

Fortify Rights

Flash Report

Access Denied: The Myanmar Military Junta's Deprivation of Lifesaving Aid in Karenni (Kayah) State

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Cover:

The remains of a burned-out vehicle seen through a windshield near Konethar Village in Demoso Township, Karenni State, October 2021. The Myanmar Army shot at the vehicle and then set it alight, reportedly killing two Karenni civilians. Since the February 1 coup, the Myanmar military has occupied, destroyed, burned, and looted civilian properties in Karenni State, including medical facilities, ambulances, schools, and religious buildings. ©Mauk Kham Wah, October 2021



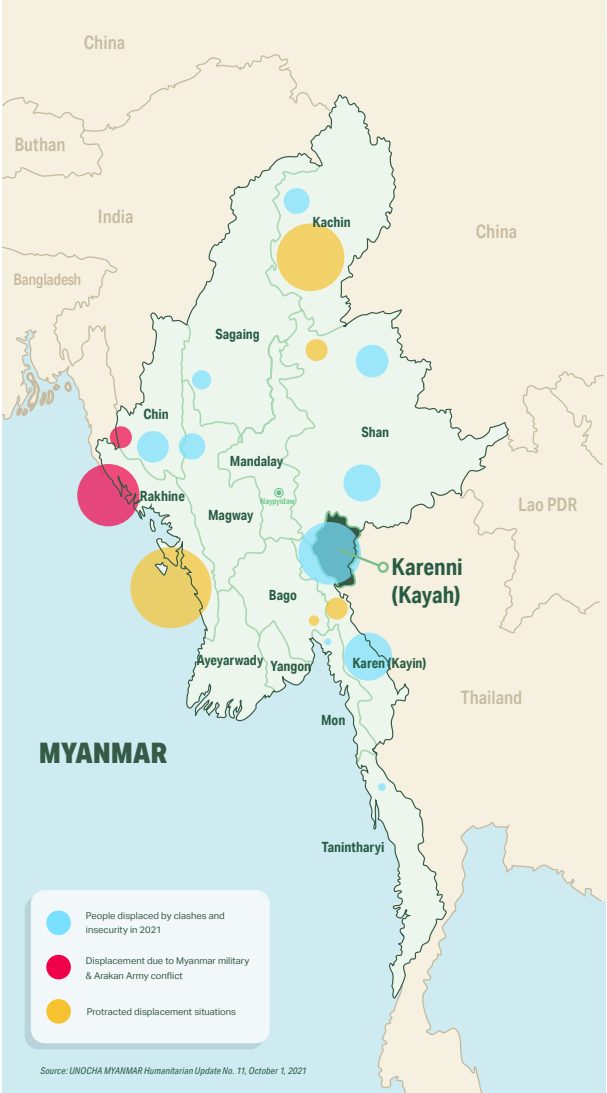
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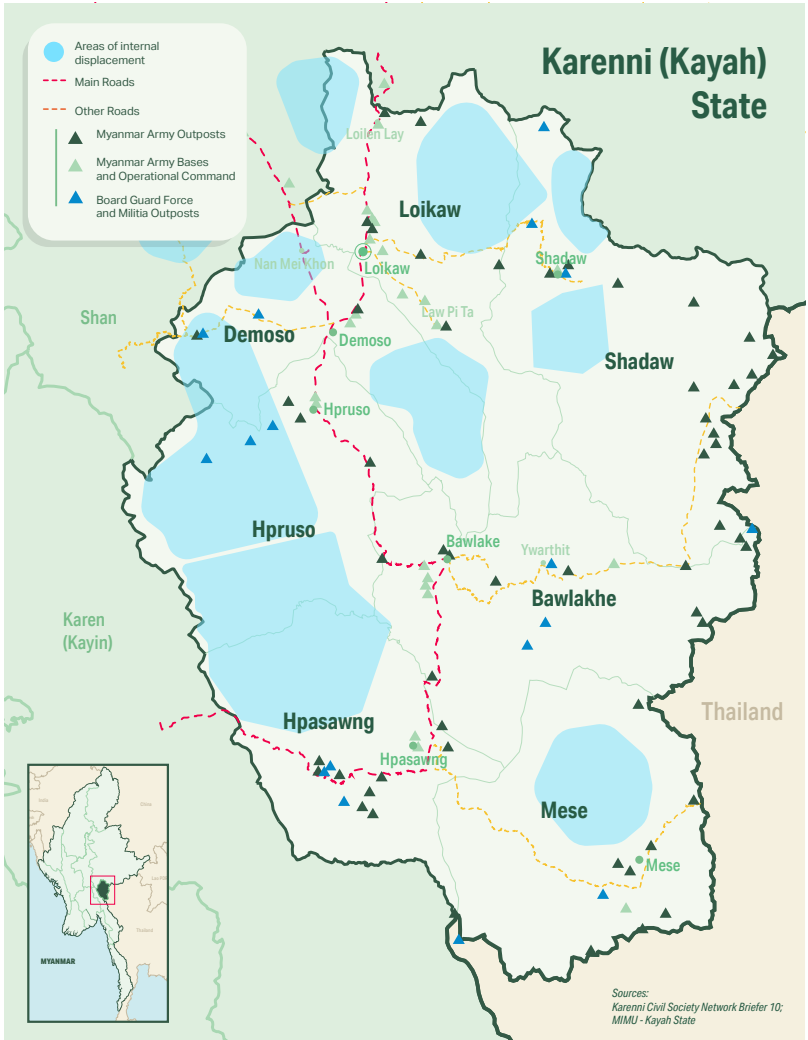
Fortify Rights works to ensure human rights for all. We **investigate** violations, **engage** people with power on solutions, and **strengthen** human rights defenders. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working in close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

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Maps of Myanmar and Karenni State







The international organization Partners Relief & Development delivers aid to ethnic-Karenni civilians displaced by Myanmar Army attacks, at an undisclosed location in Karenni State in June 2021.
©Partners Relief & Development, June 2021

Summary

Following the deadly military *coup d'état* in Myanmar on February 1, 2021, the Myanmar military junta launched attacks on non-state armed groups and the civilian population in Karenni State—also known as Kayah State—forcibly displacing more than 100,000 civilians. The junta killed, tortured, and arbitrarily arrested Karenni civilians, while also using forced labor, including human shielding. As part of these attacks, the junta has blocked lifesaving humanitarian aid to women, men, and children, who are now in dire need.

The junta has arbitrarily arrested humanitarian workers, destroyed civilian food stocks and non-military properties, and hampered the operations of humanitarian aid organizations to delay or deny the delivery of food and medical supplies to civilians in Karenni State. These ongoing acts may constitute war crimes and are consistent with the Myanmar junta's continued attack on other civilian populations throughout the country.

This flash report draws on more than 20 interviews conducted by Fortify Rights with people in Karenni State, including survivors of human rights violations, internally displaced persons (IDPs), religious leaders, humanitarian workers, and members of People's Defense Forces (PDFs)—

civilian-founded militias formed after the coup to resist military rule and defend against junta-led attacks. Fortify Rights also reviewed internal files and documentation from humanitarian agencies working in Karenni State and evaluated photo and video evidence of alleged violations.

Since the coup, the junta has reportedly arrested more than 9,000 people nationwide and, according to U.N. sources, internally displaced more than 223,000 women, men, and children throughout the country. Of the total, more than 85,000 remain displaced in Karenni State and more than 18,000 others displaced from Karenni State remain in southern Shan State, according to U.N. sources. The Karenni Civil Society Network, comprising 10 local civil society and aid organizations that closely monitor the situation, has documented more than 140,000 displaced from their homes in Karenni State since February 1, 2021. More than three million people nationwide are reportedly in urgent need of humanitarian aid, and displaced civilians are in particularly dire circumstances while aid workers face extreme threats to life and liberty.

Displaced civilians at an undisclosed site in Karenni State. Due to the Myanmar junta's systematic denial of humanitarian aid, displacement sites in Karenni State still lack basic resources, including potable water, healthcare, and sanitation facilities.

©Free Burma Rangers, 2021





A member of a local People's Defense Force looks on as a family passes on a motorbike, fleeing Myanmar military attacks near Moebye, Pekon Township, on the border of Shan and Karenni states, October 24, 2021.

©Mauk Kham Wah, October 2021

“They stop everyone and every vehicle,” said one aid worker in Karenni State with knowledge of the junta’s arbitrary arrest of seven aid workers in October 2021, six of whom the junta subsequently released.

“We are all afraid to work under these conditions, but we do as much as we can,” said another aid worker to Fortify Rights, commenting on the junta’s arbitrary arrest of three aid workers near Pan Kan Village, Loikaw Township in Karenni State, on May 27, 2021. As of October 18, 2021, those three aid workers remain detained.

In particularly egregious acts, on June 9, Myanmar Army soldiers destroyed and burned stockpiles of rice stored at a school in Loi Yin Taung Chae Village in Pekon Township on the Karenni–Shan State border. Aid workers and a local resident told Fortify Rights that aid workers were using the stock of rice to supply nearby displacement sites, which sheltered approximately 3,000 displaced civilians. In the same incident, soldiers reportedly set fire to an ambulance and a private car belonging to aid workers.

Karenni IDPs and aid workers described to Fortify Rights how displacement sites in the state lack essential resources, including food, potable water, medicine, healthcare, and sanitation facilities. These conditions, too, are representative of the situation of those displaced elsewhere in Myanmar.

“Despite having a hideout, we still don’t have water,” said a Karenni man, 39, who fled his home in Kayan Thayar Village in Karenni State’s Loikaw Township in May due to Myanmar Army attacks. “[W]e only have enough food available for one or two weeks. We’re feeling insecure and scared, and we don’t know when the next attack will happen.”

The military-imposed deprivations and attacks on civilians are not limited to Karenni State or the current crisis. While it is beyond the scope of this report, aid workers told Fortify Rights they are struggling to reach affected civilians in Chin State, where, on October 29, the Myanmar military reportedly razed more than 160 civilian houses, two Christian churches, and the office of an international non-governmental organization. Moreover, many of the violations and restrictions documented in Karenni State mirror earlier and ongoing violations and restrictions elsewhere in Myanmar. In 2018, for example, Fortify Rights published a 70-page report “*They Block Everything*,” documenting avoidable deprivations in humanitarian aid to ethnic civilians displaced by war in Kachin State.

The ongoing trends and escalating attacks on civilians highlight the urgent need for a multifaceted approach to address the humanitarian needs of the civilian population and hold the Myanmar military accountable for its past and present mass-atrocity crimes.

At the time of writing, international actors are in the process of identifying strategies to respond to the junta’s most recent denials of humanitarian aid. For example, on October 20, 2021, following a two-day visit to Thailand by U.S. State Department Counselor Derek Chollet, Thailand’s Foreign Ministry announced that the U.S. and Thailand are considering providing cross-border humanitarian aid to Myanmar via the Thailand-Myanmar border. To stem the escalating humanitarian crisis, immediate and coordinated action by members of the international community is necessary.

Key Recommendations

ASEAN and U.N. member states should encourage the Government of Thailand to authorize cross-border aid delivery to civilians in need in Myanmar. Similarly, the governments of India, China, and Bangladesh should authorize cross-border aid to civilians in need in Myanmar. Humanitarian donors and donor governments should also immediately support cross-border aid operations, including those led by local civil society and community-based organizations.


ASEAN and U.N. member states should also refrain from any political or economic engagement with Myanmar military junta representatives and categorically deny any political legitimacy to the junta. Governments should take necessary bilateral and multilateral measures to deny the junta access to funds and financing, including access to revenue generated from natural gas sales to Thailand. Member states should also outlaw weapons sales to Myanmar and support a global arms embargo against the Myanmar military, as the U.N. General Assembly called for in June 2021.

Lastly, U.N. and ASEAN member states should engage the civilian-led National Unity Government of Myanmar on solutions and support existing international accountability mechanisms to end and remedy ongoing atrocity crimes in Myanmar.



Members of a local People's Defense Force skirmish with the Myanmar Army in Dawngan Khar, Demoso Township, Karenni State, on September 25, 2021.

©Mauk Kham Wah, September 2021

A photograph of a woman in a blue shirt and red patterned pants crouching on the ground, cooking rice in a large metal pot over a fire. She is using a long wooden pestle to stir the rice. The setting appears to be a simple, outdoor or semi-outdoor structure with a dirt floor. A yellow plastic container is visible in the background.

A displaced Karenni woman cooks rice delivered by the Free Burma Rangers, a humanitarian organization, at an undisclosed displacement site in Karenni State, October 2021.

©Free Burma Rangers, October 2021

Methodology

This flash report is based on 23 interviews conducted by Fortify Rights, including 21 with people in Karenni State and two in Thailand, between June and October 2021. Those interviewed include survivors of and eyewitnesses to human rights violations, internally displaced persons, religious leaders, humanitarian workers, and members of PDFs. Fortify Rights also reviewed internal files and documentation from humanitarian agencies working in Karenni State and evaluated photo and video evidence of alleged violations.

Fortify Rights conducted most interviews in the Burmese language. No one interviewed for this report received compensation, and Fortify Rights informed all participants of the purposes of the interview, its voluntary nature, and the ways that any shared information might be used. All of those interviewed provided informed consent or specified how the information shared could be used. To avoid possible reprisals by junta forces, Fortify Rights is withholding the names of survivors, eyewitnesses, and others featured in this report. The initials ascribed to individual interviews in footnote citations do not represent the actual initials of interviewees.



Members of a local People's Defense Force transport a body bag holding a fighter killed in a battle with the Myanmar Army in Demoso Township, Karenni State, on September 27, 2021.

©Mauk Kham Wah,
September 2021

I. Human Rights Violations and Restrictions on Humanitarian Assistance

Following the February 1 *coup d'état*, the Myanmar military launched fresh attacks in Karenni State, forcing tens of thousands of men, women, and children to flee their homes. In these attacks, the Myanmar junta killed, tortured, and arbitrarily arrested civilians, while also using forced labor, including human shielding.¹ Eyewitnesses and survivors in Karenni State also described Myanmar military attacks on non-military targets, including religious places of worship and shelters for those displaced.²

These attacks and the subsequent mass displacement heighten the need for urgent and lifesaving aid in Karenni State. However, instead of facilitating necessary aid, the junta has taken steps to interfere with aid operations and prevent displaced civilians from accessing humanitarian assistance.

¹ In an investigation spanning five months—from June to October 2021—Fortify Rights documented evidence of the Myanmar military's crimes against civilians in Karenni State. The findings will be released in a forthcoming publication.

² *Ibid.*

Fortify Rights documented how the military junta arbitrarily arrested humanitarian workers, destroyed civilian food stocks and non-military properties, and hampered the operations of humanitarian aid organizations to delay or deny the delivery of essential aid to civilians in Karenni State. The resulting avoidable deprivations in humanitarian assistance are likely to have grave and far-reaching consequences and may constitute war crimes.

Arbitrary Arrest and Detention of Aid Workers

Since the coup, junta forces have detained at least 14 aid workers in Karenni State, three of whom remain arbitrarily detained.

In one incident that took place on May 27, Fortify Rights documented the arrest of three aid workers—two women and one man—near Pan Kan Village, Loikaw Township by the Myanmar junta’s forces. A Myanmar-led organization—name withheld for security reasons—employed all three workers at the time of the arrest. A local aid worker told Fortify Rights: “Until now, they have not been released. We are all afraid to work under these conditions, but we do as much as we can.”³ As of October 18, the three aid workers remain detained.

In another incident on October 18, Myanmar military forces arbitrarily detained seven staff of an international aid organization—name withheld for security reasons—at a checkpoint in Loikaw, reportedly after finding they were carrying medical supplies intended for IDPs.⁴ A local aid worker told Fortify Rights: “They stop everyone and every vehicle. [Military soldiers] check for ‘security reasons’ . . . [The aid workers] were detained because they were carrying ‘suspicious things,’ like medicines.”⁵

The junta released six of the seven detainees.⁶

On August 10, the junta also arbitrarily arrested four men working with a local aid organization.⁷ A woman working with the same organization and with knowledge of the situation told Fortify Rights:

3 Fortify Rights interview with A.C., Karenni State, Myanmar, July 9, 2021. The names of the three detainees are on file with Fortify Rights.

4 Fortify Rights interviews with C.A., October 21, 2021.

5 *Ibid.*

6 *Ibid.*

7 Fortify Rights interview with B.F., Karenni State, Myanmar, August 12, 2021.

Staff from one of the IDP camps went to the warehouse [in Demoso Township] by truck to gather supplies for the [IDP] camp. The warehouse issued many items, including mats, raincoats, mosquito nets, food items, hygiene kits, and all for [IDPs]. On the way back, they got arrested together with all the stuff.⁸

The military later released the four detainees.

Throughout September and October, the Myanmar military deployed troops to Loikaw, Demoso, Hpruso, Bawlakhe, and Hpasaung townships and established checkpoints from Demoso to Hpasaung, a key supply route for the military as well as humanitarian aid organizations and providers.⁹

Destruction of Aid Stocks and Non-Military Objects

Karenni State residents reported how Myanmar junta forces looted civilian possessions, carried out arson attacks, and destroyed civilian property, including food, medicine, and aid supplies for IDPs.¹⁰

For example, on June 9, Myanmar Army soldiers destroyed and burned stockpiles of rice stored at a school in Loi Yin Taung Chae Village in Pekon Township, located on the Karenni-Shan State border.¹¹ Aid workers and a local resident told Fortify Rights that aid workers were using the stock of rice to supply nearby displacement sites sheltering approximately 3,000 displaced civilians.¹² In the same incident, soldiers reportedly set fire to an ambulance and a private car belonging to aid workers.¹³ A 35-year-old resident of Loi Yin Taung Chae Village told Fortify Rights:

⁸ *Ibid.*

⁹ Fortify Rights interview with B.B., Karenni State, Myanmar, October 18, 2021.

¹⁰ Fortify Rights interviews with A.H., Karenni State, Myanmar, June 22, 2021; A.I., Karenni State, Myanmar, June 22, 2021; B.E., Karenni State, Myanmar, July 5, 2021; B.I., Karenni State, Myanmar, July 20, 2021; A.E., Karenni State, Myanmar, July 20, 2021; B.D., Karenni State, Myanmar, July 27, 2021; B.B., Karenni State, Myanmar, August 10, 2021; B.F., Karenni State, Myanmar, August 12; B.J., Karenni State, Myanmar, August 25, 2021; B.C., Karenni State, Myanmar, August 26, 2021.

¹¹ Fortify Rights interview with B.E., Karenni State, Myanmar, July 5, 2021; B.C., Karenni State, Myanmar, August 26, 2021.

¹² *Ibid.*

¹³ *Ibid.*

When people, including me, fled the village to safety, only soldiers were left there in the village. [Myanmar Army soldiers] took out all the bags of rice from the school building and burned them in front of the school, accusing people of being supporters of the PDFs. We could see everything [the soldiers] were doing down there from the mountain, as the distance wasn't that far.¹⁴

The firsthand testimony documented by Fortify Rights corroborates information reported to the U.N. Human Rights Council by the Office of the High Commissioner for Human Rights (OHCHR). In its submission to the council on September 16, 2021, OHCHR reported that, in Karenni State, the Myanmar military had “restricted humanitarian access” and “occupied, destroyed, burned, and looted civilian objects, including schools and religious buildings.”¹⁵

Blocking or Restricting Aid at Military Checkpoints

Local and international aid workers in multiple townships in Karenni State—including Demoso, Loikaw, Hpruso, and Hpsaung—told Fortify Rights that the military routinely stopped vehicles at checkpoints and confiscated supplies meant for IDPs.¹⁶ For example, in July, an aid worker told Fortify Rights:

There is the blocking of trucks coming down from Taunggyi [in Shan State] to Moebye to Loikaw [in Karenni State] . . . The most blatant case [of aid being blocked] would be with the U.N.'s World Food Programme [WFP]. When the attacks in Kayah State started, the WFP had a large shipment, I think it was many thousand metric tons of rice that were

14 Fortify Rights interview with B.C., Karenni State, Myanmar, August 26, 2021.

15 U.N. Office of the High Commissioner for Human Rights, *Written updates of the Office of the United Nations High Commissioner for Human Rights on the Situation of human rights in Myanmar*, A/HRC/48/67, Human Rights Council, Forty-eighth session, September 13–October 1, 2021, https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_48_67.pdf.

16 Fortify Rights interviews with B.D., Karenni State, Myanmar, July 7, 2021; A.C., Karenni State, Myanmar, July 9, 2021; A.D., Thailand, July 16, 2021; B.F., Karenni State, Myanmar, August 12, 2021; B.J., Karenni State, Myanmar, August 25, 2021; B.C., Karenni State, Myanmar, August 26, 2021; J., Karenni State, Myanmar, September 6, 2021; A.K., Karenni State, Myanmar, September 6, 2021; A.E., Karenni State, Myanmar, September 15, 2021; A.C., Karenni State, Myanmar, October 18, 2021; B.B., Karenni State, Myanmar, October 18, 2021; A.D., Thailand, October 18, 2021; C.A., Karenni State, Myanmar, October 21, 2021.

blocked, and that wasn't allowed to get in.¹⁷

Members of one local aid organization in Karenni State that coordinates humanitarian responses among community-based groups said that military checkpoints and roadblocks are increasingly obstructing the delivery of emergency aid.¹⁸ When asked by Fortify Rights whether the Myanmar military is intentionally blocking aid to civilians, one aid worker responded, "I think that's indisputable."¹⁹

Fortify Rights also documented an incident in May 2021 where the military opened fire on an unmarked aid delivery vehicle transporting "food support and necessary items for IDPs." A volunteer aid worker in Karenni State, 33, told Fortify Rights:

At that time, military forces were everywhere and shot at anybody suspicious. The military troops checked everyone and everything. Our car got shot at with guns twice. We couldn't enter Loikaw . . . While passing through Demoso, we came across military forces, so we turned back and drove away. Then they shot at our car. Nothing happened to our car, but the motorbike driver following our car was injured in his leg.²⁰

Acknowledging the Myanmar military's role in creating a humanitarian crisis, the acting U.N. Resident Coordinator and top humanitarian official in Myanmar, Andrew Kirkwood, warned in a public briefing on October 1, 2021 of "significant operational challenges" to humanitarian aid efforts across the country, including "roadblocks," adding "I think it's really incumbent upon me to take this opportunity to call on all parties to use their influence to facilitate the safe and unhindered access to humanitarian workers and also our humanitarian supplies."²¹

17 *Ibid.*

18 Fortify Rights interview with B.F., Karenni State, Myanmar, August 12, 2021.

19 Fortify Rights interview with A.D., Thailand, July 16, 2021.

20 Fortify Rights interview with B.J., Karenni State, Myanmar, August 25, 2021.

21 Acting U.N. Resident Coordinator in Myanmar, Andrew Kirkwood, "Draft transcript of the briefing by Andrew Kirkwood, United Nations Resident Coordinator and Humanitarian Coordinator to the media," October 1, 2021, <https://myanmar.un.org/en/149802-draft-transcript-briefing-andrew-kirkwood-united-nations-resident-coordinator-ai-and>.

U.N. Office for the Coordination of Humanitarian Affairs (OCHA) also affirmed that, as of October 1, 2021, humanitarian assistance and protection services in the country remain “significantly restricted,” including in Karenni State, where “access, security and other operational constraints” are affecting aid delivery.²²

In his report to the U.N. General Assembly in September 2021, the U.N. Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, further concluded that, in Karenni and Chin states, “the junta is directly to blame for the lack of humanitarian access to internally displaced persons, where its forces have deliberately blocked access roads and turned back aid convoys, including tons of rice to Kayah [Karenni] State.”²³

Delayed or Denied Administrative Approvals to Deliver Aid

In June, aid workers said humanitarian aid to civilians in Karenni State, including food supplies from international organizations—including the WFP and the U.N. High Commissioner for Refugees (UNHCR)—was extremely limited due, in part, to difficulties in obtaining formal authorization from the junta to conduct humanitarian projects.²⁴ For example, in its *Situation Report*, the WFP stated that while humanitarian needs continue to increase, “access to conflict-affected populations remains largely constrained by the prevailing security situation and lengthy administrative processes.”²⁵ Internal documents of international aid organizations, seen by Fortify Rights, also describe arbitrary delays in obtaining travel authorizations as of mid-October.²⁶

A director of a local aid organization, speaking to Fortify Rights on October 21, said their organization had attempted since May 2021 to

22 OCHA, *Myanmar Humanitarian Update No. 11*, October 1, 2021, <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-11-1-october-2021>

23 The U.N. Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, *Situation of Human Rights in Myanmar*, U.N. General Assembly 76th Session, A/76/314, September 2, 2021, <https://undocs.org/A/76/314>.

24 Fortify Rights interviews with A.D., Thailand, July 16, 2021; B.F., August 12, 2021; B.C., August 26, 2021; C.A., October 21, 2021.

25 WFP Myanmar, “Situation Report #4,” August – September 2021, https://api.godocs.wfp.org/api/documents/66f1cfb3c8b7489fb7257ad8d9146bb6/download/?_ga=2.72331099.974480423.1635230391-596732011.1635230391.

26 [Redacted organization name], internal document shared with Fortify Rights, October 15, 2021, on file with Fortify Rights.

secure authorization from the junta to deliver aid to IDPs in Karenni State, including supplies for children. At the time of writing, the junta had still not granted the organization approval.²⁷ The director told Fortify Rights that his organization's only option now is to find alternative ways to reach IDPs, risking arrest and the confiscation of supplies by junta forces.²⁸



Top left: The burned-out remains of a vehicle belonging to local aid workers sits by the road in Loi Yin Taung Chae village on the Karenni-Shan state border, after Myanmar Army Soldiers set it on fire on June 9, 2021.

Bottom: The burned-out shell of an ambulance sits by the road in Loi Yin Taung Chae Village in Pekon Township, on the Karenni-Shan state border. Myanmar Army soldiers reportedly set fire to the ambulance on June 9, 2021.

Top right: Rice meant for internally displaced persons lays burnt and strewn across the floor outside a school in Loi Yin Taung Chae Village. The rice was destroyed and set on fire by Myanmar Army soldiers on June 9, 2021.

©MT, June 2021

²⁷ Fortify Rights interview with C.A., Karenni State, Myanmar, October 21, 2021.

²⁸ *Ibid.*

II. Impacts of Aid Restrictions on Displaced Populations in Karenni State

The military-imposed restrictions on humanitarian aid in Karenni State lead to avoidable deprivations in food, healthcare, shelter, essential items, water, and sanitation for IDPs. Lacking access to basic and lifesaving aid and assistance not only heightens protection risks for IDPs, but also compounds regional security concerns as communities are forced to flee their homes to escape human rights violations and a mounting humanitarian crisis. U.N. agencies estimate that at least 15,000 civilians have fled to neighboring countries since February 1, 2021.²⁹

Internal documents of international aid organizations, seen by Fortify Rights, confirm civilians in Karenni State are facing increasing food insecurity and lack basic services, including healthcare, water, sanitation, and hygiene due to avoidable constraints on aid delivery to target communities.³⁰ IDPs and aid workers told Fortify Rights of avoidable constraints on aid delivery.³¹ For example, on October 18, 2021, the director of a local aid organization told Fortify Rights:

We still have torrential rain here in the forests of Kayah [State]. It's wet and cold, and it's not good. Now there are a lot of IDPs who are sick. Currently, we have more demands for medicines than food. The IDPs have enough food to last up to two weeks, but they're really short on medicines and medical supplies, and there are hardly any healthcare workers on site.³²

29 UNHCR, "Myanmar Emergency Overview Map," November 1, 2021, <https://data2.unhcr.org/en/documents/details/89436>.

30 [Redacted organization name], internal document shared with Fortify Rights, October 15, 2021, on file with Fortify Rights.

31 Fortify Rights interviews with A.H., Karenni State, Myanmar, June 22, 2021; A.I., Karenni State, Myanmar, June 22, 2021; A.C., Karenni State, Myanmar, July 9, 2021; B.E., Karenni State, Myanmar, July 5, 2021; A.D., Thailand, July 16, 2021; A.E., Karenni State, Myanmar, July 20, 2021; B.I., Karenni State, Myanmar, July 21, 2021; A.G., Karenni State, Myanmar, July 20, 2021; B.B., Karenni State, Myanmar, August 10, 2021; A.C., Karenni State, Myanmar, October 18, 2021.

32 Fortify Rights interview with A.C., Karenni State, Myanmar, October 18, 2021.

A 39-year-old Karenni man from Kayan Thayar Village in Loikaw Township, who was forced to flee his home in May 2021 and is now living in a jungle IDP site along with around 1,000 IDPs, told Fortify Rights:

Since we first arrived here [in the IDP site], there's been a shortage of drinking water. Despite having a hideout, we still don't have water. There are a few donors here and there, but we only have enough food available for one or two weeks. We're feeling insecure and scared, and we don't know when the next attack will happen. So, we think it's best that we store up food for the uncertain future ahead. [We will] store food that will last for up to three months.³³

An ethnic-Karenni teacher and mother-of-two who fled Loikaw in Karenni State described a similar situation at another IDP site in southern Shan State, where she and her daughters, aged nine and 19, are sheltering with approximately 300 other people from her village.³⁴ She told Fortify Rights:

We collect water from the mountains, and we take turns and use it sparingly. If we must move again [because of the advancing military], we'll run into the same problem. There are a few people who are sick, and we only have two nurses [among us]. We're pooling our own money to buy essentials for the camp, but things are not looking good in the long run . . . My youngest [daughter] is scared every time she hears gunshots. She's haunted by the memories and images of what she experienced.³⁵

U.N. Special Rapporteur Tom Andrews's recent report to the U.N. General Assembly documents layers of increasing humanitarian needs not only in Karenni State, but in other parts of the country, including Chin and Kachin states and Sagaing Region:

[H]ost communities that had been keeping internally displaced persons alive were themselves running low on their own foodstuffs and medical supplies. Local aid organizations were incapable of feeding existing internally displaced persons and simultaneously resupplying

³³ Fortify Rights interview with A.H., Karenni State, Myanmar, June 22, 2021.

³⁴ Fortify Rights interview with A.I., Karenni State, Myanmar, June 22, 2021.

³⁵ *Ibid.*

host communities. Families in areas experiencing fighting were also deeply concerned that they would be unable to get their crops planted on time and face additional food shortages.³⁶

UNHCR further warned in an update published on October 4, 2021 that the COVID-19 pandemic has compounded the humanitarian situation in Myanmar: “With positivity rates still increasing in some IDP sites, IDPs continue to have urgent needs for personal protective equipment (PPE), and COVID-19–related restrictions continue to restrict their access to livelihoods and humanitarian assistance.”³⁷ UNHCR reported 90 cases of COVID-19 in two displacement sites in Karenni State alone.³⁸

Internal documents of international aid organizations active in Myanmar, seen by Fortify Rights, additionally raise concerns regarding a lack of mental health and psychosocial support for IDPs.³⁹ Humanitarian aid workers reported the same concerns among the IDP population in Karenni State. One aid worker told Fortify Rights: “Psychosocial responses also cannot be provided under the current circumstances. In the long run, I think the mental trauma of the whole community will just grow and grow.”⁴⁰

Humanitarian needs extend beyond IDPs and those directly impacted in conflict areas. The U.N. has warned that some 20 million people—nearly half the population—are living below the poverty line and that over three million people across the country are currently in need of emergency humanitarian assistance.⁴¹

36 The U.N. Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, *Situation of Human Rights in Myanmar*, U.N. General Assembly 76th Session, A/76/314, September 2, 2021, <https://undocs.org/A/76/314>.

37 U.N. High Commissioner for Refugees, “Myanmar Emergency – UNHCR Regional Update,” October 4, 2021, <https://data2.unhcr.org/en/documents/details/89045>.

38 *Ibid.*

39 [Redacted organization name], internal document shared with Fortify Rights, October 15, 2021, on file with Fortify Rights.

40 Fortify Rights interview with B.F., Karenni State, Myanmar, August 12, 2021; For more information on mental harm inflicted on forcibly displaced populations in Myanmar, see Fortify Rights, “*The Torture in my Mind*”: *The Right to mental Health for Rohingya Survivors of Genocide in Myanmar and Bangladesh*, December 10, 2020, <https://www.fortifyrights.org/mya-inv-rep-2020-12-10/>.

41 U.N. Resident Coordinator in Myanmar, Andrew Kirkwood, “Draft transcript of the briefing by Andrew Kirkwood, United Nations Resident Coordinator and Humanitarian

According to the WFP, “growing insecurity and a deteriorating economy are likely to further worsen food insecurity among the vulnerable households reeling from a deadly third wave of COVID-19 between June and August.”⁴² The WFP also referred to recurring “banking challenges” that are impacting procurement processes and the timely delivery of cash assistance.⁴³ The WFP also warned that in December 2021, funding for their cash-based operations in crisis-affected areas will run out, impacting 275,000 people.⁴⁴

Coordinator to the media,” October 1, 2021, <https://myanmar.un.org/en/149802-draft-transcript-briefing-andrew-kirkwood-united-nations-resident-coordinator-ai-and>.

⁴² World Food Programme, “Situation Report—Myanmar,” October 21, 2021, <https://www.wfp.org/publications/situation-report-myanmar>.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

III. The International Legal Framework

In the context of a non-international armed conflict, such as the situation in Karenni State, international humanitarian law, commonly referred to as the “laws of war,” applies.⁴⁵ War crimes are grave breaches of international law that incur individual criminal liability under international criminal law.

International humanitarian law requires all parties to armed conflicts ensure the protection of civilians. The Geneva Conventions of 1949 and their protocols provide the framework for international humanitarian law. In situations of non-international conflict, Common Article 3 to the Geneva Conventions of 1949, Additional Protocol II to the Geneva Conventions, and customary international law are particularly applicable.⁴⁶ The 1998 U.N. Guiding Principles on Internal Displacement also provide an authoritative articulation of the minimum standards required “to provide protection and humanitarian assistance to internally displaced persons.”⁴⁷

⁴⁵ International humanitarian law is largely defined by the Geneva Conventions. Though Myanmar is not a party to Protocol II, the Geneva Conventions are considered part of customary international law and thus binding on all states. Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950, ratified by Myanmar August 25, 1992, Art. 3 [Common Article 3]. Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978, not signed by Myanmar. To be considered a “non-international armed conflict,” the armed groups involved in the conflict must show a minimum degree of organization and the armed confrontations must reach a minimum level of intensity. While there are a number of indicators to determine if these elements are met, it is likely that the conflict in Karenni State would qualify as a “non-international armed conflict” given the parties involved in the conflict and the level of armed confrontations.

⁴⁶ Common Article 3 and Protocols I and II. The norms enshrined in Protocols I and II represent an important codification of customary law rather than treaty obligations. Customary humanitarian law in relation to the conduct of hostilities is now recognized as largely the same in situations of both international and non-international armed conflict. Although Common Article 3 does not define “non-international armed conflict,” the International Criminal Tribunal for the former Yugoslavia defined it as ‘protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.’ See, Prosecutor v. Dusko Tadic, International Criminal Tribunal for the former Yugoslavia (ICTY), Case No. IT-94-1-AR72, Decision (Appeals Chamber), October 2, 1995, para. 70

⁴⁷ UNOCHA, Guiding Principles on Internal Displacement, January 2003, <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html> (accessed August 9, 2018), Principle 3(1), 18.

All parties to an armed conflict, including non-state armed groups such as those operational in Karenni State, are obligated to abide by the provisions of international humanitarian law.⁴⁸

By arbitrarily arresting and detaining aid workers, destroying aid stocks, blocking or restricting aid, and imposing restrictions on humanitarian aid organizations seeking to assist displaced populations in need, the Myanmar military junta has failed to meet its obligations under international humanitarian law.

Right to Freedom of Movement and Right to Liberty for Humanitarian Aid Workers

International humanitarian law protects the right to freedom of movement for humanitarian aid workers.⁴⁹ Parties to a conflict are obligated to provide protection to aid workers to facilitate access to displaced populations.⁵⁰ International human rights law as guaranteed under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) further protects the right to freedom from arbitrary arrest and detention.⁵¹ While the right to liberty can be restricted in certain situations, an arrest is considered unlawful if a person is arrested for engaging in activity that is protected under international law, such as facilitating humanitarian aid.⁵² Therefore, the Myanmar junta's arrest and detention of humanitarian aid workers in Karenni State contravenes both international humanitarian law as well as human rights law.

48 The obligation on the State stems from the principle of sovereignty. Charter of the United Nations and the Statute of the International Court of Justice, 1945, Art. 2(1). See also, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, (Cambridge: Cambridge University Press, 2005); U.N. General Assembly, Resolution on the Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations, GA Res. 46/182, December 19, 1991, Annex, para. 4.

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

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

51 Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316

52 U.N. Human Rights Committee, Article 9: Liberty and Security of Person, General Comment No. 35, U.N. Doc. CCPR/C/ GC/35, December 16, 2014, para. 17.

Fortify Rights also documented how the junta uses administrative delays or denials of travel authorization to interfere with aid operations. While the right to movement for humanitarian aid workers extends only to aid workers authorized by the authorities, international law prohibits authorities from arbitrarily refusing to recognize aid workers.⁵³ In addition, the authorities may only restrict the right to freedom of movement for aid workers in cases of “imperative military necessity.”⁵⁴ Such restrictions must be limited and imposed only on a temporary basis.⁵⁵ The travel authorization process, as it is being implemented by the junta, effectively acts as a restriction on aid and the freedom of movement of aid workers in violation of international humanitarian law.

Ensuring Humanitarian Assistance

Under international humanitarian law, all parties to armed conflict are obligated to “facilitate the free passage of humanitarian assistance” and ensure that aid workers have “rapid and unimpeded access to the internally displaced.”⁵⁶

Fortify Rights documented how the Myanmar military junta destroyed aid stocks and blocked or restricted aid at military checkpoints. Blocking access to humanitarian aid is a serious violation of international humanitarian law. For example, “willfully impeding relief supplies” as a method of warfare to starve civilians is considered a war crime.⁵⁷ While authorities may

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

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

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

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

57 Rome Statute of the International Criminal Court (Rome Statute), adopted July 17, 2998, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9 (2002), Art. 8(2)(b)(xxv). See also, Resolutions of the U.N. Security Council, U.N. General Assembly, and U.N. Commission on Human Rights condemning impediments to aid delivery, including U.N. Security Council, Resolution 758, Bosnia and Herzegovina (8 June), U.N. Doc. S/RES/758, June 8, 1992; U.N. Security Council, Resolution 761, Bosnia and Herzegovina (29 June), U.N. Doc. S/RES/761, June 29, 1992; U.N. Security Council, Resolution 836, Bosnia and Herzegovina (4 June), U.N. Doc. S/RES/836, June 4, 1993; U.N. Security Council, Resolution 945, Extension of the mandate of the UN Angola Verification Mission II, U.N. Doc. S/RES/945, September 29, 1994; UN Security Council, Resolution 1132, The Situation in Sierra Leone, U.N. Doc. S/RES/1132, October 8,

implement measures to control the content and delivery of humanitarian aid, international law prohibits acts to deliberately impede the delivery of aid.⁵⁸ Any measures imposed by authorities to control humanitarian operations must not result in undue delays to the delivery of aid, impede deployments, or frustrate implementation.⁵⁹ Measures that have a disproportionate impact on the civilian population or are carried out to starve or deny civilians essential aid necessary for survival directly contravene the laws of war and can be prosecuted as war crimes.

1997; U.N. General Assembly, Resolution 46/242, The Situation in Bosnia and Herzegovina, U.N. Doc. A/RES/46/242, August 25, 1992; U.N. General Assembly, Resolution 52/145, Situation of Human Rights in Afghanistan, U.N. Doc. A/52/644/Add.3, December 12, 1997; U.N. Commission on Human Rights, Resolution 1994/72, Situation of Human Rights in the Territory of the Former Yugoslavia, U.N. Doc. E/CN.4/RES/1994/72, March 9, 1994; U.N. Commission on Human Rights, Resolution 1995/77, Situation of Human Rights in the Sudan, U.N. Doc. E/CN.4/1995/77, March 8, 1995; U.N. Commission on Human Rights, Resolution 1996/73, Situation of Human Rights in the Sudan, U.N. Doc. E/CN.4/1996/73, April 23, 1996.

- 58 Consent in the context of relief operations is intrinsically linked to state sovereignty. As noted by the International Committee of the Red Cross, “consent is to be sought from the State on the territory of which the non-international armed conflict takes place, and this also with regard to relief activities which are to be undertaken in areas over which the State in question has lost control to the opposing party.” See, ICRC, Customary International Law, Rule 55, p. 198.
- 59 See, ICRC, ICRC Q&A and Lexicon on Humanitarian Access, Vol. 96, No. 893, 2014, p. 368–9, <https://www.icrc.org/en/international-review/article/icrc-qa-and-lexicon-humanitarian-access> (accessed August 9, 2018).

Recommendations

To the Myanmar Military Junta

- **RESPECT** the sovereign will of the people of Myanmar, immediately stand down, and return political power to officials elected in the 2020 national elections.
- **CEASE** attacks on civilian populations, prevent violations of international human rights and humanitarian law, and ensure protection of civilians.
- **PROVIDE** the United Nations, national and international humanitarian aid organizations, and human rights monitors safe, sustained, and unfettered access to all areas with internally displaced populations in Myanmar.
- **COOPERATE** fully with international investigations, especially the Independent Investigatory Mechanism for Myanmar, into alleged international crimes in Myanmar. Implement recommendations from credible independent advisory and investigatory bodies, including the U.N. Fact-Finding Mission and the U.N. Special Rapporteur on the situation of human rights in Myanmar, to address violations of international law.

To ASEAN and United Nations Member States

- **SUPPORT** and authorize the delivery of cross-border, lifesaving humanitarian aid to civilians-in-need in Myanmar.
- **PROVIDE** financial, technical, and advocacy support to humanitarian organizations providing cross-border assistance to civilians in need in Myanmar.
- **ENGAGE** Myanmar's democratically elected leadership and civil society and deny the Myanmar military junta access to political legitimacy in all forms, including through political and economic engagement.
- **EXERCISE** collective and bilateral leverage to encourage all U.N. Security Council member states to support a referral of Myanmar to the International Criminal Court.

- **IMPOSE** an arms embargo on Myanmar and the Myanmar military and targeted sanctions against military-owned enterprises to deny the Myanmar military access to funds and financing—including revenue generated from natural gas sales to Thailand—and access to weapons.

To the National Unity Government of Myanmar and Relevant Non-State Actors in Karenni State

- **ENSURE** all internally displaced persons in Myanmar have access to the rights and protections guaranteed by international humanitarian and human rights law, including the right to food, health, housing, water, and sanitation.
- **PROVIDE** the United Nations, national and international humanitarian aid organizations, and human rights monitors safe, sustained, and unfettered access to all areas with internally displaced populations in Myanmar.
- **COOPERATE** fully with international accountability mechanisms and international investigations into alleged crimes in Karenni State and elsewhere in Myanmar.
- **SUPPORT** the U.N. special procedures, in particular the Special Rapporteur on the situation of human rights in Myanmar and the Special Rapporteur on the Human Rights of Internally Displaced Persons.
- **ACCEDE** to and uphold obligations under the Rome Statute of the International Criminal Court, the International Covenant on Civil and Political Rights, as well as other international instruments.



FORTIFY
RIGHTS

Since the deadly military *coup d'état* in Myanmar on February 1, 2021, the Myanmar military junta has killed, tortured, and otherwise persecuted civilians, forcibly displacing hundreds of thousands nationwide. In Karenni State—also known as Kayah State—rather than ensure humanitarian aid reached civilians in need, the junta arbitrarily arrested aid workers, destroyed civilian food stocks and non-military objects, prevented the delivery of food and medical supplies at military checkpoints, and delayed or denied administrative approvals for local, national, and international aid organizations. This flash report finds that these ongoing acts may constitute war crimes.

While military-led attacks on civilians increase and impunity for atrocity crimes is further entrenched, the military junta continues to deny any wrongdoing.

To ensure lifesaving aid for an increasing number of civilians forcibly displaced in the country, this report recommends that Thailand, India, China, and Bangladesh authorize agencies to deliver cross-border humanitarian aid to Myanmar, directly as well as through community-based partners.

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