50 The election was unfair and not free, as the Election Commission and President Thein Sein's administration systematically disqualified Rohingya candidates and disenfranchised several hundred thousand Rohingya by denying them the ability to vote. See, section "Rakhine State" in this report.

51 Wai Moe and Richard C. Paddock, "Myanmar Releases Dozens of Student Activists from Jail," *New York Times*, April 8, 2016, <http://www.nytimes.com/2016/04/09/world/asia/myanmar-aung-san-suu-kyi-political-prisoners.html> (accessed May 4, 2016); "Myanmar President Frees 83 Political Prisoners," *Reuters*, April 17, 2016, <http://uk.reuters.com/article/us-myanmar-politics-prisoners-idUKKCN0XE05U> (accessed May 3, 2016). See also, "U.N. Rights Chief Welcomes Release of 83 Prisoners in Myanmar," *U.N. News Centre*, April 19, 2016, <http://www.un.org/apps/news/story.asp?NewsID=53719#.VymKSj9nv0E> (accessed May 3, 2016).

52 Fortify Rights communication with representative from Assistance Association for Political Prisoners, Yangon, Myanmar, May 2016. Of the 138 prisoners facing charges, 43 are currently in prison.

53 Following the 2012 violence in Rakhine State, more than 1,000 Rohingya were arrested and detained. At least 62 were killed in detention. The authorities detained scores of Rohingya in 2015. See, The Arakan Project, "Submission to the U.N. Universal Periodic Review," 23rd Session of the UPR Working Group, November 2015, March 23, 2015, http://www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/ap_upr23_mmr_e_main.pdf (accessed May 4, 2016); See also, Fortify Rights, "Myanmar: End Mass Arrests of Muslim Men and Boys in Rakhine State, Protect At-Risk Communities," January 23, 2014, <http://www.fortifyrights.org/publication-20140123.html> (accessed May 4, 2016).

54 Constitution of the Republic of the Union of Myanmar, 2008, Chapter V. See also, David Scott Mathieson, "Myanmar: Fahrenheit 436," *The Diplomat*, January 5, 2016, <http://thediplomat.com/2016/01/myanmar-fahrenheit-436/> (accessed May 4, 2016).

55 Constitution of the Republic of the Union of Myanmar, 2008, art. 109 (b) and 141 (b).

56 *Ibid.* at art. 20(b), 40, 342, and 419.



Khin Khin Lwin, an ethnic-Rohingya woman, shows her National Identification Card indicating full citizenship status. Myanmar's internationally funded Election Commission disqualified her from running for a seat in Parliament in 2015, disputing her citizenship. ©Fortify Rights 2015

Moreover, the 2008 Constitution bars anyone with foreign-born children from becoming president.⁵⁷ Aung San Suu Kyi's sons were born in and are citizens of the United Kingdom. As a result, by the military's design, Suu Kyi is unable to hold the presidency despite her position as the leader of the NLD. The NLD nominated Suu Kyi's longtime ally Htin Kyaw as President, and he was sworn into office in April 2016. Suu Kyi now serves as Foreign Minister and State Counselor—a newly created position—functioning as she described “above the presidency.”⁵⁸

Despite the military's continued political power, the NLD's victory and promise of further political reforms helped justify the lifting of certain U.S. sanctions in order to boost trade. For example, the U.S. Department of the Treasury issued a General License suspending sanctions for six months on Asia World, which operates Yangon's main port and is on the SDN list along with its founder Steven Law.⁵⁹ The U.S. Treasury took action following a

57 *Ibid.* at art. 59(f).

58 Hannah Beech, “Aung San Suu Kyi Says She’ll Be ‘Above The President’ if Her Party Wins Burma’s Elections,” *TIME*, November 5, 2015, <http://time.com/4101057/aung-san-suu-kyi-burma-myanmar-elections-nld/> (accessed May 3, 2016).

59 Asia World is owned and operated by Steven Law, who the U.S. has listed on the SDN list since 2008 due to ties to the military and illegal drug trade. See, “‘Workaround’ of U.S. Sanction on Steven Law to Allow Use of Seaport,” *Mizzima*, December 8, 2015, <http://mizzima.com/news-domestic/%E2%80%98workaround%E2%80%99-us-sanction-steven-law-allow-use-seaport> (accessed May 1, 2016).

sharp decline in U.S. exports to Myanmar from \$50 million in June 2015 to just \$5.5 million in September 2015 when banks, including Citigroup Inc, Bank of America, HSBC, and PNC Financial, withdrew financing for trade to Myanmar that would utilize the Asia World port.⁶⁰

Meanwhile, calls for the U.S. to lift all remaining sanctions have increased. Myanmar Vice President Nyan Tun called for the U.S. Government to lift all remaining sanctions at the U.S.-ASEAN Summit in California in February 2016.⁶¹ A conglomeration of business interests led by the U.S. Chamber of Commerce and U.S.-ASEAN Business Council called for President Obama not to renew sanctions in 2016.⁶² Former U.S. official in Myanmar Priscilla Clapp, in a report published in March 2016 by the Council on Foreign Relations, likewise called for U.S. sanctions to be lifted, specifically referring to the SDN list as “inflexible.”⁶³ Clapp recommended that U.S. sanctions “be reorganized and gradually abolished.”⁶⁴

Voices in the U.S. Congress and human rights groups have been cautious with respect to suggestions that the U.S. should simply abolish the targeted sanctions policy, citing concerns with the military’s role in government and ongoing egregious abuses in Myanmar. Members of Congress raised such concerns during the confirmation process for newly appointed U.S. Ambassador to Myanmar Scot Marciel, which led to assurances that Marciel “would not anticipate, nor recommend any dramatic changes” to U.S. sanctions on Myanmar in the foreseeable future.⁶⁵

Such concerns are warranted, particularly given the military’s outsized role in politics and the ongoing human rights violations taking place in Myanmar with impunity.

60 Joel Schectman, *et al.*, “Sanctions Fears Choke Nascent U.S. Trade with Myanmar,” *Reuters*, November 7, 2015, <http://www.reuters.com/article/us-usa-myanmar-sanctions-insight-idUSKCN0SW0TX20151108> (accessed May 1, 2016).

61 Kyaw Hsu Mon, “Burma Govt Looks to Shed Burden of US Sanctions,” *The Irrawaddy*, February 20, 2016, <http://www.irrawaddy.com/burma/burma-govt-looks-to-shed-burden-of-us-sanctions.html> (accessed May 1, 2016).

62 See, AmCham Myanmar Chapter, *et al.*, “U.S. Business Community Statement on U.S.-Myanmar Relations,” Letter to John Kerry, U.S. Secretary of State, *et al.*, February 18, 2016, https://www.uschamber.com/sites/default/files/u.s._business_community_statement_on_u.s.myanmar_relations.pdf (accessed May 2, 2016).

63 Priscilla A. Clapp, *Securing a Democratic Future for Myanmar*, Council on Foreign Relations, March 16, 2016, <http://www.cfr.org/burmayanmar/securing-democratic-future-myanmar/p37681> (accessed April 28, 2016), p. 21.

64 *Ibid.* at p. 28; Such a move would, in effect, permit known criminals, drug lords, and human rights abusers to do business with U.S. entities and to access the U.S. financial system. It would also enable the import of jade into the U.S., enriching the select few who unlawfully profit off the trade while potentially fueling the ongoing armed conflict to access the lucrative mining areas.

65 “U.S. Nominee to be Myanmar Envoy Does Not See Big Sanctions Changes,” *Reuters*, December 1, 2015, <http://www.reuters.com/article/us-myanmar-usa-envoy-idUSKBN0TK5T920151201> (accessed May 4, 2016).

Rakhine State

There are more than 1 million stateless Rohingya and other Muslims in Rakhine State.

The authorities continue to confine more than 140,000 Rohingya, Kaman, and other Muslims to more than 40 squalid internment camps throughout Rakhine State.⁶⁶ On a recent visit to these camps in April 2016, Fortify Rights and United to End Genocide documented avoidable deprivations in food, shelter, and health care among displaced Muslims in Rakhine State.⁶⁷

State and national-level authorities continue to deny U.N. and other aid agencies unfettered humanitarian access to the internment camps—with some camps being more restricted and isolated than others—and have obstructed the delivery of humanitarian aid in various ways.⁶⁸

The government is re-classifying the persons confined to the camps, and the World Food Program is authorized to provide rations only to those recognized by the government as “Internally Displaced Persons” (IDPs).⁶⁹ The authorities’ criteria to determine who constitutes an IDP are unclear. Fortify Rights and United to End Genocide are concerned that thousands more displaced Muslims may be deprived of food rations beyond those already deprived. Dozens of Rohingya men and women who have been displaced since 2012 and currently reside in Sittwe Township internment camps have been denied food rations since 2012 on the grounds that they are not “registered” IDPs.⁷⁰

Interned Muslims are also deprived of adequate shelter and sanitation. The Director of Operations for the U.N. Office of the Coordination of Humanitarian Affairs (OCHA) John Ging described the camps as being “in a state of collapse” and expressed shock at “the appalling sanitation conditions.”⁷¹

U.N. officials and survivors told Fortify Rights and United to End Genocide that avoidable deprivations in aid have led to preventable deaths.⁷²

66 Fortify Rights, “Myanmar: Facilitate Right to Return and Reparations for Displaced Muslim Rohingya,” February 26, 2016, <http://www.fortifyrights.org/publication-20160226-02.html> (accessed May 4, 2016).

67 Fortify Rights and United to End Genocide interviews with A.A., A.B., and A.E., Rakhine State, Myanmar, April 2015.

68 Fortify Rights and United to End Genocide interviews with A.A., A.B., A.C., A.D., Yangon and Rakhine State, Myanmar, April 2015.

69 Fortify Rights and United to End Genocide interview with U.N. officials, Yangon, Myanmar, April 2015.

70 See, e.g., Fortify Rights interviews with I.B., I.C., Z.C., E.H., H.C., H.B., H.G., Z.H., Z.I., A.H., and A.I. Rakhine State, Myanmar, March 2016.

71 U.N. Office for the Coordination of Humanitarian Affairs, “Myanmar: The Plight of Internally Displaced People and the Muslim Minority Must Not be Forgotten,” March 1, 2016, <http://reliefweb.int/report/myanmar/myanmar-plight-internally-displaced-people-and-muslim-minority-must-not-be-forgotten> (accessed May 4, 2016).

72 Fortify Rights interviews with A.A., A.B., A.C., and A.D., Yangon Division and Rakhine State, April 2016.



Rohingya Muslim children in an overcrowded internment camp in Sittwe Township, Rakhine State. ©Fortify Rights 2015

Most recently, at least 24 displaced Muslims, including nine children, drowned in Sittwe Township while attempting to travel by boat from Sin Tet Maw internment camp in Pauktaw Township to Thae Chaung internment camp in Sittwe Township to purchase food and access medical care that is otherwise denied to them in Sin Tet Maw. Survivors of the incident, other Rohingya, and U.N. officials and staff confirmed that Myanmar authorities still restrict overland travel of Rohingya and Kaman Muslims throughout Rakhine State—in many cases, the restrictions require interned Muslims to take risky journeys by sea for basic necessities otherwise denied by Myanmar authorities.⁷³ Moreover, survivors explained that Myanmar authorities, in effect, do not allow boats carrying Muslims to dock at the Sittwe jetty, which services the state capital city Sittwe and is regarded by local boat operators as safer than the makeshift Thae Chaung jetty.⁷⁴

73 Fortify Rights interviews with A.A. and A.B., Rakhine State, Myanmar, April 2016; Fortify Rights interview with A.C., Yangon, Myanmar, April 2016; Fortify Rights interview with A.D., Yangon, Myanmar, April 2016; and Fortify Rights interview with A.E., Rakhine State, Myanmar, April 2016.

74 Fortify Rights interview with A.E., Rakhine State, Myanmar, April 2016.

Drowning of Displaced Muslims in Sittwe Township

On the morning of April 19, a boat transporting more than 60 internally displaced Muslims traveled from Sin Tet Maw internment camp in Pauktaw Township to Thae Chaung internment camp in Sittwe Township. Passengers were internally displaced Kaman and Rohingya Muslims otherwise confined to an internment camp in Sin Tet Maw. Many were traveling with their children to purchase food and access medical care that is otherwise denied to them in Sin Tet Maw.

Encountering rough waters, the boat capsized just offshore near Thae Chaung internment camp at approximately 9:30 a.m.

“Muhammed Rasheed” is a 21-year-old self-identified Rohingya man who was on the boat with his sister, wife, and their three-year-old son. He explained to Fortify Rights and United to End Genocide how all three of his family members, including his young son, drowned.⁷⁵

At least 24 passengers drowned, including nine children. Eyewitnesses and survivors told Fortify Rights and United to End Genocide that several personnel of the Myanmar Police Force stood dormant on Thae Chaung beach, watching as people drowned and arrived ashore unconscious while other police personnel stationed at a nearby post on Thae Chaung beach likewise failed to act.⁷⁶

Eyewitnesses and U.N. officials confirmed that ambulances did not arrive at the scene until two hours after the incident—several people died on Thae Chaung beach.⁷⁷ Some survivors made their way to the nearest clinic at Thet Kae Pyin internment camp, where government doctors reportedly initially denied them medical attention.⁷⁸

75 Fortify Rights interview with A.A., Rakhine State, Myanmar, April 2016.

76 Fortify Rights interviews with A.A. and A.B., Rakhine State, Myanmar, April 2016.

77 *Ibid.*; Fortify Rights interview with A.C., Yangon, Myanmar, April 2016.

78 Fortify Rights interviews with A.B., Rakhine State, Myanmar, April 2016.

Displaced Rohingya told Fortify Rights and United to End Genocide that severe restrictions on freedom of movement and access to humanitarian aid have resulted in other fatalities among people traveling by boat between Pauktaw Township and Sittwe internment camps in recent years.⁷⁹

Advocates for abolishing remaining U.S. sanctions point to news that the authorities returned an estimated 20,000 displaced Rohingya to their original villages in 2015.⁸⁰ However, U.N. Special Rapporteur for Human Rights in Myanmar Yanghee Lee reported, “only a small minority relocated voluntarily.”⁸¹ Moreover, restrictions on freedom of movement and other avoidable deprivations continue to be in place against those who were relocated.

Apart from displaced Muslims, Myanmar authorities continue to impose severe restrictions on more than one million Rohingya and other Muslims in Rakhine State, particularly in the three townships comprising Northern Rakhine State—Maungdaw, Buthidaung, and Rathedaung.

In 2014, Fortify Rights exposed 12 internal government documents describing state policies of restrictions targeting Rohingya.⁸² 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, providing evidence of the crime against humanity of persecution.⁸³

Fortify Rights and United to End Genocide confirmed that these restrictions against Rohingya remain in place at the time of writing and continue to infringe on other human rights, such as the rights to health, education, and livelihood.

79 See for example, Fortify Rights interviews with A.B., Rakhine State, Myanmar, April 2016.

80 Simon Webb, “Around 25,000 Rohingya Left Myanmar Camps this Past Year: U.N.,” *Reuters*, March 21, 2016, <http://www.reuters.com/article/us-thailand-migrants-idUSKCN0WN16W> (accessed May 4, 2016).

81 Human Rights Council, 31st Session, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, A/HRC/31/71, March 18, 2016, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.71.AEV.docx> (accessed May 3, 2016), para 43.

82 Fortify Rights, *Policies of Persecution*.

83 *Ibid.* See also, Matthew Smith, “Burma’s Ethnic Persecution is State Policy,” *Wall Street Journal*, March 13, 2014, <http://www.wsj.com/articles/SB10001424052702304185104579436802799788162> (accessed May 4, 2016).

Furthering these restrictions, a broader movement of radical Buddhist monks, known as Ma Ba Tha or the Association for the Protection of Race and Religion, managed to lobby Myanmar's parliament in 2015 to pass four highly discriminatory "Protection of Race and Religion" laws. These laws require permission for interfaith marriages and religious conversions and impose restrictions on birth, the latter of which would largely target Rohingya women.⁸⁴

U.N. Special Rapporteur Yanghee Lee has called for the restrictions against Rohingya to be categorically lifted: "There are more than a million Rohingya Muslims in Myanmar deprived of some of their most fundamental rights. This is a million too many."⁸⁵

Moreover, the authorities have failed to hold perpetrators accountable for killings, rape, arson attacks, and other abuses during the two waves of violence in 2012. No state security officials have been held to account, and government-appointed commissions found no wrongdoing by state actors and falsely characterized the 2012 attacks as "communal violence."⁸⁶ Although state security officials and others buried untold Muslim victims in mass graves—as documented by Human Rights Watch, The Arakan Project, and Al Jazeera's Investigative Unit—none of these graves have been exhumed, despite available information about their location.⁸⁷

The Early Warning Project at the U.S. Holocaust Memorial Museum continues to rank Myanmar at the top of countries likely to experience mass killings.⁸⁸ United to End Genocide has warned about the high risk of genocide against Rohingya in Myanmar, and in October 2015, a legal analysis prepared for Fortify Rights by the Allard K. Lowenstein International Human Rights Clinic at Yale Law School found "strong evidence" that the elements of the crime of

84 See, Human Rights Watch, "Burma: Discriminatory Laws Could Stoke Communal Tensions – New Laws Target Muslims, Other Religious Minorities," August 23, 2015, <https://www.hrw.org/news/2015/08/23/burma-discriminatory-laws-could-stoke-communal-tensions> (accessed May 4, 2016). See also, Amnesty International, "Myanmar: Parliament Must Reject Discriminatory 'Race and Religion' Laws," March 3, 2015, <https://www.amnesty.org/en/documents/asa16/1107/2015/en/> (accessed May 4, 2016).

85 OHCHR, "Statement by Ms. Yanghee Lee, Special Rapporteur on the Situation of Human Rights in Myanmar at the 31st Session of the Human Rights Council," March 14, 2016, <http://www.ohchr.org/ch/NewsEvents/Pages/DisplayNews.aspx?NewsID=17237&LangID=E> (accessed May 4, 2016).

86 See, Rakhine Inquiry Commission, The Republic of the Union of Myanmar, *Final Report of Inquiry Commission on Sectarian Violence in Rakhine State*, (July 8, 2013)

87 Human Rights Watch, "All You Can Do Is Pray," p. 65-71; The Arakan Project, "Submission to the U.N. Universal Periodic Review," p.4; Al Jazeera Investigative Unit, "The Hidden Genocide," *Al Jazeera*, January 16, 2013, <http://www.aljazeera.com/programmes/aljazeerainvestigates/2012/12/2012125122215836351.html> (accessed May 4, 2016); Al Jazeera Investigative Unit, "Genocide Agenda," *Al Jazeera*, October 28, 2015, <http://www.aljazeera.com/investigations/genocideagenda.html> (accessed May 4, 2016); See also Al Jazeera, "Expert Warns of Rohingya Genocide," *Al Jazeera Press Office*, March 3, 2013, <http://www.aljazeera.com/pressoffice/2013/03/20133210535530465.html> (accessed May 4, 2016);

88 For further information, see, "Early Warning Project," *Early Warning Project* (website), <http://www.earlywarningproject.com/countries/myanmar> (accessed May 4, 2016).

genocide appear to be in place against Rohingya in Rakhine State.⁸⁹ The Investigative Unit at Al Jazeera twice analyzed crimes against Rohingya in the framework of the crime of genocide in two feature-length documentary films, and two academic studies likewise addressed the question of genocide in Rakhine State since 2012.⁹⁰

The Lowenstein Human Rights Clinic, Fortify Rights, and United to End Genocide recommended a U.N.-mandated independent, international investigation into the situation of human rights in Rakhine State.⁹¹

The Rohingya continue to have few allies in Myanmar, contributing to their lack of protection. Aung San Suu Kyi has failed to publicly condemn abuses against Rohingya and suggested that the situation in Rakhine State should not be “exaggerated.”⁹² An NLD spokesperson told reporters that the conditions facing the Rohingya “would not be a priority” for the new government and suggested that the government needed to work with neighboring Bangladesh on the question of where Rohingya belong, intimating a view that they may not belong in Myanmar.⁹³

Human rights abuses and violence against Rohingya have also put Rohingya at a heightened risk of human trafficking. More than 100,000 other Rohingya have fled the country due to violence and human rights abuses since 2012, contributing to a regional refugee and human trafficking crisis.⁹⁴

89 United to End Genocide, *Marching to Genocide In Burma: Fueled By Government Action and a Systematic Campaign of Hate Aided and Abetted By The Diverted Eyes of The World*, March 24, 2014, <http://endgenocide.org/wp-content/uploads/2014/03/marching-to-genocide-in-burma.pdf> (accessed May 4, 2016); Yale Law School, *Persecution of the Rohingya Muslims*.

90 Maung Zarni and Alice Cowley, “The Slow Burning Genocide of Myanmar’s Rohingya,” *Pacific Rim Law & Policy Journal*, volume 23 no.3, June 2014, <https://digital.lib.washington.edu/dspace-law/handle/1773.1/1377> (accessed May 4, 2016); International State Crime Initiative, *Countdown to Annihilation: Genocide in Myanmar*, October 2015, <http://statecrime.org/state-crime-research/isci-report-countdown-to-annihilation-genocide-in-myanmar/> (accessed May 4, 2016); Al Jazeera Investigative Unit, “Genocide Agenda,” *Al Jazeera*; Al Jazeera Investigative Unit, “The Hidden Genocide,” *Al Jazeera*; Al Jazeera, “Expert Warns of Rohingya Genocide,” *Al Jazeera* Press Office.

91 See, Fortify Rights, “United Nations: Establish Independent Investigation into Genocide in Myanmar,” October 29, 2015, <http://www.fortifyrights.org/publication-20151029.html> (accessed May 4, 2016); Yale Law School, *Persecution of the Rohingya Muslims*.

92 “Don’t Exaggerate the Problems: Suu Kyi on Myanmar’s Persecuted Rohingya,” *Reuters*, November 5, 2015, <http://www.reuters.com/article/us-myanmar-election-suukyi-idUSKCN0SU0CH20151105> (accessed May 4, 2016).

93 Austin Ramzy, “After Myanmar Election, Few Signs of a Better Life for Muslims,” *New York Times*, November 18, 2015, <http://www.nytimes.com/2015/11/19/world/asia/myanmar-election-rohingya-muslims.html> (accessed May 4, 2016).

94 The U.N. High Commissioner for Refugees (UNHCR) estimates that 170,000 migrants departed by sea from Myanmar’s Rakhine State and Bangladesh’s Cox’s Bazar since 2012, including mostly Rohingya as well as some Bangladeshi nationals. UNHCR, “Mixed-Maritime Movements in South East Asia in 2015,” February 1, 2016, <http://reporting.unhcr.org/sites/default/files/regionalupdates/UNHCR%20-%20Mixed%20Maritime%20Movements%20in%20South-East%20Asia%20-%202015.pdf> (accessed May 4, 2016). See also, Fortify Rights and Burmese Rohingya Organization UK, “Everywhere Is Trouble: An Update on the Situation of Rohingya Refugees in Thailand, Malaysia and Indonesia,” March 2016, <http://www.fortifyrights.org/downloads/EverywhereIsTrouble.pdf> (accessed May 4, 2016).

1982 Citizenship Law and Rohingya Statelessness

At the core of the plight of the Rohingya is statelessness. The 1982 Citizenship Law in Myanmar effectively revoked citizenship from Rohingya and denied them equal access to full citizenship rights.⁹⁵ Fortify Rights and United to End Genocide interviewed Rohingya who were born stateless or were previously citizens and had their status revoked in 1982.⁹⁶

Under the 1982 Citizenship Law, individuals must provide proof that their family resided in Myanmar before 1948 in order to be a citizen.⁹⁷ Most Rohingya lack records of their families' historical residence, making this requirement onerous—and, in effect, odious—for the region's poorest community. Rohingya survivors of targeted arson attacks in 2012, which destroyed personal belongings, find it particularly difficult to produce records.

Naturalization under the law also requires fluency in one of Myanmar's national languages.⁹⁸ Rohingya speak the "Rohingya" dialect and, with limited access to education and no freedom of movement, they have had little opportunity to learn a nationally recognized language. This is likewise the situation of other ethnic nationalities in remote areas of Myanmar.

As a result, the vast majority of Rohingya in Myanmar are stateless, making them the world's largest stateless population within any single country's borders.⁹⁹ The government continues to deny the existence of the Rohingya ethnic identity and the authorities have prosecuted people for using the term.¹⁰⁰

Their statelessness denies Rohingya standing in Myanmar courts and severely limits access to economic opportunities, education, and property ownership in the country. Fortify Rights has documented how Myanmar authorities invoke the 1982 Citizenship Law to deny Rohingya access to education, healthcare, and other basic services to which they are entitled under international human rights law.¹⁰¹

For decades, U.N. Special Rapporteurs, U.N. officials, and agencies have recommended that Myanmar amend the 1982 Citizenship Law to bring it in line with international standards.¹⁰²

95 Yale Law School, *Persecution of the Rohingya Muslims*, p. 7. See also, Human Rights Watch, "All You Can Do Is Pray," p. 109-114.

96 See for example, Fortify Rights and United to End Genocide interviews with A.G., Rakhine State, April 2015.

97 See, Burma Citizenship Law, Chapter IV, Sections 42 and 43, October 15, 1982, <http://www.refworld.org/docid/3ae6b4f71b.html> (accessed May 4, 2016). See also, Yale Law School, *Persecution of the Rohingya Muslims*, p.7; Human Rights Watch, "All You Can Do Is Pray," p. 109-114.

98 *Ibid.*

99 See, UNHCR, "Annex to UNHCR Statistical Yearbook 2014," 2014, <http://www.unhcr.org/56655f4b3.html> (accessed May 4, 2016).

100 Fortify Rights, "Myanmar: Drop Charges Against 'Rohingya Calendar' Defendants," December 11, 2015, <http://www.fortify-rights.org/publication-20151211.html> (accessed May 4, 2016).

101 See, Yale Law School, *Persecution of the Rohingya Muslims*; Fortify Rights, *Policies of Persecution*.

102 Regarding U.N. offers of assistance to the government of Myanmar to review the 1982 Citizenship Law, see OCHA, *Rakhine Response Plan July 2012-June 2013*, 2012, <http://reliefweb.int/sites/reliefweb.int/files/resources/Revised%20Rakhine%20Response%20Plan%20%28amended%29.pdf> (accessed May 4, 2016), p. 29. Further, the U.N. Committee on the Rights of the Child has recommended to the Government of Myanmar: "In the field of the right to citizenship, the Committee is of the view that the State party should, in the light of articles 2 (non-discrimination) and 3 (best interests of the child), abolish the categorization of citizens as well as the mention on the national identity card of the religion and the ethnic origin of citizens, including children. In the view of the Committee, all possibility of stigmatization and denial of the rights recognized by the Convention should be avoided." U.N. Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Myanmar*, CRC/C/15/Add.60, January 24, 1997. The Committee similarly called for the law to be repealed in November 2008. See, Human Rights Council 10th Session, *Human Rights Situations That Require the Council's Attention*, A/HRC/10/19, March 11, 2009.

November 2015 Elections Exclude Rohingya

Despite calls by the U.S. for “credible, transparent, and inclusive” elections in Myanmar, the 2015 election fell far short for Rohingya Muslims who were effectively excluded from participating. In advance of the elections, President Thein Sein invalidated the identity cards of an estimated 750,000 mostly Rohingya, revoking their right to vote. As a result, several hundred thousand Rohingya who had voting rights in the previous 2010 election were barred from voting in the 2015 election.¹⁰³

The Myanmar authorities systematically excluded Muslims from running for office in the election, including sitting Muslim Members of Parliament.¹⁰⁴ In August 2015, Fortify Rights accompanied Shwe Maung and Khin Khin Lwin, two Rohingya candidates seeking to run in the election, to the Rakhine State Election Commission, where officials reaffirmed the disqualification of both candidates from the election.¹⁰⁵ At the time, Shwe Maung was a sitting Union-level MP from the ruling Union Solidarity and Development Party. Election Commission officials refused to review the comprehensive documentation presented by both Khin Khin Lwin and MP Shwe Maung and claimed their parents were not citizens at the time of their birth, which both vehemently denied.¹⁰⁶ The decision effectively declared their citizenship invalid. Fortify Rights reviewed Shwe Maung’s documentation, which appears to demonstrate his family had citizenship status at the time of his birth.

Other Rohingya, such as Mr. Abdul Rasheed from the predominantly Rohingya Democracy and Human Rights Party, likewise provided the Election Commission with comprehensive family records in an application to run for a seat in parliament. Fortify Rights reviewed these documents, which appear to demonstrate a family history that would have made Abdul Rasheed eligible to run for office. Abdul Rasheed, too, was disqualified.¹⁰⁷

103 “Myanmar Officials Issue Green Cards to Muslims in Rakhine State,” *Radio Free Asia*, June 15, 2015, <http://www.rfa.org/english/news/myanmar/officials-issue-green-cards-to-muslims-in-rakhine-state-06152015145915.html> (accessed May 4, 2016). See also, Human Rights Watch, “Southeast Asia: Accounts from Rohingya Boat People,” May 27, 2015, <https://www.hrw.org/news/2015/05/27/southeast-asia-accounts-rohingya-boat-people> (accessed May 4, 2016).

104 See, David Baulk and Matthew Smith, “Ethnic Minorities in Myanmar Denied Vote as Aung San Suu Kyi Claims Power,” *The Guardian*, November 26, 2015, <http://www.theguardian.com/global-development-professionals-network/2015/nov/26/myanmar-millions-of-ethnic-minorities-denied-vote-as-aung-san-suu-kyi-claims-power-rohingya> (accessed May 4, 2016); Poppy McPherson, “No Vote, No Candidates: Myanmar’s Muslims Barred From Their Own Election,” *The Guardian*, November 3, 2015, <http://www.theguardian.com/world/2015/nov/03/no-vote-no-candidates-myanmar-muslims-barred-from-their-own-election> (accessed May 4, 2016).

105 Matthew Smith, Twitter Post, September 3, 2015, 10:20 p.m., <https://twitter.com/matthewfsmith/status/639669449587425281> (accessed May 2, 2016).

106 See, Clayton Swisher, “America in Myanmar: Jim-Crow Style Democracy,” *Huffington Post*, October 30, 2015, http://www.huffingtonpost.com/clayton-swisher/america-in-myanmar-jim-cr_b_8425872.html (accessed May 2, 2016).

107 See, Family records and relevant documentation of Mr. Abdul Rasheed, on file with Fortify Rights.



Rakhine citizens line up to vote in Myanmar's national elections, Sittwe, Rakhine State, November 8, 2015. In 2015 Myanmar President Thein Sein stripped Rohingya of their right to vote. ©Fortify Rights 2015

Kachin and Shan States

At stake in the ongoing armed conflict between the Myanmar Army and the Kachin Independence Army (KIA) in northern Myanmar is access to lucrative, multi-billion dollar jade mines. In 2014 alone, Myanmar's jade trade generated an estimated \$31 billion, much of which is unaccounted for or kept out of state coffers.¹⁰⁸ Myanmar military-owned firms, drug lords, and others control the jade trade, including many individuals and entities presently sanctioned by the U.S. government.¹⁰⁹ The people of Kachin State have yet to benefit from enormous revenues generated by jade from their homeland, and authorities in Myanmar have yet to conduct a proper investigation into the lawfulness of Myanmar's jade industry.

In the conduct of the war in Kachin and Shan states since 2011, Myanmar Army soldiers have committed extrajudicial killings, rape, torture, indiscriminate attacks on civilians, forced labor, and used human shields against civilians in Kachin and northern Shan states, according to eyewitnesses, survivors, and aid workers interviewed by Fortify Rights and United to End Genocide. Fortify Rights and United to End Genocide believe these acts may constitute war

¹⁰⁸ See, Global Witness, *JADE: Myanmar's 'Big State Secret'*.

¹⁰⁹ *Ibid.*



Ethnic-Kachin civilian injured by a landmine, Kachin State. The Myanmar Army and Kachin Independence Army have used landmines throughout Kachin State since June 2011. ©Fortify Rights 2013

crimes and crimes against humanity under international law.¹¹⁰ Myanmar Army soldiers committed these abuses with impunity.

Officials in the Myanmar Army, Military Intelligence, and Myanmar Police Force have systematically used torture and other cruel, inhuman, and degrading treatment against ethnic Kachin civilians suspected of sympathizing or associating with the KIA. In 2014, Fortify Rights documented the use of torture against more than 60 civilians in Kachin State and northern Shan State. Authorities severely beat civilians during prolonged interrogation sessions and subjected civilians to sexual assault, burnings, stabbings, and other methods calculated to cause severe physical pain.¹¹¹ At the time of writing, there is no evidence that any state security officials have been held accountable for the use of torture in Kachin State or northern Shan State.

110 See, Fortify Rights, *"I Thought They Would Kill Me."* See also, U.S. Committee on Foreign Affairs, "Oversight of U.S. Policy Toward Burma," Testimony of Mr. Tom Andrews, President and CEO of United to End Genocide, April 25, 2012, <http://archives.republicans.foreignaffairs.house.gov/112/74001.pdf> (accessed May 3, 2016), p. 39-47; U.S. Committee on Foreign Affairs, "Get it Right This Time: A Victims-Centered Trafficking in Persons Report," Testimony of Mr. Matthew Smith, Executive Director of Fortify Rights, House Committee On Foreign Affairs, March 22, 2016, http://www.fortifyrights.org/downloads/Testimony_20160322.pdf (accessed May 4, 2016).

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

More than 100,000 ethnic civilians have been displaced by the war in Kachin and Shan states.¹¹² At present, the basic humanitarian needs of many displaced civilians remain unmet.¹¹³ The government restricts humanitarian agencies' access to displaced persons, particularly in KIA-held territory—depriving local aid groups and displaced civilians of the resources they need.¹¹⁴ In addition, the Ministry of Social Welfare and Myanmar Army Regional Commanders are responsible for restrictions on aid groups, creating avoidable deprivations in humanitarian aid to displaced Kachin and Shan communities.¹¹⁵ During recent visits in 2016 to displaced communities in government and KIA-controlled territories in Kachin State, Fortify Rights documented the lack of adequate shelter, medicine, and health care as well as the lack of access to education, livelihoods, and other protections.¹¹⁶

112 See, UNHCR, “2015 UNHCR Country Operations Profile – Myanmar,” <http://www.unhcr.org/pages/49e4877d6.html> (accessed May 4, 2016).

113 Fortify Rights interviews with B.A., B.B., B.C., B.D., B.E., B.F., B.G., B.H., B.I., B.J., B.K., B.L., B.M., B.N., B.O., Kachin State, Myanmar, March 2016; Fortify Rights interviews with A.F., Yangon, Myanmar, April 2016.

114 Fortify Rights interviews with B.A., B.B., B.C., B.D., B.E., B.F., B.G., B.H., B.I., B.J., B.K., B.L., B.M., B.N., B.O., A.F., Kachin State, March 2015. According to UNHCR, “In Kachin State, the Government limits humanitarian agencies’ access to IDP sites and aid organizations must seek permission to access areas not under government control.” UNHCR, “2015 UNHCR country operations profile – Myanmar.”

115 Fortify Rights interviews with B.N. and A.F., Kachin State and Yangon Division, March – April 2016.

116 Fortify Rights interviews with B.A., B.B., B.C., B.D., B.E., B.F., B.G., B.H., B.I., B.J., B.K., B.L., B.M., B.N., B.O., Kachin State, March 2016.



Ethnic Kachin mother and child displaced by ongoing war and abuses in Kachin Independence Army-held territory, Kachin State. ©Partners 2013

At the time of writing, Myanmar authorities are restricting humanitarian access to an estimated 1,600 displaced Kachin civilians north of Sumprabum in northern Kachin State where they remain isolated and in desperate need of assistance and protection.¹¹⁷

Fortify Rights and United to End Genocide found that the authorities' restrictions on humanitarian access have effectively forced displaced civilians to take risky journeys back to their abandoned villages, where they risk encountering hostile Myanmar Army soldiers, armed conflict, or landmines, which litter the landscape. Other displaced Kachin have opted to cross the border into China in search of food and livelihoods.¹¹⁸ The lack of access to opportunity and livelihoods in the displacement camps in Kachin State have put women at a heightened risk of human trafficking to China.¹¹⁹

Humanitarian aid workers seeking to deliver aid to displaced populations have also expressed concern about the risk of spurious legal action for operating in areas controlled by non-state ethnic armed groups.¹²⁰

Their fears are not unfounded. In July 2015, the Myanmar Police Force arrested and charged Muslim activists Zaw Zaw Latt, 28, and Pwint Phyu Latt, 34, under Article 17(1) of the Unlawful Associations Act for participating in a well-publicized interfaith peace delegation visit in June 2013 to the headquarters of the Kachin Independence Army (KIA) in Laiza.¹²¹ The delegation delivered a Christian cross and a statue of the Buddha to Laiza in a call for peace and interfaith harmony. Dozens of other citizens participated in the delegation, none of whom were prosecuted.

On April 8, 2016, Zaw Zaw Latt and Pwint Phyu Latt were sentenced to two years in prison under Article 17(1) of the Unlawful Associations Act. They remain in prison at the time of writing.¹²²

117 Fortify Rights interview with A.F., April 22, 2016. See also, U.N. World Food Programme, *World Food Programme Myanmar: February 2016 Operational Report*, February 2016, <https://www.wfp.org/sites/default/files/WFP%20Myanmar%20Operational%20Report%20-%20Feb2016.pdf> (accessed May 4, 2016).

118 Fortify Rights interviews with B.A., B.B, B.C., B.D, and B.E., Kachin State, Myanmar, March 2016.

119 Fortify Rights interviews with B.B., B.D., B.F, B.G., B.H., B.I., B.J., B.K., B.L., B.N., and B.O., Kachin State, Myanmar, March 2016. See also, Kachin Women's Association Thailand, *Pushed to the Brink: Conflict and human trafficking on the Kachin-China border*, June 2013, http://www.kachinwomen.com/kachinwomen/images/stories/publication/pushed_to_the_brink.pdf (accessed May 4, 2016).

120 Fortify Rights interview with A.F., April 22, 2016; See also, Fortify Rights, "Myanmar: Release Human Rights Defenders Zaw Zaw Latt, Pwint Phyu Latt, and Zaw Win Bo", April 7, 2016, <http://www.fortifyrights.org/publication-20160407.html> (accessed May 4, 2016).

121 *Ibid.*

122 Zarni Mann, "Interfaith Activists Sentenced To Two More Years In Prison," *The Irrawaddy*, April 8, 2016, <http://www.irrawaddy.com/burma/interfaith-activists-sentenced-to-two-more-years-in-prison.html> (accessed May 4, 2016).

RECOMMENDATIONS: THE NEED FOR CONTINUED SANCTIONS AUTHORITY

Since 2012, the U.S. Government has included sanctions as a tool to advance human rights and democratic reform in Myanmar and to hold persons and entities responsible for human rights violations accountable. Myanmar has benefitted greatly from historic reforms, and there is reason to be optimistic about the country's future. However, the military's continued role in politics and the perpetuation of egregious human rights violations with impunity persist, especially in Rakhine, Kachin, and Shan states. Particularly concerning are abuses that may constitute "atrocities crimes"—defined under international law as crimes against humanity, war crimes, and genocide.¹²³

The U.S. can best support further progress and human rights in Myanmar by incentivizing improved diplomatic and economic relations while maintaining sanctions against those responsible for human rights violations.

To the U.S. Government and President Barack Obama:

- Renew the International Emergency Economic Powers Act of 1997 (IEEPA) to establish U.S. sanctions authority regarding Myanmar for another 12 months.
- Publish detailed criteria for inclusion and removal of individuals and entities from the U.S. Department of Treasury's Specially Designated Nationals (SDN) list, and conduct a comprehensive update and assessment of the SDN list to add and remove individuals and entities that meet the articulated criteria.
- Support the establishment of a U.N.-mandated independent, international investigation to assess the totality of the human rights situation in Rakhine State, including human rights violations against Rohingya Muslims, Kaman Muslims, and Rakhine Buddhists, and provide detailed recommendations to the Government of Myanmar to improve the situation.
- Continue to implement a calibrated foreign policy in Myanmar, using the relaxation and application of the sanctions authority to encourage progress and isolate human rights abusers. Rely on waivers to relax sanctions, not legislative change.

¹²³ U.N. Office on Genocide Prevention and The Responsibility to Protect, *Framework of Analysis for Atrocity Crimes*, 2014, http://www.un.org/en/preventgenocide/adviser/pdf/framework%20of%20analysis%20for%20atrocity%20crimes_en.pdf (accessed May 4, 2016).

- Identify and communicate to the Government of Myanmar measurable conditions that must be met in order for the U.S. Government to consider lifting sanctions, including:
 - 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.
 - Ensure safe, sustained, and unfettered access to all internally displaced populations in Kachin State, Shan State, and Rakhine State for humanitarian agencies. Make an explicit long-term commitment to authorize relief, recovery, and eventual development support for and with these populations.
 - Abolish all local orders and practices that impose restrictions on Rohingya, Kaman, and other Muslims in Rakhine State, including restrictions on rights related to freedom of movement, family and child birth, marriage, nondiscrimination, nationality, health, education, religion, and privacy. The Government of Myanmar should communicate to central, state, and local governments and the general public that authorities are to cease all official and unofficial practices related to these restrictions against Rohingya in Rakhine State.
 - Amend the 1982 Citizenship Law to reduce statelessness in Myanmar and ensure Rohingya and other stateless populations have equal access to full 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 as recommended by the U.N. Committee on the Rights of the Child in 2012.
 - 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.
 - Support the establishment of a U.N.-mandated independent, international investigation to assess the totality of the human rights situation in Rakhine State, including human rights violations against Muslims and Buddhists, and provide detailed recommendations to improve the situation.

- Repeal and amend laws that have been used by authorities to arrest and detain activists and human rights defenders, including the Unlawful Associations Act, Article 505(b) of the Penal Code, and Article 18 of the Peaceful Assembly Law.
- Amend the Constitution including provisions that guarantee the military 25 percent of parliamentary seats and control of the ministries of Defense, Home Affairs, and Border Affairs and article 445, which may shield authorities from legal action relating to “any act done in the execution of their respective duties.”
- Ensure all perpetrators of human rights violations and discriminatory acts, regardless of rank or position, are held accountable.
- End all discrimination in law, policy, and practice against ethnic and religious minorities, including Rohingya Muslims and Kachin Christian minorities.
- 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.



Local Imam responsible for burying the dead stands near growing corridor of gravesites in a Muslim internment camp, Sittwe Township. ©Fortify Rights 2016

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