“WE ARE AT BREAKING POINT”

ROHINGYA: PERSECUTED IN MYANMAR, NEGLECTED IN BANGLADESH

AMNESTY INTERNATIONAL

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Cover photo: *Debris of burned houses in Wa Peik village, a Rohingya village in Maungdaw Township, northern Rakhine State on 14 October 2016.*
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Bangladesh and Myanmar
N
NEPAL
BHUTAN
CHINA
BANGLADESH
INDIA
Dhaka
MYANMAR
Cox's Bazar
Maungdaw Town
Naypyitaw
LAOS
Rakhine State
Bay of Bengal
Yangon
THAILAND
LEGEND
State capital
City or town
Andaman Sea
Gulf of Thailand
0 100 200 km
(C) GADM, Natural Earth, MIMU 2016

Rakhine State
BANGLADESH
MYANMAR
Maungdaw
Buthidaung
Kyauktaw
Mrauk-U
Ponnagyun
Rathedaung
Minbya
Pauktaw
Sittwe
Myebon
Ann
Bay of Bengal
Kyaukpyu
Ramree
Toungup
Munaung
Thandwe
Gwa
N
BHUTAN
INDIA
CHINA
BANGLADESH
MYANMAR
LAOS
THAILAND
KEY
Township outline (Rakhine)
Township outline (Myanmar)
Capital of Rakhine
Township name
0
25
50 km
(C) GADM, Natural Earth, MIMU 2016

GLOSSARY

BGB	Border Guard Bangladesh
BGP	Border Guard Police
CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
ECHO	European Civil Protection and Humanitarian Aid Operations
IDP	Internally Displaced Person
INGO	International Non-governmental Organization
IOM	International Organisation for Migration
KMC	Kutupalong Makeshift Camp
NLD	National League for Democracy
NRS	Northern Rakhine State
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNSR	United Nations Special Rapporteur
WFP	World Food Programme

1. EXECUTIVE SUMMARY

> ***"There is no one in Wa Peik [village] now. All the houses are destroyed… We are in very difficult times, no food, no clothes, we are just sleeping in the fields. We rely on the other villagers to support us, but this can't continue for much longer. We are at breaking point…"***
>
> A Rohingya farmer, displaced from his home in Wa Peik village, northern Rakhine State, after his home was burned down by the military.[1]

In the pre-dawn hours of 9 October 2016, several hundred men attacked three border police posts in Myanmar's northern Rakhine State. Nine police officers were killed and weapons and ammunition were seized. The attackers are believed to be part of a militant group called *Harakat Al-Yaqin* (Faith Movement), composed primarily of individuals from the Rohingya ethnic group.[2]

The government immediately tightened security throughout northern Rakhine State. Large numbers of soldiers were immediately deployed in the region and began search operations to apprehend the attackers and recover the weapons seized by them. A curfew in Maungdaw and Buthidaung Townships in place since 2012 was extended, and people were ordered not to leave their villages. The government sealed off the area, forcing the suspension of humanitarian aid and precluding access by journalists and rights monitors.

The situation has had a devastating impact on the Rohingya, a Muslim minority that has suffered decades of severe persecution in the country.

In the past two months, the government has repeatedly insisted that their security operations are aimed at apprehending "violent attackers" and are being conducted "in accordance with the law". However, the evidence presented in this report suggests that security forces in their response to the 9 October attacks, have perpetrated widespread and systematic human rights violations against the group including by deliberately targeting the civilian populations with little, or no, regard for their connection to militants. While some unknown number of Rohingya participated in the 9 October attacks and subsequent clashes with security forces, the overwhelming majority did not.

1 Amnesty International telephone interview, December 2016.
2 Until recently there was very little public information about the group, however a December report by the International Crisis Group (ICG) found that it was formed in the aftermath of the 2012 violence in Rakhine Sate, and recruited leaders and trained hundreds of villages in 2013 and 2014. According to ICG, the group is well-organized and well-funded, and is led by a group of Rohingyas in Saudi Arabia. See ICG, *Myanmar: A New Muslim Insurgency in Rakhine State*, Crisis Group Asia Report N°283, 15 December 2016. See all also box, Rohingya militancy?, on p.13.

Amnesty International has found that security forces have been guilty of deliberately killing civilians, firing at random in villages, arbitrarily arresting Rohingya men, raping Rohingya women and girls, and destroying homes and property. The authorities also suspended humanitarian access to the area imperilling the lives of a population that was heavily reliant on such assistance prior to the attacks.

The below sections outline some of our key findings:

Random attacks and killings

According to eyewitnesses, military personnel attacked Rohingya villagers at random, leading to deaths and injuries. People described how soldiers would enter villages during security sweeps and fire indiscriminately at women, men and children, often as they were fleeing in fear. On one occasion, soldiers dragged three people out of their homes and shot them dead, including a 13-year-old boy.

Through interviews with multiple eyewitnesses, the report also documents specific incidents in detail. On 12 November, for example, the Myanmar military deployed two helicopter gunships to a group of villages, where soldiers had engaged in a skirmish with suspected militants. The helicopters fired indiscriminately on, and killed, people as they fled in panic, although the exact death toll is difficult to determine.

One 30-year-old man said: "*We got scared when we heard the noise from the helicopter… The soldiers were shooting randomly. If they saw someone, the helicopter shot. They were shooting for a long time… We could not sleep that night. The next morning the military came and started shooting again.*"

Arbitrary arrest and detention

Myanmar authorities have also carried out mass arrests of hundreds of mainly Rohingya men over the past two months according to state media, which has confirmed that at least six people detained since 9 October have died in custody, raising serious concern about the use of torture in custody.

Amnesty International has documented the cases of 23 men who were taken away by security forces, without any information about their whereabouts or charges against them. Authorities have appeared to target prominent community members for arrest, including village leaders and religious leaders. These arbitrary arrests could amount to enforced disappearances under international law. Multiple eyewitnesses also described brutal tactics, including physical violence, used by security forces during arrests.

Rape and other sexual violence

Myanmar security forces have raped and sexually assaulted Rohingya women and girls during security operations in northern Rakhine State. Evidence collected by Amnesty International suggests that Rohingya women and girls were mostly raped during security raids on their villages after the men had fled. Amnesty International spoke to six women and their relatives who told the organization they had been raped or sexually assaulted by soldiers. Fatimah,[3] a 32-year-old Rohingya woman who has fled to Bangladesh, said that military entered her village and dragged her out to a paddy field where they raped her: "*Three military officers raped me… I don't remember what happened next because I fell unconscious… I woke up early the next morning. I could not get up so I crawled across the paddy field.*"

Aid workers in Bangladesh also confirmed that survivors of sexual violence had crossed the border and sought treatment. These accounts, taken together with interviews by other independent human rights groups and journalists, indicate an alarming pattern of rape and other sexual violence against Rohingya women during security operations.

Scorched earth

Amnesty International has confirmed that the military has torched over 1,200 Rohingya homes and other buildings, including schools and mosques. Sometimes, whole villages have been burned down. Several eye witnesses also described how soldiers used weapons which resembled rocket launchers to destroy houses. The Myanmar government has insisted Rohingyas the militants were burning the homes and buildings in an attempt to garner international aid and support, but all eyewitnesses Amnesty International spoke to said security forces had burned down the houses. Analysis of satellite imagery shows patterns of burning consistent with targeted and systematic attacks by the military rather than ad hoc burning by militants.

During security sweeps, the military also frequently looted Rohingya homes for valuables, including gold and cash. Soldiers sometimes confiscated important documents, including temporary identity documents, which can have long-lasting impacts as it restricts the ability to travel or to restoring citizenship rights.

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3 Not her real name.

Humanitarian catastrophe

The Myanmar authorities have imposed severe restriction on humanitarian access in the "operations zone" since 9 October, which has placed tens of thousands of people's lives at risk. According to the UN, some 150,000 people in the region were dependent on food aid before the current crisis. Pregnant women and new mothers, many of whom now have no way to access medical care, are thought to be facing particular health risks.

Political failure

Since security operations were launched on 9 October, the Myanmar government and military have issued a series of blanket denials of human rights violations committed by state security forces. For example, on 7 December, Commander-in-Chief Senior General Min Aung Hlaing said that "*Burmese security forces have not committed any human rights violations including extrajudicial killings, rapes, or arson*." At the same time, the authorities placed northern Rakhine State under effective lockdown, imposing severe restrictions on the ability of journalists and independent human rights monitors to travel there.

The research presented in this report, however, adds to a growing body of evidence that the Myanmar security forces are committing widespread human rights violations in northern Rakhine State. While the military bears ultimate responsibility for the violations, State Counsellor Aung San Suu Kyi – the de facto head of Myanmar's civilian government – has failed in her political and moral responsibility to speak out.

Desperation across the Bangladeshi border

Unfortunately, Rohingya fleeing violence at home have also suffered further human rights violations as they crossed the border into Bangladesh. Bangladeshi authorities have refused to treat the fleeing population as asylum seekers and refugees and have partially denied considerable numbers of recent arrivals access to humanitarian assistance.

Fearful of creating conditions that would encourage more refugees to enter the country, the Bangladeshi government has strengthened its long-standing policy of sealing the border with Myanmar and has pushed back thousands who have crossed into Myanmar. Such pushbacks are illegal under international law as they violate the principle of *non-refoulement* – which absolutely prohibits forcibly returning people to a country or place where they would be at real risk of serious human rights violations. The border closure has also forced people to take dangerous, irregular routes to enter Bangladesh.

Still, at least 27,000 refugees are believed to have entered Bangladesh since 9 October. Due to the fear of arrest and deportation, these desperate people have been forced into hiding in villages, refugee camps and even forests. They are by and large living without adequate access to food, clothing, shelter and medical care. The Bangladeshi authorities have imposed severe restrictions on the ability of aid agencies to access and provide services to the newly arrived refugees, despite the obvious humanitarian needs.

Instead, many of the new arrivals have been dependent on longer-term refugees or the local population for food and other necessities, straining their already meagre resources even further. As one long-term Rohingya refugee in Bangladesh told us: "*I am the only breadwinner in my family. We are seven people, but some family members arrived from Myanmar last week so now we are 15 people living in the same small hut. We did not have any food this morning.*"

Collective punishment and possible crimes against humanity

The response of the army to attacks on security forces went far beyond what is necessary and proportional. Instead of investigating and arresting specific suspects, the army carried out operations which amount to collective punishment, targeting individuals clearly not involved in such attacks, whole families and whole villages. These operations appear to target Rohingya collectively on the basis of their ethnicity and religion.

Evidence collected by Amnesty International also gives rise to a serious concern that human rights violations by Myanmar security forces described in this report are part of a widespread and systematic attack against the Rohingya population in northern Rakhine State and may therefore constitute crimes against humanity. At the very least, the concerns substantiated in this report that crimes against humanity may have been committed in Rakhine State warrant a prompt, impartial, independent and effective investigation.

Crimes against humanity are exactly what the term suggests – crimes so serious that they are the concern not only of their victims, survivors or the state in question, but of humanity as a whole.

Recommendations

The unlawful killings, random attacks, destruction of property and restriction of aid and services in Myanmar are part of a long-standing pattern of persecution of the Rohingya community that has been entrenched for decades. To resolve the current crisis will take more than the establishment of government commissions and investigations.

It is essential that Aung San Suu Kyi, as Myanmar's de facto leader, shows strong moral and political leadership by condemning human rights violations and committing to a genuinely impartial and independent investigation into the events of the last two months. Ending the absolute impunity of the Myanmar security forces is an essential step if Myanmar is to continue on the path of reform. Equally essential is that Rohingyas, ethnic Rakhines and other minorities in Myanmar are able to live their lives in dignity, free from violence and discrimination.

Amnesty International strongly urges the Myanmar authorities to take immediate steps to address the unfolding situation in Rakhine state. These must include:

- Ordering members of all state security forces to halt all conduct which violates international law and refrain from any further violations;
- Publicly condemning human rights violations against the Rohingya in Rakhine State;
- Granting humanitarian organizations, as well as independent journalists and local and international human rights monitors, unimpeded access to northern Rakhine State; and
- Initiating an independent, impartial and, effective investigation, with the assistance of the UN, into alleged violations of international law. Where there is sufficient, admissible evidence, all individuals suspected of involvement in crimes under international law – including those with command responsibility – must be [or you can say "ensure that"] brought to justice in trials which meet international standards of fairness and without resorting to the death penalty.

Amnesty International also urges the government to take effective steps to address and dismantle longstanding, systematic discrimination against the Rohingya, ethnic Rakhine and other minorities in Rakhine State. Further recommendations are provided in the final chapter of this report
Amnesty International also urges the government of Bangladesh to:

- Allow all persons fleeing violence and persecution in Myanmar to enter Bangladesh without delay or restriction;
- Strictly apply the principle of *non-refoulement*, by ensuring that no one fleeing Myanmar is transferred to any place, including Myanmar, where their lives or human rights are at risk; and
- Provide for the immediate humanitarian needs of refugees and asylum-seekers, including food, water, shelter and health care, as well as education for children.

METHODOLOGY

This report is based on 35 interviews conducted by Amnesty International with victims of, and eyewitness to, abuses in October, November and December 2016. Amnesty International also spoke to a further 20 people, including human rights monitors, humanitarian workers, journalists and Rohingya leaders while researching this briefing.

The research on conditions within Myanmar was conducted from outside of the country, and Amnesty International carried out the majority of interviews by telephone. Interviews were also conducted in person with victims, their relatives, eyewitnesses and others in Cox's Bazar District in Bangladesh in late November 2016. Amnesty International was not able to visit northern Rakhine State due to government restrictions on access. The organization submitted a formal request for access to northern Rakhine State to State Counsellor and Minister of Foreign Affairs Aung San Suu Kyi on 1 November 2016.[4] At the time of writing, the Myanmar government had not responded to this request.

4 Amnesty International Ref: TG ASA 16/2016.062.

Interviews were conducted in English and in the Rohingya, Burmese and Bengali languages with interpretation. Interviewees were informed about the nature and purpose of the interview as well as how the information they provided would be used. Oral consent was obtained from each interviewee prior to the start of the interview. No incentives were provided to interviewees in exchange for their accounts.

Amnesty International corroborated and supplemented victim and witness testimony using satellite imagery, still photographs and videos, and reports from local and international human rights monitors. Six satellite images captured between 7 November 2015 and 23 November 2016 were used to conduct spectral and visual analysis of changes in the villages over 125 square kilometres of northern Rakhine State. The first cloud-free satellite images after the reports of abuses were 1.5 metre resolution and a thematic change detection was run on two image dates – 23 October 2016 and 7 November 2015 – over 100 square kilometres of land. The results were later supported by visual analysis of 50 centimetre high resolution imagery from 7 November and 10 November. High resolution imagery was also used to confirm reports of destruction in November over another 25 square kilometres of land in the Dar Gyi Zar area, north of Maungdaw Town.

The organization reviewed over 35 photographs and 26 videos relating to alleged human rights abuses in Myanmar. Using information from interviewees and satellite images, Amnesty International was able to geo-locate two videos, which show the destruction of a village described by several different eyewitnesses. Photographs and videos were also used to assess the veracity of individual testimonies. Although Amnesty International has not been able to confirm the exact date and location where all photographs and videos were taken, comparisons with satellite imagery found them to be largely consistent with the locations and landscapes where events allegedly occurred. None of the videos and photographs used in this research appear to exist before 9 October 2016, and are therefore judged to depict events related to the recent escalation in violence. All photographs and videos are catalogued and remain on file with Amnesty International.

The risk of reprisal against individuals reporting human rights violations in Myanmar is high. Refugees and asylum-seekers in Bangladesh also face the threat of arrest and deportation. For these reasons, information that could identify interviewees – including their names and most instances the precise date and location of events they describe – has been withheld from this report.

Amnesty International extends its thanks to the individuals and organizations who provided information for this briefing. In particular, the organization wishes to extend its deep appreciation to the victims and their family members who shared their stories – often at great personal risk – and entrusted Amnesty International to raise their concerns.

2. BACKGROUND

2.1 THE ROHINGYA IN MYANMAR: A HISTORY OF DISCRIMINATION

The Rohingya are a Muslim ethnic minority residing primarily in Rakhine State, western Myanmar. Northern Rakhine State, the name commonly used to refer to Maungdaw and Buthidaung Townships[5] is home to the vast majority of Myanmar's estimated one million Rohingyas.[6]

The Rohingya have been subjected to decades of state-sponsored discrimination and persecution, which have been extensively documented by Amnesty International and other human rights groups.[7] The Rohingya have been stripped of citizenship rights, in particular as a result of the country's discriminatory 1982 Citizenship Law and its application, and more broadly their civil, political, economic and social rights have been violated.[8]

The situation of the Rohingya, and other Muslims in Rakhine State, deteriorated significantly after waves of violence erupted between Rakhine Buddhists, Rohingya and other Muslim groups in 2012. State security forces were also accused of perpetrating human rights abuses against the Rohingya during the unrest.[9] Scores were killed and thousands of homes were destroyed, resulting in massive displacement. More than four years later about 120,000 people[10] – mainly Rohingya – continue to live in squalid internally displaced person (IDP) camps and unofficial settlements, where they do not have reliable access to adequate food, medical care or sanitation facilities. The dire conditions are due, in part, to government-imposed restrictions that prohibit displaced people from leaving the camps but then also create barriers for humanitarian organizations to access the affected communities.

Rohingyas and other Muslims living outside displacement camps also face similarly severe restrictions on their freedom of movement, limiting their access to livelihoods, healthcare, food and education. In Central Rakhine State, Rohingyas are not allowed in the main towns and, in most cases, are able to travel to other Muslim villages often only by waterway. In northern Rakhine State, prior to the October attacks, Rohingya movement was subject to a complex system of travel authorisations, and restrictions that were strictly enforced by state security forces, including the military and the Border Guard Police (BGP).[11]

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5 Rathedaung Township is sometimes included as part of northern Rakhine State, as it was formerly part of Maungdaw District, but today falls within Sittwe District. For the purposes of this briefing, northern Rakhine State refers only to Maungdaw and Buthidaung Townships.
6 Precise figures for the Rohingya population are not publicly available, as in March 2014, just days before the first census since 1983, the government of Myanmar reneged on a promise to allow them to self-identify in the census forms. Instead the government required them to register as "Bengali" – a divisive term used to imply that all Rohingya are migrants from Bangladesh and which they reject. This led to most not being included in the count. See United Nations Population Fund (UNFPA), Myanmar releases population count from census, 30 August 2014, available at: http://asiapacific.unfpa.org/news/myanmar-releases-population-count-census
7 See for example, Amnesty International, *Human rights violations against Muslims in the Rakhine* (Index: ASA 16/06/92), May 1992; *Rohingya: the search for safety* (Index: ASA 13/07/97), September 1997; *The Rohingya: Fundamental rights denied* (Index: ASA 16/005/2004), May 2004; Human Rights Watch (HRW), *The Rohingya Muslims: Ending a cycle of exodus*, September 1996*; Perilous plight*, May 2009; and the Irish Center for Human Rights, *Crimes against Humanity in Western Burma: The Situation of the Rohingyas*, 2010.
8 See for example Amnesty International, *The Rohingya: Fundamental rights denied* (Index: ASA 16/005/2004), May 2004.
9 See for example, HRW, *"All you can do is pray": Crimes against humanity and ethnic cleansing of Rohingya Muslims in Burma's Arakan State*, 22 April 2013; and *The Government could have stopped this, Sectarian Violence and Ensuing Abuses in Burma's Arakan State*, August 2012.
10 UN Office for the Coordination of Humanitarian Affairs (OCHA), Myanmar: IDP Sites in Rakhine State (Sep 2016), 30 September 2016, available at: http://www.refworld.org/docid/58343f474.html
11 The Border Guard Police (BGP) was established in 2014 after the disbandment of the *NaSaKa*, a military-civilian force which was notorious for abuses against the Rohingya population in northern Rakhine State.

Amnesty International and other organizations have documented arbitrary arrests, extortion, torture, and other ill-treatment of the Rohingya community by the BGP.[12] These abuses are perpetrated with almost total impunity.

Discrimination against the Rohingya also takes place in the context of growing religious intolerance in Myanmar in recent years. Advocacy of hatred against Muslims by Buddhist extremist groups has largely gone unaddressed and unchallenged by Myanmar authorities. Attacks on Muslims communities in many parts of Myanmar have caused deaths, injuries and destruction of property in recent years.[13]

The National League for Democracy (NLD), headed by Aung San Suu Kyi, took power in March 2016 after winning a historic general election in November 2015. Aung San Suu Kyi, who remains constitutionally barred from the Presidency, was appointed State Counsellor – a tailor-made role which made her the de facto leader of the civilian government. She has not met expectation among the Rohingya and the international community that she would prioritise the human rights situation in Rakhine State. She has instead sought to downplay the situation, casting doubt on reports of abuses against the Rohingya and asking for "space" to address the issue.[14]

ROHINGYA MILITANCY?

Until recently, very little was known about the perpetrators of the October attacks on border police posts in Rakhine State. A group called *Harakat Al-Yaqin* (Faith Movement)[15] claimed responsibility in a series of online videos released shortly after the attacks. In the videos, men carrying guns, swords, machetes and batons call for other Rohingya to join in their fight against the Myanmar government. In some videos the group has called for jihad, although analysts suggest there are no indications that they are calling for acts of "terrorism".[16]

According to the International Crisis Group (ICG), the group was formed in the aftermath of the 2012 Rakhine State violence, and recruited leaders and trained hundreds of villagers in 2013 and 2014. ICG reports that the group is well organized and well-funded, and is led by a group of Rohingyas in Saudi Arabia.[17] Amnesty International's interviews and information from other credible sources indicate that a group is active in Maungdaw Township, and has been involved in several other attacks and clashes with security forces since 9 October. According to state media since 9 October at least 20 security force personal have been killed.[18]

There is a history of Rohingya and Muslim insurgency in Rakhine State, and over the decades several Rohingya armed groups have been active in the area. Prominent among these is the Rohingya Solidarity Organization (RSO), which was established in the early 1980s and had small bases in Bangladesh, close to the border with Myanmar.[19]

In recent years the RSO was largely believed to be defunct. Despite this, security forces in Rakhine State have regularly used alleged links with the RSO and other militant groups as a pretext for arbitrarily arresting Rohingyas.

The prospect of a new Rohingya armed group operating in Rakhine State has stoked fears and increased tensions in the region, in particular among the ethnic Rakhine community. It is critical that these concerns are not dismissed. For the security of all people living in Rakhine State it is essential that the attacks are investigated and those responsible are brought to justice. Such investigations should be conducted in a fair and transparent manner, in accordance with international human rights law.

12 Unpublished research, on file with Amnesty International. See also Physicians for Human Rights (PHR), *Where There is Police, There is Persecution*, October 2016.
13 See for example: PHR, *Massacre in Central Burma: Muslim Students Terrorized and Killed in Meiktila*, May 2013; Tomás Ojea Quintana, Special Rapporteur on the situation of human rights in Myanmar, Report UN Doc: A/68/397, 23 September 2013, paras 58-61; and Amnesty International, *Myanmar: Investigate violent destruction of mosque buildings*, 24 June 2016.
14 *AFP (Agence France-Presse)*, "Myanmar's Suu Kyi says don't 'exaggerate' Rohingya plight", 5 November 2015 available at: http://tribune.com.pk/story/985719/myanmars-suu-kyi-says-dont-exaggerate-rohingya-plight/; and Lesley Wroughton, "Suu Kyi calls for 'space' to address Myanmar's Rohingya issue as Kerry visits", *Reuters*, 22 May 2016, available at: http://www.reuters.com/article/us-myanmar-usa-kerry-idUSKCN0YD01E
15 The government calls the group Ahqamul Al-Yaqin, meaning "community of fighters".
16 ICG, *Myanmar: A New Muslim Insurgency in Rakhine State*, Crisis Group Asia Report N°283, 15 December 2016, p. 14.
17 ICG, *Myanmar: A New Muslim Insurgency in Rakhine State*, Crisis Group Asia Report N°283, 15 December 2016, p. i.
18 *The Global New Light of Myanmar*, "Vice President to Rakhine commission: The world is waiting", 9 December 2016.
19 ICG, *Myanmar: The Politics of Rakhine State*, Crisis Group Asia Report N°261, 22 October 2014, p. 24.

On 30 May 2016, the government formed the Central Committee on Implementation of Peace, Stability and Development of Rakhine State. This is a body, chaired by Aung San Suu Kyi, with a mandate to work on issues relating to security and citizenship.[20] However, the committee was criticised by the ethnic Rakhine, Arakan National Party (the dominant party in the state parliament), which claimed to have been side-lined in its creation.[21]

A few months later on 23 August 2016, Aung San Suu Kyi also announced the establishment of another commission: the Advisory Commission on Rakhine State, which "aims to propose concrete measures for improving the welfare of all people in Rakhine State."[22] Composed of six local and three international experts, the commission is chaired by former UN Secretary General Kofi Annan and is assigned to present recommendations to the State Counsellor by the end of 2017. The move was generally welcomed by human rights organizations and the international community, although there are concerns that there are no Rohingya representatives in its composition.[23] The October attacks have significantly changed the political environment, with the space for positive engagement on issues affecting Rakhine State shrinking considerably.[24] It is therefore unclear what the Commission will be able to achieve in the next year.

2.2 THE ROHINGYA IN BANGLADESH: A LIFE ON THE BRINK

Rohingya refugees from Myanmar have arrived in Bangladesh in waves since at least the 1970s. Arrival numbers have increased significantly during periods of unrest in Myanmar, such the 1978 violence and during the 1991 military campaign, when tens of thousands of refugees have poured across the border in short spaces of time.[25]

In 2016, there are approximately 32,000 registered Rohingya refugees in Bangladesh residing in two refugee camps, Kutupalong and Nayapara. These are managed by the Bangladeshi government together with the Office of the UN High Commissioner for Refugees (UNHCR) and other agencies.[26] However, the Bangladeshi authorities have refused to register newly arrived Rohingya as refugees since 1992, in an apparent attempt to dissuade further people from entering the country. As a result, there are an estimated 300,000 to 500,000 undocumented Rohingya refugees in Bangladesh. Tens of thousands live in several informal camps in Cox's Bazar, including Leda and Kutupalong makeshift camp (KMC), while others have settled in local villages or towns.[27]

Undocumented Rohingya refugees live in extremely poor conditions, with limited access to food, water and basic services. With few employment opportunities, some resort to illegal activities to make a living, including the drug trade or human trafficking, as many Rohingya make irregular journeys to other countries from Bangladesh in search of livelihood.[28] Levels of sexual violence against Rohingya women – by both the local population and other refugees – are very high. These crimes are perpetrated with almost total impunity partly because the victims lack access to the formal justice system. [29] Undocumented Rohingya also live in constant fear of arrest under Bangladesh immigration laws, in particular the Foreigner's Act of 1946, which

20 Republic of the Union of Myanmar President's Office Notification 23/2016 9th Waning of Kason, 1378 ME, Formation of Central Committee on Implementation of Peace, Stability and Development of Rakhine State, 30 May 2016, available at: http://www.president-office.gov.mm/en/?q=briefing-room/notifications/2016/06/01/id-6378
21 ICG, Myanmar's new government: Finding its feet?, Asia Report No. 282, 29 July 2016, p.15.
22 Ministry of the Office of the State Counsellor, Establishment of the advisory commission on Rakhine State, 23 August 2016, available at: http://www.statecounsellor.gov.mm/en/node/228
23 Amnesty International, Myanmar: Kofi Annan to head commission on Rakhine State, 24 August 2016.
24 ICG, Myanmar: A New Muslim Insurgency in Rakhine State, Crisis Group Asia Report N°283, 15 December 2016, p.23.
25 See Amnesty International, *Myanmar / Bangladesh: Rohingyas – the search for safety* (Index: ASA 13/007/1997, 31 August 1997; and HRW, *Burma: The Rohingya Muslims - Ending a Cycle of Exodus?*, September 1996.
26 United Nations High Commissioner for Refugees (UNHCR), Bangladesh Factsheet, August 2015, available at http://www.unhcr.org/50001ae09.pdf
27 UNHCR, Bangladesh Factsheet, August 2015, available at http://www.unhcr.org/50001ae09.pdf
28 Amnesty International, *Deadly journeys, the refugee and trafficking crisis in South East Asia* (Index: ASA 21/2574/2015), 21 October 2015.
29 Amnesty International interviews with national and international NGO and think tank officials in Dhaka, November 2016.

imposes penalties of up to five years' imprisonment for "illegal" entry.[30] Many Rohingya are therefore reluctant to leave the informal camps in search of work or food.

In 2014, the Bangladeshi government announced a new national strategy for undocumented Rohingya refugees, which focused on meeting their basic humanitarian needs, strengthening border management and engaging with the Myanmar government.[31] The Bangladesh government completed a census of the undocumented Rohingya refugees in June 2016 but has not yet made the results public.[32]

The government claims the census will lead to better access to services and to granting basic legal status to undocumented Rohingya.

While the census has been welcomed as a positive step which could lead to improved access to basic services of all Rohingya refugees, there has also been criticism raised against it. Tens of thousands of Rohingya are thought to have purposefully avoided being counted, in part because they feared the survey would lead to them being returned to Myanmar, according to credible sources with knowledge of the process.[33] It is also concerning that an unknown number of children from mixed Rohingya-Bangladeshi parents were counted as undocumented Rohingya refugees, despite their right to Bangladeshi citizenship under international human rights law.[34]

30 The Foreigner's Act, 1946 (ACT NO. XXXI OF 1946), Article 3.
31 Government of Bangladesh, National Strategy on Myanmar refugees and undocumented Myanmar nationals, available at: http://www.cxbcoordination.org/Policy/National%20StrategyRohingya_UMNs_leaflet_English.pdf
32 Sheikh Shahariar Zaman, "Foreign Secy: Final Rohingya census report by November", *Dhaka Tribune*, 21 June 2016, available at: http://archive.dhakatribune.com/bangladesh/2016/jun/21/foreign-secy-final-rohingya-census-report-november
33 Amnesty International interviews in Dhaka and Cox's Bazar, November 2016.
34 Convention on the Rights of the Child, Article 7.

Northern Rakhine State
BANGLADESH
MYANMAR
BGP Post in Koe Tan Tauk
BANGLADESH
Rakhine State
Nga Khu Ya
Kyet Yoe Pyin
Ngan Chaung
U Shey Kya
Kyar Gaung Taung
Yae Khat Chaung Gwa Son
Dar Gyi Zar
Thu U Lar
Kyauk Pyin Seik
Wa Peik
Kyee Kan Pyin
Buthidaung Township
Buthidaung Town
Myo Thu Gyi
Maungdaw Town
Maungdaw Township
Bay of Bengal
Bay of Bengal
0 25 50 km
N
KEY
Sites of 9 October attacks
Village
Town
Township outline (Rakhine)
Township outline (Myanmar)
0 2.5 5 km
BHUTAN
INDIA
CHINA
BANGLADESH
MYANMAR
LAOS
THAILAND
(C) GADM, Natural Earth, MIMU 2016

3. GRAVE VIOLATIONS IN MYANMAR

In the pre-dawn hours of 9 October, several hundred men armed with knives, slingshots and firearms attacked three border police posts in Maungdaw and Rathedaung Townships in northern Rakhine State: the BGP headquarters in Kyi Kan Pyin, the BGP post in Nga Khu Ya in Maungdaw Township, and the BGP post in Koe Tan Tauk, Rathedaung Township. According to the authorities, nine police officers were killed and 62 weapons and more than 10,000 rounds of ammunition were seized. [35]

The authorities responded by launching a major operation to apprehend those involved, recover the missing weapons and arrest those suspected of assisting the attackers. The same day, movement restrictions were tightened across northern Rakhine state and northern Maungdaw Township was sealed off. Ongoing skirmishes between the military and the insurgent group have continued, with an escalation of violence from 12 November, after a senior military commander was killed in one such clash. Since the first attacks Amnesty International has documented a wide range of human rights violations carried out against the Rohingya Muslim population by state security forces, as detailed in the chapter below.

3.1 RANDOM SHOOTING AND UNLAWFUL KILLINGS

> **"The military were shooting randomly. If they saw someone, the helicopter shot."**
>
> Rohingya villager from Dar Gyi Zar.[36]

According to eyewitnesses, military personnel operating in northern Maungdaw Township attacked Rohingya villagers at random, leading to deaths and injuries.[37] Fifteen eyewitnesses from five different villages told Amnesty International that soldiers entered their villages as part of security operations and fired randomly at villagers – men, women and children – often while they were fleeing in fear. Such attacks often began early in the morning while soldiers conducted security sweeps and searched for suspected insurgents.

35 *The Global New Light of Myanmar*, "Security tightened Nine policemen killed, five injured, one missing in border attacks", 10 October 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-10-10-red.pdf
36 Amnesty International telephone interview, November 2016.
37 Villages in northern Rakhine state are often known by several names, including a local Rohingya name. A single village tract may have several villages with the same or very similar names, and multiple hamlets which residents often only refer to by their Rohingya language name. For the purposes of this briefing, Amnesty International uses village tract and village names identified by the Myanmar Information Management Unit (MIMU) in maps of Rakhine State available online:
http://www.themimu.info/sites/themimu.info/files/documents/Tsp_Map_VL_Maungdaw_-_Rakhine_MIMU154v04_03May2016_A1.pdf

Humanitarian workers in Bangladesh confirmed to Amnesty International that refugees with gunshot wounds had fled Myanmar to seek treatment for their injuries.[38]

Two individuals said that residents in their village were taken from their homes and shot dead by Myanmar soldiers. Amnesty International heard how in Myo Thu Gyi, three people, including a 13-year-old boy, were shot dead when soldiers entered the hamlet on the morning of 10 October. One villager said:

> "*They went inside the house, pulled the people outside, took them to the jungle nearby and then shot them… I saw the bodies afterwards*." [39]

Other human rights organizations and media outlets have also documented the incident.[40] The villager from Myo Thu Gyi also told Amnesty International that the bodies of four men from a nearby hamlet were also found on 10 October. Credible sources report that they had been detained by the security forces the night before.

A Rohingya man who fled to Bangladesh showed Amnesty International a bullet wound on his left shin. He stated that he was one of six people who were shot while fleeing a military sweep in Ngan Chaung village in October.[41] While he said he was able to receive medical treatment in Myanmar, many have not been so lucky. One Rohingya man still living in the operations area told Amnesty International:

> *"There are people in the village who were injured and who need treatment… there is a woman here who has a bullet in her leg. She was shot while fleeing the military. But she can't get medical treatment."*[42]

Unable to travel to nearby clinics, and with medical staff not allowed to enter the operations area, some are left with no other option but to remain in their villages, where medicines are increasingly in short supply.

On 12 November the Myanmar military attacked villagers after a skirmish between soldiers and suspected militants in the vicinity of Pwint Hpyu Chaung village.[43] The precise sequence of events remains unclear. However, villagers and other credible sources told Amnesty International that during the skirmish between the armed insurgents and the Myanmar military, the insurgents fled and disappeared into nearby villages. Soldiers who pursued them fired at random, causing residents to flee in fear.

In nearby Gwa Son,[44] villagers and other credible sources told Amnesty International that soldiers engaged armed insurgents, who were supported by a group of several hundred villagers carrying sticks, spears and machetes, in a series of skirmishes.[45] The military was outnumbered, and a lieutenant-colonel was shot dead, causing the military to retreat.[46]

Soon afterwards, the military deployed two helicopter gunships which opened fire on residents in Gwa Son and surrounding villages, without making any apparent efforts to distinguish between militants and uninvolved villagers. Seven eyewitnesses told Amnesty International in detail how the helicopters fired at random on the villagers below, including children.

A Rohingya farmer in his fifties from Dar Gyi Zar village, a nearby village, who arrived in Bangladesh on 29 November, described what happened that day:

> "*I came out from the mosque after completing prayers, and when we heard the sounds of the firing, we started running away. We ran to the forest and to the safe space where we could hide. I saw the military burning the houses and shooting people who were fleeing. When someone came in front of them, they shot them. Everyone was running. They [the military] were firing on the crowd. My son was wounded by a bullet. He was hit while running away. He was shot in the thigh. He fell… Then the helicopter came and started shooting. No one could stop them. Everyone was just running…*

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38 Amnesty International correspondence with aid workers in Bangladesh, December 2016.
39 Amnesty International telephone interview, November 2016.
40 The Arakan Project, confidential correspondence on file with Amnesty International; Fortify Rights, *Myanmar: Protect Civilians in Rakhine State, Investigate Fatal Shootings*, 12 October 2016; and *BBC*, "Muslim civilians 'killed by Burmese army'", 7 November 2016, available at: http://www.bbc.com/news/world-asia-37892512
41 Amnesty International telephone interview, December 2016.
42 Amnesty International telephone interview, November 2016.
43 *The Global New Light of Myanmar*, "One officer, one soldier dead, several injured in fighting continuously erupts in Rakhine", 12 November 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-11-12-red.pdf
44 Also known locally as Yae Khat Chaung Gwa Son.
45 Amnesty International interviews, November 2016.
46 ICG, *Myanmar: A New Muslim Insurgency in Rakhine State*, Crisis Group Asia Report N°283, 15 December 2016, pp. 9-10. State media confirmed the death of two soldiers, see *The Global New Light of Myanmar*, "One officer, one soldier dead, several injured in fighting continuously erupts in Rakhine", 12 November 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-11-12-red.pdf

We came here [to Bangladesh]. But my daughter, son-in-law and two sisters are missing… Until now I don't know where they are."[47]

Another eyewitness, a 30-year-old Rohingya man from Dar Gyi Zar who fled the attack, also told Amnesty International about the helicopter attack and how the military came to their village the following day:

"*We got scared when we heard the noise from the helicopter… The military [soldiers] were shooting randomly. If they saw someone, the helicopter shot. While they were shooting we went to the houses. They were shooting for a long time… [then] the helicopter left. We could not sleep that night. The next morning, the military came and started shooting again. I saw them myself. I woke up in the morning for prayer. [They] came in and started shooting. I ran away with my family. I was across the canal, but I could see them burning the houses… later, after things were silent I went back to the village… we found dead bodies.*"[48]

An unknown number of people died during the attacks on 12 and 13 November. One eyewitness told Amnesty International that he saw eight people shot while fleeing the shooting:

"*I saw myself the military shooting them. One person was shot in the head, another person on the waist, another on the thigh.*"[49]

Amnesty International has received photographs and videos showing at least 10 people – including a young child – allegedly injured or killed in the attack. In one of the videos, people are clearly heard speaking the Rohingya language as they walk around the scene and check on injured persons amidst what appears to be several dead bodies. A man directs villagers to position dying villagers so that their heads are facing north, which Rohingya sources say is in accordance with local Muslim customs.[50]

Five eyewitnesses told Amnesty International that the Myanmar military also fired explosive munitions at their houses. Three of these accounts came from people who witnessed attacks in Dar Gyi Zar, although interviewees from two other villages also described the use of these weapons. Without access to northern Rakhine State, it is very difficult to verify these claims, however eyewitness provided strikingly similar descriptions of the weapon used, which from the descriptions seems likely to be rocket launchers. Other human rights organizations have reported receiving similar accounts and descriptions of the weapons, and the Arakan Project reports that in some places, villagers found unexploded ordinance.[51]

Armed military troops and police force travel in trucks through Maungdaw Township in northern Rakhine State on October 14, 2016 @ YE AUNG THU/AFP/Getty Images

47 Amnesty International telephone interview, December 2016.
48 Amnesty International telephone interview, December 2016.
49 Amnesty International telephone Interview, November 2016.
50 The dead are usually positioned with either their heads or right side and shoulder facing Mecca to the west.
51 Amnesty International correspondence, December 2016. See also HRW, *Burma: Military Burned Villages in Rakhine State*, 13 December 2016 and Burma Human Rights Network (BHRN), *Report on Rohingya Refugees in Bangladesh Tell of Horrors in Maungdaw*, 5 December 2016.

There were also a series of deadly attacks in Kyet Yoe Pyin village in the week immediately following the border post attacks in October. A number of civilians were killed, including men, women and at least one child. According to villagers, the military entered the village in the morning and began firing at random, causing most people to flee. However, a local woman who had given birth that morning and four others, including a child, stayed in the village, moving to the safety of a nearby house. When residents returned, they found their five bodies bearing gunshot wounds. An eyewitness who helped bury the bodies told Amnesty International that the new-born baby survived and is now with relatives. The incident was independently confirmed by the Arakan Project, a non-governmental organization which has been documenting human rights violations in northern Rakhine State for over 15 years.[52]

Another villager from Kyet Yoe Pyin village, interviewed after he arrived in Bangladesh, told Amnesty International that the military came to their village several times over a number of weeks:

> "*They came to the village on 12 October. Secretly and suddenly they entered our village and started randomly firing on everyone they saw... They came again a few weeks later. They fired their guns again at the villagers. When I saw them coming I ran away, but my younger brother, sister and mother stayed at home. They were all killed. Now I am alone.*"[53]

Although Amnesty International was unable to verify each individual account, together they indicate a strong pattern of violations by the military of the human right to life. Unlawful killings resulted from the military shooting randomly or recklessly at villagers and in some cases carrying out extra-judicial executions of detainees. These violations appear to have been perpetrated only against Rohingya villagers.

EXCESSIVE USE OF FORCE, UNLAWFUL KILLINGS, EXTRAJUDICIAL EXECUTIONS

At the heart of the international human rights standards governing the use of force by police lies the human right to life, enshrined in Article 3 of the Universal Declaration of Human Rights (UDHR).

Under international standards developed to protect this right, law enforcement officials are required to "as far as possible, apply non-violent means before resorting to the use of force".[54] Where the use of force is unavoidable, they must "[e]xercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved", minimise damage and injury and "[e]nsure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment".[55]

International standards emphasise the importance of proportionality in judging whether the use of force is legitimate and strictly unavoidable, in order to protect life. Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that: "… officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury" or to prevent "a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger" and "only when less extreme means are insufficient to achieve these objectives". The Principle continues: "In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life".

With the exception of circumstances of extreme, immediate danger, law enforcement officials must identify themselves as such and "give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed".[56]

Amnesty International's interviews indicate that the Myanmar security forces deployed grossly excessive force during clearance operations, which in some cases led to unlawful killings. International standards are clear that such cases should be investigated and punished as a criminal offence under national law.[57]

52 Amnesty International correspondence, November and December 2016.
53 Amnesty International telephone interview, November 2016.
54 Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
55 UN Basic Principles, Principle 5.
56 UN Basic Principles, Principle 10.
57 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 7.

3.2 ARBITRARY ARRESTS AND DETENTION, POSSIBLE ENFORCED DISAPPEARANCES

> **"They were handcuffed and taken away. The police didn't say or ask anything… We heard they are in Buthidaung jail, but we don't know. Since that day we were not able to get any information."**
>
> Rohingya villager from northern Maungdaw Township.[58]

Myanmar authorities have carried out mass arrests of Rohingyas – mainly men – as part of security operations in northern Rakhine State since the 9 October attacks. According to state media, as of 10 December 575 people have been detained for questioning. Of these, 88 were later tried, convicted and sentenced and ten released from custody.[59] Based on information in state media, the pace and number of arrests appears to have increased significantly in November and December. To date, no specific details about charges, trials or the length of sentences have been made public or shared with relatives.

This absence of information and transparency is deeply concerning. With little official information provided to families of those arrested, it is difficult to assess the strength of the evidence used to form the basis of an arrest, charge or conviction. Amnesty International has not been able to confirm the specific charges brought against any detainees or whether they have had access to lawyers or were informed of their right to legal representation.

Authorities have appeared to target prominent community members for arrest, including village leaders and elders, local businessmen, religious leaders and Arabic teachers. At least two Rohingya men were arrested in November for posting "defamatory" news stories on Facebook,[60] and unconfirmed reports suggest that another man was arrested after security forces found photographs of dead bodies and a Rohingya news app on his phone.[61] At least one current and one former international NGO (INGO) worker have also been arrested.[62]

Amnesty International documented the arrest of 23 Rohingya men in northern Maungdaw Township since the October attacks. Some were summoned to security forces headquarters for meetings and did not return, while others were arrested in their villages during security sweeps. In the cases where security forces arrested them in their villages, none of the detainees were informed of the allegations against them at the time of arrest. A relative of two men detained by military and BGP in northern Maungdaw Township in November told Amnesty International:

> "*We were about to eat, the food was ready in front of us. They came and surrounded our house. They told us all to go outside. There was one BGP officer, the rest were all military in green uniforms. They asked [my relatives] their names, showed them some paper, and then handcuffed them and took them away. We saw only that they were taken. We don't know where they are, and we cannot try to visit them because no Muslims are allowed to leave the villages.*"[63]

Other Rohingya villagers indicated that while arrests have mostly been carried out by the BGP, soldiers have also often been present. An eyewitness who saw four men being detained by BGP and military in northern Maungdaw Township in October said:

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58 Amnesty International telephone interview, November 2016.
59 *The Global New Light of Myanmar*, "470 suspects still under investigation in northern Maungdaw attacks", 10 December 2016, available at: http://www.moi.gov.mm/npe/nlm/?q=content/10-dec-16
60 *The Global New Light of Myanmar*, "More suspects in 9th October attacks arrested", 11 November 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-11-11-red.pdf
61 Amnesty International telephone interview, December 2016.
62 One later died in custody (see below). Amnesty International interviews, November 2016.
63 Amnesty International telephone interview, November 2016.

"*They came to our village at 3 or 4pm. They surrounded one of the houses and took the men outside. Some were military wearing green uniforms, and then some were ordinary police. The military waited outside while the police went in and pulled the men outside. I was in my house, I could see it from where I was. The police kicked them a few times. They were handcuffed and taken away. The police didn't say or ask anything. They took them away on foot. We heard they are in Buthidaung jail, but we don't know. Since that day we were not able to get any information.*"[64]

In these accounts, documented by Amnesty International, arrests were often accompanied by physical violence amounting to torture or other ill-treatment. Several eyewitnesses described how police and military beat and kicked Rohingyas they arrested. One woman described how her sons were beaten by security forces who came to their village in October:

"*We [my family] were all inside the house. It was around 7:30 or 8 o'clock in the morning. We were forced to go outside. My two sons were tied up – the military tied their hands behind their backs – they were beaten badly. The military kicked them in the chest. I saw it myself. I was crying so loudly. When I cried they pointed a gun at me. My children were begging the military not to hit them. They were beaten for around 30 minutes before being taken away. I haven't heard anything from them since.*"[65]

Security forces also beat and threatened villagers in an attempt to get information about the identity and location of suspected militants. A 25-year-old woman, who fled to Bangladesh with her three children, described how security forces beat her husband when they came to her village in November:

"*The military came at midnight as we were about to go to sleep. They surrounded the house. Four or five of them came in – military and BGP. They broke the door and entered the house. One said to my husband, 'Show us where the insurgents are.' He said he didn't know. They held him at gunpoint [then] they beat him with a rod on the back. They tied his hands behind his back and then beat him with rods. First it was in the house, then it was outside. I couldn't see [when he was outside], but I could hear. I was being held by a soldier. He pulled the gold [necklace] from my neck. One of my children was crying.*"[66]

The woman did not know what had happened to her husband and had not seen or heard from him since that night.

The location of most of those arrested remains unknown. Additionally, all the relatives of the people in detention that Amnesty International spoke with said that they had not heard from their family members since they were arrested. Restrictions on movement made it difficult to obtain information as families could not travel to make any enquiries. Relatives were often afraid to seek more information for fear of reprisals.[67]

Although Amnesty International was unable to obtain detailed information about conditions or treatment in detention, the information that is available raises serious concerns about the treatment of detainees. Amnesty International spoke to the relative of a young man detained by the security forces for two nights in November who was beaten so badly that he could not stand.[68] While such reports are difficult to verify, they are consistent with reports of torture and other ill-treatment in detention in northern Rakhine State that Amnesty International received prior to the October attacks.[69]

According to state media, six of those detained following the October attacks have died in custody during interrogation.[70] Amnesty International considers these reports very worrying and an indication that torture may have been committed by security forces against detainees. This number includes Kalim Ullah, a 58-year-old former UN worker who died on 17 October. Kalim Ullah, who had spent 13 years working for UN agencies including the World Food Program (WFP) and UNHCR in Rakhine State, was arrested along with five family members in Ridar village on 14 October. According to state media, the men were taken to Kyeing Chaung police station, and on 16 October Kalim Ullah was taken to an unknown location for interrogation. He died while being transferred back to Kyein Chaung police station at 5.30am the next morning. State media reported that he grabbed a firearm from a solider and had to be "subdued" by "responsible personnel".

64 Amnesty International telephone interview, November 2016.
65 Amnesty International telephone interview November 2016.
66 Amnesty International telephone interview, Bangladesh, 30 November 2016.
67 Amnesty International telephone interview, November 2016.
68 Amnesty International telephone interview, December 2016.
69 Unpublished research, on file with Amnesty International.
70 *The Global New Light of Myanmar*, "470 suspects still under investigation in northern Maungdaw attacks", 10 December 2016, available at: http://www.moi.gov.mm/npe/nlm/?q=content/10-dec-16

He lost consciousness and died on the way to the hospital, and local sources reported he was buried the next day.[71]

While state media reported that an investigation has been opened into the death, it is unclear which authorities are responsible for overseeing it. Members of Kalim Ullah's family, who only learned of his death after it was published in the media, have not been informed about the progress of the investigation.

RIGHTS OF DETAINEES UNDER INTERNATIONAL LAW

International law prohibits the arbitrary deprivation of liberty.[72] International law and standards contain a number of safeguards ensuring detainees' rights to due process and to freedom from torture and other ill-treatment. Among them are:

- the right to notify family or another third person;[73]
- the right to legal counsel;[74]
- the right to medical assistance;[75]
- the right to be brought promptly before a judge and to challenge the lawfulness of detention;[76]
- the right to silence and not to incriminate oneself.[77]

Denial of the right to communicate with the outside world – that is, holding a person in incommunicado detention – clearly breaches these standards. The UN General Assembly has repeatedly stated that "prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment." [78]

PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT

Under international law, torture and other cruel, inhuman or degrading treatment or punishment are prohibited absolutely, in all circumstances and without exception. The prohibition of torture and other ill-treatment was recognized in 1948 in Article 5 of the UDHR. The prohibition has been included in many subsequent international and regional human rights treaties, and other international and regional instruments. Many of these instruments also require measures to prevent such abuses; to independently investigate alleged cases, to bring to justice those responsible and to provide reparation to victims.

Myanmar has yet to ratify any human rights treaty that imposes a general prohibition on torture and other ill-treatment. However, the prohibition of torture and other ill-treatment is also a rule of *customary international law*,[79] binding on all states whether or not they are parties to particular treaties which contain the prohibition. Indeed, the prohibition of torture is widely recognised as one of a relatively small number of particularly fundamental and almost immutable *peremptory norms of general international law (jus cogens rules)*.[80]

In specific circumstances, torture and other ill-treatment are also war crimes and crimes against humanity, including under the Rome Statute of the International Criminal Court.[81]

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71 *The Global New Light of Myanmar*, "Suspected border police attackers arrested, one dies after altercation", 26 October 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-10-26-red.pdf
72 Universal Declaration of Human Rights (UDHR), Article 9; International Covenant on Civil and Political Rights (ICCPR), Article 9(1).
73 See for instance Principle 16 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles), UN General Assembly Resolution 43/173 (1988).
74 Article 9(3) of the ICCPR, Article 9(3); Principles 17 and 18 of the UN Body of Principles.
75 Principles 24 and 25 of the UN Body of Principles.
76 Article 9(3), 9(4) of the ICCPR; and Principle 32 of the UN Body of Principles.
77 Article 14(3)(g) of the ICCPR.
78 UN General Assembly Resolutions UN Doc. A/Res/65/205 (2010), para. 21; UN Doc. A/Res/67/161 (2012), para. 23; UN Doc. A/Res/68/156 (2013), para. 27.
79 International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, Judgment of 20 July 2012, para. 99; International Court of Justice, Case Concerning Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*), Judgment of 30 November 2010, para. 87; UN General Assembly Resolution 66/150 (19 December 2011), third preambular paragraph; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundzija*, no IT-95-17/1, Trial Judgment, 10 December 1998, paras. 137-146.
80 International Court of Justice, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal), Judgment of 20 July 2012, para 99; UN General Assembly Resolution 66/150 (19 December 2011), third preambular paragraph; International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v Furundzija*, no IT-95-17/1, Trial Judgment, 10 December 1998, paras 153-157.
81 Rome Statue of the International Criminal Court, adopted on 17 July 1998 (A/CONF.183/9), entered into force 1 July 2002 (as subsequently amended), Articles 7(1)(f) (torture) and 7(1)(k) ("other inhumane acts" – both as crimes against humanity), Article 8(2)(a)(ii); 8()2(c)(i,ii) ("torture or inhuman treatment" and "cruel treatment and torture" and "humiliating or degrading treatment," respectively, as war crimes).

When a person dies in custody, a prompt, impartial and independent investigation must be conducted regardless of the presumed cause of death.[82]

ENFORCED DISAPPEARANCE AS VIOLATIONS OF INTERNATIONAL LAW

Enforced disappearance is defined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance as: "…the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".[83]

The Convention provides that the "widespread or systematic use of enforced disappearance constitutes a crime against humanity, as defined in applicable international law" (in Article 5).[84]

3.3 RAPE AND OTHER SEXUAL VIOLENCE

"They touched my body, including the sex parts."

A 22-year-old woman from Ngar Kyu Ya village.[85]

Myanmar security forces have raped or otherwise sexually assaulted Rohingya women and girls during security operations in northern Rakhine State. Amnesty International spoke to six survivors and their family members, as well as several other people who witnessed rapes or saw women being taken away by soldiers. Their testimonies are supported by reports from independent human right monitors and journalists, who have interviewed other survivors of rape and sexual violence. Reuters interviewed eight rape survivors in U Shay Kya village, while the Arakan Project has received reports of dozens of rapes of Rohingya women and girls across at least six different villages.[86] A humanitarian worker in Bangladesh also confirmed to Amnesty International that of survivors of rape had arrived from Myanmar after the 9 October attacks to seek medical treatment.[87]

Together, these reports indicate an alarming pattern of rape and other sexual violence against Rohingya women during security operations. Evidence collected by Amnesty International suggests that Rohingya women and girls were mostly raped during security sweeps on their villages after the men had fled.

Fatimah,[88] a 32-year-old woman from Dar Gyi Zar, was gang-raped by three Myanmar army soldiers on 13 November, the day after the helicopter attack on her village. After fleeing to Bangladesh she told Amnesty International:

> "*The military came in the evening. I was taken to the paddy field. There were other ladies there too, around five or six others, but I didn't know them. Three military officers raped me… I don't remember what happened next because I fell unconscious… I woke up early the next morning. I could not get up so I crawled across the paddy field. I crawled to a nearby house. I didn't go back to my own house because I was afraid that they [the military] might come again. A woman was there with her daughter. They washed me with hot water. I was crying a lot. I asked them to bring me my children...*

82 Principle 9 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions, Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.
83 International Convention for the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly Res. 61/177, 20 December 2006, Art. 2.
84 See also Rome Statute of the Criminal Court, Article 7(2)(i).
85 Amnesty International telephone interview, December 2016.
86 Confidential reports, on file with Amnesty International, and Lewis, Simon and Wa Lone, "Exclusive: Rohingya women say Myanmar soldiers raped them amid crackdown on militants", *Reuters*, 28 October 2016, available at: http://www.reuters.com/article/us-myanmar-rohingya-exclusive-idUSKCN12S0AP
87 Confidential interview and written correspondence, on file with Amnesty International.
88 Not her real name.

When I arrived in Bangladesh, I told people what had happened to me and they helped me. I could not sit. The refugees brought a doctor to see me and I was given medicine. I feel better now."[89]

A man in his 30s from Dar Gyi Zar village who fled to Bangladesh told Amnesty International that other women from the village were raped that day. He stated that when he and others went back to look for survivors after the helicopter attack, they found Fatimah and twelve other women: "*They could not speak, they were just crying. They all had injuries. Their clothes had blood on them, around their private parts… they had marks on their necks from where they were held.*" He told Amnesty International that villagers took the women with them to Bangladesh where three were referred for treatment in a hospital. The others were treated by private health workers in the makeshift refugee camps.[90]

Women were also subjected to sexual assault and humiliation during security sweeps. A 22-year-old woman from Ngar Kyu Ya village explained:

"*They came to me and asked, 'Where is your husband?' and ordered me to give them my gold. They touched my body, including the sex parts. I was beaten. They didn't rape me, but they raped other women from our village. They took my gold and mobile – my gold chain and my earrings. I was not able to hide anything.*"

For many women, the shame and stigma surrounding sexual violence means that often they are unable to speak out about what happened to them. Amnesty International spoke to two other women who alluded to sexual violence by the military but did not provide details. Amnesty International researchers did not question them further for fear of re-traumatizing them. A woman from a village in northern Maungdaw Township described what happened to her the day the military came to her village in November:

"*I had a gold chain around my neck. They tried to pull it off me. I tried to resist and they beat me. Some were holding me down while they pulled the chain. Something happened afterwards, but I am ashamed to talk about it.*"

She later described being treated by a health worker for injuries "inside".[91]

RAPE AND OTHER CRIMES OF SEXUAL VIOLENCE UNDER INTERNATIONAL LAW

Rape is an act of gender-based violence and constitutes "discrimination", prohibited under international human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Myanmar is a state party.[92]

Rape by state officials (which include soldiers and police) has been unequivocally defined as torture by international criminal tribunals,[93] as well as by UN and regional human rights bodies.[94] In specific circumstances, rape and other forms of sexual violence are also war crimes and crimes against humanity, including under the Rome Statute of the International Criminal Court.[95]

The state's failure to prevent, investigate and prosecute violence against women by its armed forces, including rape and other crimes of sexual violence, is a flagrant breach of a number of its human rights obligations, including to prevent torture and cruel, inhuman or degrading treatment or punishment.

As a state party to CEDAW, Myanmar is also obligated to establish and support services for survivors of rape, sex assault and other forms of gender-based violence. This includes ensuring access to specially trained health workers, rehabilitation and counselling.

89 Amnesty International telephone interview, December 2016.
90 Amnesty International telephone interview, December 2016.
91 Amnesty International telephone interview, November 2016.
92 Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), para 1.
93 See for instance *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, para. 687; *Prosecutor v. Zejnil Delalic*, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, paras. 475-496, 943, 965; *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, ICTY Trial Chamber, Judgment of 10 December 1998, paras. 264-9.
94 See for instance Interim Report of the Special Rapporteur on torture to the General Assembly, UN Doc A/55/290 (2000), para. 5; Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/7/3, 15 January 2008, paras. 34-6; *Aydin v. Turkey,* European Court of Human Rights, Reports 1997-VI (57/1996/676/866), Judgment of 25 September 1997, para. 86; *Fernando and Raquel Mejia v. Peru*, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10.970, 1 March 1996; para. B(3)(a); *Almonacid Arellano et al. v. Chile*, Preliminary objections, merits, reparations and costs, Inter-American Court of Human Rights, Judgment of 26 September 2006, Series C No. 154, para. 82.4.
95 Rome Statue, Articles 7(1)(g) (as crimes against humanity), Article 8(2)(b)(xxii), 8(2)(c)(vi) (as war crimes).

The government has denied reports of rape and other sexual violence out of hand. In October, Presidential Spokesperson Zaw Htay dismissed a *Reuters* report describing the alleged rape of eight women in U Shey Kya village, saying: "*There's no logical way of committing rape in the middle of a big village of 800 homes, where insurgents are hiding*".[96] In November, Aung Win, a Rakhine State Member of Parliament, who was part of an investigation commission which went to Maungdaw to investigate the October attacks, also dismissed allegations of rape. He told the BBC that Rohingya women are "*very dirty*" and said that they "*have a very low standard of living and poor hygiene. They are not attractive so neither the local Buddhist men nor the soldiers are interested in them*".[97] However, such patterns of abuse by the Myanmar military have long been documented against ethnic women in Myanmar.[98]

The consequences for survivors of sexual violence are serious and can include unwanted pregnancies and sexually transmitted diseases. These challenges are further exacerbated by the difficulties Rohingya women face in accessing medical care in both Myanmar and Bangladesh. Additionally, women and girls who have been raped are vulnerable to social stigma, which can also prevent them from seeking medical care and other forms of support.

3.4 DESTRUCTION OF PROPERTY AND HOMES

> **"I saw with my own eyes how the military burned down our village…"**
>
> A 38 year old man from Ngar Chaung who fled to Bangladesh on 21 November.[99]

Myanmar security forces have destroyed hundreds of Rohingya homes and properties in northern Rakhine State since 9 October, mostly by burning them. In some cases, entire villages have been destroyed. Satellite images demonstrate widespread destruction of homes and other civilian properties – in some cases, entire villages have been destroyed. Amnesty International analysed satellite images of northern Maungdaw Township and confirmed the destruction of over 1,262 buildings in 12 villages in October and November (see figure below). Analysis of near infrared band confirmed burning by fire. These findings are consistent with those of Human Rights Watch, which conducted a similar review of satellite imagery and found that 1,500 buildings in Rohingya villages had been destroyed between 10 October and 23 November.[100] Rohingya villagers also described the widespread destruction of Rohingya homes, shops and businesses, and provided corroborating photographs and video footage to Amnesty International.

Myanmar government representatives have insisted that the militants were burning homes in an attempt to garner international aid and support.[101] However, all eyewitnesses interviewed by Amnesty International stated that their villages – including homes, mosques and schools – were destroyed by the Myanmar military.

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96 Lewis, Simon and Wa Lone, "Exclusive: Rohingya women say Myanmar soldiers raped them amid crackdown on militants", *Reuters*, 28 October 2016, available at: http://www.reuters.com/article/us-myanmar-rohingya-exclusive-idUSKCN12S0AP

97 *BBC*, "Muslim civilians 'killed by Burmese army", 7 November 2016, available at: http://www.bbc.com/news/world-asia-37892512

98 See for example Shan Women's Action Network & Shan Human Rights Foundation, *License to Rape: The Burma military regime's use of sexual violence in the ongoing war in Shan State*, July 2002; Karen Women's Organization (KWO), *Shattering Silences: Karen Women speak out about the Burmese Military Regime's use of Rape as a Strategy of War in Karen State*, April 2004; Women's League of Burma (WLB), *If they had hope, they would speak: The ongoing use of state-sponsored sexual violence in Burma's ethnic communities*, November 2014; WLB, *Same Impunity, Same Patterns: Report of Systematic Sexual Violence in Burma's Ethnic Areas*, January 2014; and Ta'ang Women's Organization (TWO), *Trained to Torture: Systematic war crimes by the Burma Army in Ta'ang areas of northern Shan State* (March 2011-March 2016), June 2016.

99 Amnesty International telephone interview, November 2016.

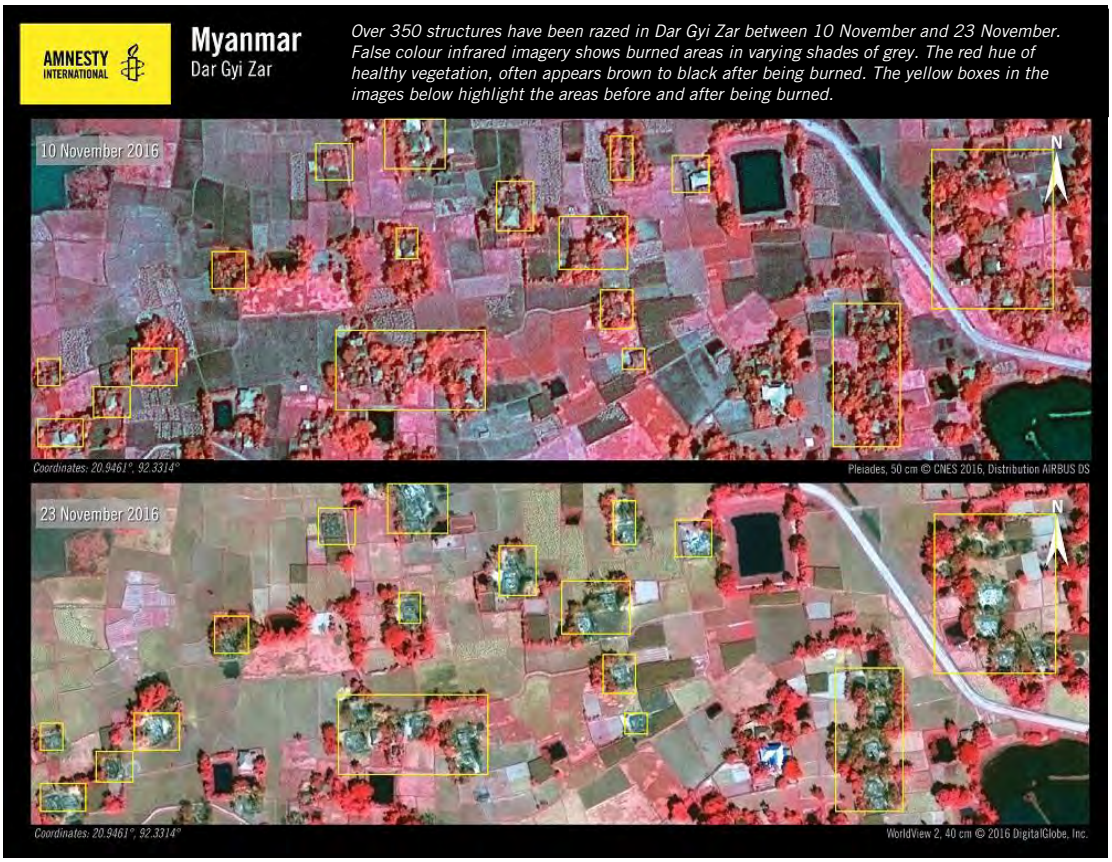
100 HRW, *Burma: Military Burned Villages in Rakhine State*, 13 December 2016. For other HRW reports of burning villages since 9 October see *Burma: New Wave of Destruction in Rohingya Villages*, 21 November 2016; *Burma: Massive Destruction in Rohingya Villages*, 13 November 2016; and *Burma: Satellite Images Show Fire-Damaged Villages*, 31 October 2016.

101 *The Global New Light of Myanmar,* "As UN delivers aid, violent attackers set home afire, seize two villagers", 9 November 2016; "Violent attackers set fire to 80 houses in Maungtaw", 14 November 2016; and "Violent attackers set fire to 60 homes", 15 November 2016.

Multiple interviewees told Amnesty International that their homes were deliberately burned down by the military.[102]

Their testimony is supported by satellite imagery analysis. In Dar Gyi Zar, for example, homes and buildings are dispersed across the area in clusters, separated by trees and other vegetation. As such, fire would not simply sweep through the village (See figure below). The burning of the buildings within such a short timeframe indicates a systematic rather than random attack. Moreover, the pattern of burning across northern Rakhine State is consistent with a progressing military offensive rather than ad hoc burnings by militants. The detection of repeated burnings in villages where the military was either active or known to be in close proximity active also indicates military responsibility as it is unlikely militants would have stayed in villages where this was the case. Extensive and repeated burning in villages where militants were reported to be active and/or clashed with the military also indicates a reprisal element to the burnings.[103]

Amnesty International also found evidence to suggest the possible burning of harvest.[104] It is unlikely that such burnings would be carried out by militants, given that most local people are small-scale farmers, and reliant on their harvest for food and income.



A villager from Kyet Yoe Pyin told Amnesty International how army soldiers came in to his village days after the border attacks and began burning buildings:

> "*The mosque, market and buildings [were] burned down by the army. I saw it happen myself. I was hiding near the area, and I saw the military looting and burning. I saw the military set fire to buildings. They brought a torch – cloths wrapped around a stick – and put it on the houses to burn them down. My house was fine, but my shop was burned down... There was a big market in the village and all the shops were burned… Some small shops scattered throughout the village were also burned.*"[105]

102 Most Rohingya homes in northern Rakhine State are wooden structures with thatch-like roofs which would burn easily, although the homes of wealthier families and people living in towns are often built using concrete and iron.
103 These conclusions are also supported by HRW's analysis of satellite imagery released on 13 December. See *Burma: Military Burned Villages in Rakhine State*, 13 December 2016.
104 See Annex to this report: Ongoing destruction in northern Rakhine State, pp 51-60.
105 Amnesty International telephone interview, November 2016.

Amnesty International was provided with photographs and video footage villagers took of the burned market and mosque in Kyet Yoe Pyin after they returned on 16 October. Amnesty International was able to geo-locate the footage using satellite imagery of Kyet Yoe Pyin taken on 10 November (see figure below).

Further analysis of satellite imagery confirms that as of 10 November, at least 243 structures were razed in Kyet Yoe Pyin.[106]

Another villager from Kyet Yoe Pyin independently corroborated this testimony, telling Amnesty International:

> *"[When the military came to our village] they started setting fire to our houses. They came again the next day and burned more buildings, including the shops. They continuously burned our village for four days. When the whole village was finished, they left. We went back but there were no food, no clothes, no shelter and nothing left to be alive."*[107]

Residents from Dar Gyi Zar and Thu U Lar told Amnesty International that multiple Rohingya homes and businesses were destroyed the day after two helicopters opened fire on villagers. Seven eyewitnesses, each interviewed independently, told Amnesty International that soldiers arrived at the village early in the morning, shot at villagers, and then set fire to their homes and buildings as they fled. One man described the weapon the military used to burn the houses:

> "*It's a long tube, you hold it by hand. It's cone-shaped at the front side. When it's released, it comes out as a fireball. Where it lands it sets on fire.*"[108]

Other interviewees provided similar descriptions of the weapons, which seem to correspond to that of a shoulder-fired rocket launcher.

106 See Annex to this report: Ongoing destruction in northern Rakhine State, pp 51-60. This corresponds with HRW's analysis of Kyet Yoe Pyin, which found 245 structures razed, see HRW, *Burma: Massive Destruction in Rohingya Villages*, 13 November 2016.
107 Amnesty International telephone interview, November 2016.
108 Amnesty International telephone interview, December 2016.

People from other villages also told Amnesty International that the military was responsible for burning down their homes and property. A 38-year-old man who fled to Bangladesh after his village Ngan Chaung was burned said "*I saw with my own eyes how the military burned down our village… they used rocket launchers.*"[109]

Amnesty International spoke to three people from Wa Peik, all of whom stated that the military burned buildings in the village. One of them, a farmer, who has been displaced after his home was burned stated:

> "*The military would go in a house, then it would set on fire, then they went to another house, and fire would start. Everywhere they went a fire would start and smoke would rise…. we could not see very closely, but we could see that everywhere they went, fires started.*"[110]

A farmer from Wa Peik, who has also been displaced after his home was burned down spoke of the difficulties displaced communities are facing:

> "*There is no one in Wa Peik now. All the houses are destroyed… We are in very difficult times, no food, no clothes, we are just sleeping in the fields. We rely on the other villagers to support us, but this can't continue for much longer. We are at breaking point. We are having to hide in the paddy fields. We are in such a difficult situation.*"[111]

Facing such desperate situation, many Rohingya – without shelter, food and other resources to sustain themselves and support independent livelihoods - have increasingly fled to Bangladesh. Restrictions on access to northern Rakhine State make it difficult to assess the scale of displacement since 9 October. However, as of mid-December 2016, the UN Office for the Coordination of Humanitarian Affairs (OCHA) estimated that up to 30,000 had fled their homes.[112]

109 Amnesty International telephone interview, November 2016.
110 Amnesty International telephone interview, December 2016.
111 Amnesty International telephone interview December 2016.
112 OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot (6 - 12 December 2016), available at: http://reliefweb.int/report/indonesia/asia-and-pacific-weekly-regional-humanitarian-snapshot-6-12-december-2016

FORCED EVICTION, DESTRUCTION OF PROPERTY IN INTERNATIONAL LAW

Forced evictions, defined as "the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection,"[113] have for decades been recognized by human rights bodies as a gross violation of human rights, in particular the right to adequate housing.[114] The UN Committee on Economic, Social and Cultural Rights spoke of governments' "fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them."[115]

Many instances of forced eviction are associated with violence, such as evictions resulting from international armed conflicts, internal strife and communal or ethnic violence.[116]

Amnesty International is concerned that the security forces' actions combining the targeting or threatening of Rohingya villagers such as random shooting, torture and other ill-treatment and the extensive destruction of homes and other buildings clearly constitute forced evictions, in addition to other violations and crimes under international law.

3.5 LOOTING AND ARBITRARY CONFISCATION OF DOCUMENTS

> **"They took my chain from around my neck, and my gold things from my nose. They complained that I didn't have enough gold."**
>
> A Rohingya woman from Kyet Yoe Pyin.[117]

Testimonies collected by Amnesty International reveal that security forces have engaged in widespread looting of Rohingya goods during security operations in northern Rakhine State. People from five different villages reported valuable items, including gold and cash, being taken, primarily by the military but also by local Rakhine residents.[118] Villagers also told Amnesty International that soldiers at times also took, or killed, livestock during security operations.

Most women that Amnesty International spoke to who had encounters with the Myanmar military stated that soldiers had taken their gold and jewellery. A woman who fled from Kyet Yoe Pyin to Bangladesh in November said: "*They took my chain from around my neck, and my gold things from my nose. They complained that I didn't have enough gold*."[119]

Rohingya villagers told Amnesty International that important documents such as temporary identity documents,[120] marriage certificates, and tax documents were arbitrarily confiscated by military personnel. One Rohingya woman whose husband was detained by the military in October told Amnesty International:

113 UN Committee on Economic, Social and Cultural Rights General Comment 7, Sixteenth session (1997)(58): The right to adequate housing (art. 11 (1) of the Covenant): forced evictions, para. 3.
114 UN Commission on Human Rights Resolution 1993/77 on Forced Evictions, 10 March 1993, para. 1.
115 UN Committee on Economic, Social and Cultural Rights General Comment 7, para. 2.
116 UN Committee on Economic, Social and Cultural Rights General Comment 7, para. 6.
117 Amnesty International telephone interview, November 2016.
118 Villagers were from Kyet Yoe Pyin, Dar Gyi Zar, Kyaw Pyin Seik, Wa Peik and Nga Khu Ya.
119 Amnesty International telephone interview, November 2016.
120 Because of their lack of citizenship status, most Rohingya do not have identity cards which other Myanmar citizens have. Instead, they rely on other documents as a form of identification, often these are "white cards receipts" – documents they were given when the government ordered the surrender of all Temporary Registration Cards (TRCs) by the end of May 2015.

"*All the documentation were taken [by the military] – all the files were taken, land papers, tax receipts. All the copies of our family documents – my grandfather and grandmother's identity documents, papers for our business, all the permission letters. All were kept in a file. All were taken.*"[121]

A man, whose relatives were also detained in October, told Amnesty International:

"*They took all the documents. The family list, the white card receipt [a temporary form of identification], land tax documents… The police took and handed over to the military.*"[122]

Others said their documents were destroyed when their houses burned down.[123] A 25 year old woman who fled from Kyet Yoe Pyin to Bangladesh told Amnesty International:

"*We left all our documents in the house. I had land tax documents, our marriage certificate, my white card receipt [temporary ID card]. I ran away with only my clothes on my back, we couldn't take anything.*"[124]

The loss of documents, in particular temporary identity documents, will have a long-lasting impact on Rohingya families. Those remaining in Myanmar will face additional difficulties traveling in the future, as they are usually required to produce some form of temporary identification document in order to get permission to travel between villages and townships.[125] They may also face more obstacles in the future to having their citizenship rights restored.[126] Without any form of documentation, Rohingyas who fled to Bangladesh will find it more difficult to return. The loss of land documents also deprives Rohingyas of proof of land use, leaving them vulnerable to land confiscations in the future.

3.6 NEW DISPLACEMENT

OCHA estimates that up to 30,000 people, mainly Rohingyas, have been displaced as a result of security operations in northern Maungdaw Township.[127] It is unclear how many remain internally displaced in Myanmar and how many have now fled to Bangladesh, as Myanmar authorities have not allowed humanitarian workers to access the area to undertake a full assessment of peoples' needs.

Amnesty International is aware of only one aid delivery to communities in the security operations area between the 9 October attacks and the publication of this report: in early November, WFP was given permission to deliver food aid to four Rohingya villages in northern Maungdaw Township: Kyet Yoe Pyin, Ngar Sar Kyu, Pyaung Pyit and Wa Peik. In these villages WFP was allowed to distribute two weeks' worth of food supplies – rice, pulses, oil, and salt – for around 7,200 people.[128] The announcement came just days after a diplomatic delegation which included the UN Resident and Humanitarian Coordinator, and Ambassadors from the US, China, the UK, the European Union, Indonesia, Egypt, Turkey and India visited the area on 2-3 November. While a welcome step, it is important to note that this was a one-off delivery, and not all people in those villages received the much-needed aid.[129] Other villages in the area have not received any aid or assistance.

To date, no health workers have been able to reach displaced Rohingya communities and access to health services in the military operations zone in northern Maungdaw Township is "non-existent".[130] Concerns regarding a complete lack of access to healthcare are especially grave given the reports of large numbers of people being injured during the military operations.

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121 Amnesty International telephone interview November 2016.
122 Amnesty International telephone interview November 2016.
123 Amnesty International telephone interview November 2016.
124 Amnesty International telephone interview, November 2016.
125 For more information on restrictions on Rohingya movement in northern Rakhine State see PHR, *Where there is police, there is persecution*, October 2016, pp 12-13.
126 It is already very difficult for Rohingyas to acquire full citizenship under the 1982 Citizenship Law, and other categories of citizenship (Full and Associate Citizens) require individuals to provide "conclusive evidence" that they or their family entered and resided in Myanmar prior to 1948.
127 OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot (6 - 12 December 2016), available at: http://reliefweb.int/report/indonesia/asia-and-pacific-weekly-regional-humanitarian-snapshot-6-12-december-2016
128 World Food Program (WFP), Myanmar: October - November 2016 Operational Report, available at: http://reliefweb.int/report/myanmar/world-food-programme-myanmar-october-november-2016-operational-report. This included newly displaced people and people who have been receiving assistance prior to the suspension of aid.
129 Amnesty International telephone interview with a resident in one of the four villages which received the aid delivery, November 2016.
130 European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations (DG-ECHO), Myanmar/Bangladesh - Violence in northern Rakhine, ECHO Daily Flash of 17 November 2016, available at: http://reliefweb.int/report/myanmar/myanmarbangladesh-violence-northern-rakhine-state-dg-echo-partners-media-echo-daily

The destruction of homes and villages appears to be one of the chief causes of displacement of the Rohingya population during this crisis. Amnesty International has received video footage showing Rohingyas, women, men, and children, living in the open air and under makeshift tarpaulin canopies in paddy fields.

While Rohingya communities have been disproportionately impacted by restrictions on humanitarian access, it is important to acknowledge that people from other communities and religions have also been effected by recent events. Many ethnic Rakhine individuals, fearing further attacks by militants, fled their homes. In the two weeks following the 9 October attacks, around 3,000 ethnic Rakhine people were displaced and stayed at monasteries, schools and camps in Maungdaw, Buthidaung and Sittwe towns.[131] In some cases, the military facilitated their evacuation to areas of safety by helicopter.[132]

While most have since returned to their homes, at the time of writing around 300 people of Rakhine and Mro ethnicity remained displaced in Buthidaung and Maungdaw towns.[133] They were being supported by government and local relief organizations, and in some cases by UN agencies. Long-standing anti-UN and INGO resentment has caused some of the displaced communities to refuse aid from these organizations and agencies.[134]

HUMANITARIAN ACCESS FOR DISPLACED PEOPLE

The Myanmar government's refusal to allow humanitarian access to displaced communities directly contravenes international human rights law standards, which provide that such access should be "rapid and unimpeded".[135] The UN Guiding Principles on Internal Displacement are also clear that national authorities "have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction", [136] which they must provide without discrimination of any kind, including on the grounds of race, religion, national or ethnic origin and legal status.[137] The restriction of humanitarian aid and assistance in northern Rakhine State, where those in need are overwhelmingly from one ethnic/religious group, raises serious concerns that not only are the Myanmar authorities denying essential humanitarian access and assistance, they are doing so on a discriminatory basis.

3.7 DENIAL OF HUMANITARIAN ACCESS AND RESTRICTIONS ON MOVEMENT

> **"Sometimes we go hungry. We have so little food. I worry for my family and my children."**
>
> A Rohingya man who lives in the security operation area in northern Maungdaw Township.[138]

The Myanmar authorities have severely restricted already limited humanitarian access to northern Rakhine State since the October attacks, placing tens of thousands of lives at risk. Over two months later, and despite strong calls from the UN, foreign governments, and human rights organizations, government promises to allow the resumption of humanitarian activities have not materialized.

131 OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot (18 - 24 October 2016), available at: http://reliefweb.int/report/philippines/asia-and-pacific-weekly-regional-humanitarian-snapshot-18-24-october-2016
132 *The Global New Light of Myanmar*, "Tatmadaw troops evacuated teachers, staff and locals to places of safety", 13 October 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-10-13-red.pdf
133 OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot (22 - 28 November 2016), 28 November 2016, available at: http://reliefweb.int/report/myanmar/asia-and-pacific-weekly-regional-humanitarian-snapshot-22-28-november-2016
134 Confidential correspondence, 16 November 2016, on file with Amnesty International. For more information on the anti-INGO sentiment in Rakhine State, see Gabrielle Aron, *Reshaping Engagement: Perspectives on Conflict Sensitivity in Rakhine State*, CDA Collaborative Learning Projects (CDA), May 2016.
135 UN Guiding Principles on Internal Displacement (UN Guiding Principles), UN Doc. E/CN.4/1998/53/Add.2 (1998), Principle 25.
136 Principle 3(1) of the UN Guiding Principles.
137 Principles 3(1) and 4(1) of the UN Guiding Principles.
138 Amnesty International telephone interview, October 2016.

Pre-existing humanitarian services remain largely suspended, and humanitarian workers have not had access to the estimated 30,000 newly displaced people in northern Maungdaw Township.[139]

The near blanket suspension of aid in northern Rakhine State has disproportionately impacted Rohingyas, who represent the overwhelming majority of those in need of humanitarian services and support. By restricting humanitarian access, the Myanmar authorities have put thousands of people at risk and shown a callous disregard for human life.

3.7.1 SUSPENSION OF PRE-EXISTING HUMANITARIAN SERVICES

The Myanmar government suspended all international humanitarian programmes in Rakhine State on 9 October leaving 150,000 people, mostly Rohingya, who were usually reliant on such services without access to important lifelines. At first, the move appeared to be temporary while authorities searched for the perpetrators of the attack, however as of writing most services still remain suspended. A combination of local movement restrictions, and difficulty obtaining travel and other necessary authorisations for INGO staff have meant they are unable to undertake most of their regular services. Even people living outside of the security operations zone were affected.

Before the October attacks, food security was already at critical levels. According to WFP, more than 150,000 people in northern Rakhine State, most of them believed to be Rohingya, were heavily reliant on humanitarian services, including food nutritional support and cash assistance.[140] Malnutrition levels among children in Maungdaw and Buthidaung were very high, and levels of severe acute malnutrition in children between six months and five years were above emergency thresholds established by the World Health Organization (WHO) If not provided with adequate care and treatment, severely malnourished children are at risk of dying. ECHO has warned that "*[i]t is critical that these life-saving activities be allowed to resume in order to avoid the death of thousands of children with severe acute malnutrition.*"[141]

The situation for women and girls – in particular pregnant women and new mothers – was and remains very serious. Restrictions on movement and lack of access for humanitarian actors have made it impossible for many women to access health services, including for pregnancy-related monitoring. The maternal mortality rate for women in Maungdaw and Buthidaung was already recorded as four times the national average.[142] The UN Population Fund (UNFPA) estimates that 7,600 pregnant women in Maungdaw and Buthidaung had no access to basic primary health services for at least two months following the 9 October attacks, and has warned that women who are isolated or on the run are vulnerable to abuse and exploitation. The agency warned of "grave consequences" if the acute health, protection and hygiene needs of women and girls were not promptly addressed.[143]

While there have been some efforts to resume, at least partially, aid to communities living outside the operations zone, these have not gone far enough and services are still nowhere near the levels they were before the October attacks. In October, WFP provided cash assistance to 9,000 vulnerable people from both Rohingya and Rakhine communities in Buthidaung Township,[144] and in November OCHA confirmed that pre-existing services had resumed for more than 20,000 people in northern Rakhine State. In December the authorities delivered some aid to Rohingyas villagers in southern Maungdaw Township, but not in the sealed off areas in the north.[145] At the time of writing, services supporting around 130,000 people have yet to resume.[146]

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139 Amnesty International, *Myanmar: Lift restrictions immediately on humanitarian aid*, 20 October 2016; HRW, *Burma: Aid blocked to Rakhine State*, 21 October 2016; Chaloka Beyani, the UN Special Rapporteur on internally displaced persons, *UN experts urge Myanmar to address serious violations of human rights in northern Rakhine State*, 24 October 2016; Yanghee Lee, the UN Special Rapporteur on the situation of human rights in Myanmar, *Myanmar: UN expert warns of worsening rights situation after "lockdown" in Rakhine State*, 18 November 2016; and UNHCR, *UNHCR urges Myanmar to protect civilians in northern Rakhine state*, 18 November 2016.
140 WFP, Myanmar Situation Report #03 - Situation in Northern Rakhine State, 7 November 2016, available at: http://reliefweb.int/report/myanmar/wfp-myanmar-situation-report-03-situation-northern-rakhine-state-november-2016
141 DG-ECHO, Myanmar/Bangladesh - Violence in northern Rakhine, ECHO Daily Flash of 17 November 2016, available at: http://reliefweb.int/report/myanmar/myanmarbangladesh-violence-northern-rakhine-state-dg-echo-partners-media-echo-daily
142 DG-ECHO, Myanmar/Bangladesh - Violence in northern Rakhine, ECHO Daily Flash of 17 November 2016, available at: http://reliefweb.int/report/myanmar/myanmarbangladesh-violence-northern-rakhine-state-dg-echo-partners-media-echo-daily
143 UNFPA, Safeguarding women and girls affected by the crisis in Myanmar's Rakhine State, 29 November 2016, available at: http://asiapacific.unfpa.org/news/safeguarding-women-and-girls-affected-crisis-myanmar%E2%80%99s-rakhine-state-0?page=3%2C9
144 WFP, Myanmar Country Brief, October 2016, available at: http://reliefweb.int/report/myanmar/wfp-myanmar-country-brief-october-2016
145 *The Global New Light of Myanmar*. "Aid flows in to northern Rakhine State", 11 December 2016.
146 OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot (22 - 28 November 2016), 28 November 2016, available at: http://reliefweb.int/report/myanmar/asia-and-pacific-weekly-regional-humanitarian-snapshot-22-28-november-2016

3.7.2 TIGHTENED RESTRICTIONS ON MOVEMENT

In addition to restricting humanitarian access, Myanmar authorities have tightened already severe restrictions on movement in northern Rakhine State. Rohingyas in villages outside of the operations area in Maungdaw as well as in Buthidaung Township told Amnesty International that local authorities had instructed them not to leave their villages after the 9 October attacks. Rohingyas are usually required to apply for permissions to travel between villages and townships, a system which is enforced by BGP checkpoints. Without official permission to travel, Rohingyas are vulnerable to arrest and extortion. Interviewees stated that while Muslims were restricted from moving between villages and townships, other ethnic groups were allowed to move with relative ease.[147]

Tightened restrictions on movement have prevented Rohingya in northern Rakhine State from accessing essential services, including healthcare as noted in the previous section. They have also made it increasingly difficult for Rohingya communities to independently sustain themselves.

Most people in northern Rakhine work in agriculture or fishing or trade, and since 9 October fishing in the Naf River and border trade have effectively stopped. The inability to leave their villages has had a detrimental impact on their lives. A farmer living in a village in northern Maungdaw Township told Amnesty International:

> "*I have farmlands and do farming. I cannot even approach them to farm. I am growing paddy, and some other crops. The paddy needs harvesting now, but we can't go out.*"[148]

A Rohingya man living close to Maungdaw town outside the operations zone told us:

> "*Every village… every road is blocked. Local clinics are open, but no one comes. How can they when they are blocked from moving? Before they were crowded places, now no one is going... Income earning sources are blocked too, mainly because people are not allowed to move from one village to another. People cannot do daily work, casual work like fishing and collecting firewood. They are facing problems for food… the prices are going higher and higher*".[149]

In the operations zone, villagers needing to travel typically do so in breach of the military orders, under the cover of darkness to avoid detection by the authorities. In general, movement in this area remains severely restricted and villagers are fearful for their future. A Rohingya man from Kyauk Pyin Seik told Amnesty International:

> *"We don't have any way to get to other villages, most villages used to have stock from the harvest. It's very low now, people can't even harvest their paddy fields. Those who are poorer are coming to the richer people and asking them for food."*[150]

The combination of ongoing restrictions on humanitarian access and movement is creating an untenable situation for Rohingyas in northern Rakhine State.

RESTRICTIONS ON FREEDOM OF MOVEMENT

The rights to freedom of movement is enshrined in Article 13(1) of the UDHR. Under international human rights law, states are permitted to temporarily restrict this right in certain, limited circumstances: to protect national security, public order, public health or morals or the rights and freedom of others. Such restrictions must be clearly provided in law, and be applied on a non-discriminatory basis.[151] Restrictions must also be proportional – that is, appropriate to achieve their protective function.[152] While noting that discriminatory movement restrictions were in place against the Rohingya even before the October attacks,[153] Amnesty International believes that the tightened restrictions on security grounds exacerbate this discrimination in that they appear to target only Rohingyas, and are disproportionate, as they apply to whole communities, imposing on them a virtual lockdown and deprive them of access to medical care and livelihood, remain in place more than two months after security operations began and apply in areas where security operations are not ongoing.

147 Amnesty International telephone interviews October and November. As of early December reliable sources indicate that some movement restrictions in south Maungdaw Township have eased slightly, and some villagers from the area can travel to Maungdaw town with permission.
148 Amnesty International telephone interview, November 2016.
149 Amnesty International telephone interview October 2016.
150 Amnesty International telephone interview, November 2016.
151 ICCPR, Article 12(3).
152 UN Human Rights Committee, General Comment No. 27 Freedom of movement (Article 12), UN Doc CCPR/C/21/Rev.1/Add.9, 2 November 1999.
153 Long-standing restrictions on Rohingya's movement stem from their lack of citizenship status, and are applied through a system of discriminatory laws, local orders and policies.

3.8 THE MYANMAR AUTHORITIES' RESPONSE

> **"The Bengali problems in the northern Rakhine State occurred because of the Bengalis' failure to abide by the existing laws of Myanmar. Myanmar security forces have never committed any human rights violations such as illegal killing, rape and arson attack."**
>
> Senior General Min Aung Hlaing, Commander in Chief of the Myanmar Army.[154]

The Myanmar authorities – in particular the military – have consistently denied allegations of human rights violations. However, at the same time have also severely restricted access to information coming out of the region. Increasing international pressure to address the situation has pushed the government to take some small steps towards investigating the situation in northern Rakhine State, however these efforts do not go far enough to respond to the serious nature of the allegations which are emerging.

3.8.1 DENIALS AND MEDIA RESTRICTIONS

> **"Some local and foreign media [are] working hand in glove with the perpetrators [of the October attacks]…"**
>
> "A lie told often enough becomes the truth" – opinion piece published in state media, 2 November 2016.[155]

Since security operations were launched on 9 October, the Myanmar government representatives and military have issued a series of blanket denials of human rights violations committed by state security forces. Most recently, on 7 December, Commander-in-Chief Senior General Min Aung Hlaing told journalists that "Burmese security forces have not committed any human rights violations including extrajudicial killings, rapes, or arson."[156]

Under Myanmar's 2008 Constitution, the military remains independent of civilian oversight, limiting the civilian government's ability to even monitor, let alone bring an end to violations in Rakhine State. Moreover, the military retains considerable political power and directs three key ministries – the Ministry of Defence, the Ministry of Border Affairs, and the Ministry of Home Affairs – that together control internal security and military affairs.

The government, however, has also rejected specific allegations raised by rights groups. On 14 November, for example, the President's Office, based on information obtained by the military's "True news information Team of Defence Services", claimed that reports of houses being destroyed by the military were "fabricated".[157]

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154 Senior General Min Aung Hlaing meets Malaysian Defence Forces Chief General Tan Sri Dato' Sri (Dr.) Haji Zulkifeli Bin Mohd Zain - Nay Pyi Taw December 5, available at: https://www.facebook.com/seniorgeneralminaunghlaing/posts/1408305259203958:0
155 *The Global New Light of Myanmar*, 'A lie told often enough becomes the truth', 2 November 2016, available at: http://www.burmalibrary.org/docs23/GNLM2016-11-02-red.pdf
156 Kyaw Phyo Tha, "Burma Army Chief persists in denying rights abuses", *The Irrawaddy*, 7 December 2016, available at: http://www.irrawaddy.com/news/burma/burma-army-chief-persists-in-denying-rights-abuses.html
157 President's Office Statement, *Military's information team refutes fabrication about massive destruction in Rakhine*, available at: http://www.president-office.gov.mm/en/?q=issues/rakhine-state-affairs/id-6776

State Counsellor Aung San Suu Kyi has also been widely criticized for trying to downplay the seriousness of alleged human rights violations by the military in northern Rakhine State.[158] In an interview with Channel News Asia, she said the government had "*managed to keep the situation under control and to calm it down*". She also accused the international community of exacerbating the situation saying: "*I would appreciate it so much if the international community would help us to maintain peace and stability, and to make progress in building better relations between the two communities, instead of always drumming up cause for bigger fires of resentment*".[159]

In November, Aung San Suu Kyi's office set up the "State Counsellor Office Information Committee" in order to provide "accurate information" about events in Rakhine State.[160] The body has subsequently issued flat denials of reported human rights violations by security forces.[161] Presidential Spokesperson Zaw Htay has also denied allegations of rights abuses on multiple occasions.[162]

AUTHORITIES REMAIN DEAF TO URGENT UN CALLS

Since the 9 October attacks, calls to the Myanmar government to urgently address the situation in northern Rakhine State, including by allowing humanitarian access have come from different parts of the UN. Different offices and agencies have made public calls including the Office of the UN Secretary-General, OCHA, The UN Children's Fund (UNICEF), UNHCR, The UN Population Fund (UNFPA) and the Office of the High Commission for Human Rights (OHCHR).[163]

A number of UN Special Rapporteurs (UNSR) have also expressed concern and called for the resumption of humanitarian assistance, and an independent and credible investigation into allegations of human rights violations. Yanghee Lee, the UNSR on the situation of human rights in Myanmar, was joined by Chaloka Beyani UNSR on Internally Displaced Persons; Agnes Callamard UNSR on summary executions; Rita Izsak-Ndiaye UNSR on minority issues; Juan E. Méndez UNSR on torture and other cruel, inhuman or degrading treatment or punishment; Zainab Hawa Bangura UNSR on sexual violence in conflict and Adama Dieng, UN Special Advisor on the prevention of genocide.[164]

At the time of publication, more than two months after the 9 October attacks, none of these calls has been answered by the government of Myanmar.

State media have, at times, also gone beyond mere denials to use language that is inflammatory and may incite discrimination against Rohingya. On 26 November, an opinion piece published in the state-run newspaper *The Global New Light of Myanmar* described "extremists, terrorists, ultra-opportunists and aggressive criminals" as "human fleas" who are "loathed for their stench and for sucking our blood".[165]

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158 See for examples James Griffiths, "Is The Lady listening? Aung San Suu Kyi accused of ignoring Myanmar's Muslims", *CNN*, 25 November 2016, available at: http://edition.cnn.com/2016/11/17/asia/myanmar-rohingya-aung-san-suu-kyi/; Jane Perlez and Wai Moe, "Myanmar's Leader Faulted for Silence as Army Campaigns Against Rohingya", *The New York Times*, 1 December 2016, available at: http://www.nytimes.com/2016/12/01/world/asia/myanmars-leader-faulted-for-silence-as-army-campaigns-against-rohingya.html?rref=collection%2Ftimestopic%2FAung%20San%20Suu%20Kyi%2C%20Daw&action=click&

159 *Channel News Asia*, "Exclusive: Focus on resolving difficulties in Rakhine rather than exaggerating them, says Suu Kyi", 3 December 2016, available at: http://www.channelnewsasia.com/news/asiapacific/exclusive-focus-on-resolving-difficulties-in-rakhine-rather-than/3337068.html

160 State Counsellor Office, *Info committee formed for Rakhine issues*, 17 November 2016, available at: http://www.statecounsellor.gov.mm/en/node/365

161 State Counsellor Office Information Committee, *Government refutes rights group report on Rakhine*, 17 November 2017, available at: http://www.statecounsellor.gov.mm/en/node/366

162 See for example *The Irrawaddy*, "President's Office: Allegations of Arbitrary Arrests and Torture are 'Totally Wrong'", 27 October 2016, available at: http://www.irrawaddy.com/in-person/presidents-office-allegations-of-arbitrary-arrests-and-torture-are-totally-wrong.html

163 Mr. Vijay Nambiar, Special Advisor of the United Nations Secretary-General on Myanmar, *Statement on Rakhine by the Special Advisor to the Secretary-General on Myanmar*, on 11 October 2016 and 8 December 2016; *UN News Centre*, "Concerned by recent violence in Myanmar, UN aid chief calls for stronger humanitarian action", 14 October 2016; *UNICEF, statement on grave risks to children in Rakhine State Myanmar*, 8 November 2016; *UNHCR urges Myanmar to protect civilians in northern Rakhine state*, 18 November 2016; UNFPA, *Safeguarding women and girls affected by the crisis in Myanmar's Rakhine State*, 29 November 2016; and Ravina Shamdasani Spokesperson for the UN High Commissioner for Human Rights, Daily Press Briefing Myanmar, 29 November 2016.

164 Yanghee Lee, UN Special Rapporteur (UNSR) on the situation of human rights in Myanmar, *Myanmar: UN expert warns of worsening rights situation after "lockdown" in Rakhine State,* 18 November 2016; and U*N experts urge Myanmar to address serious violations of human rights in northern Rakhine State*, 24 October 2016; Zainab Hawa Bangura UNSR on sexual violence in conflict, *Myanmar: UN envoy urges investigation into alleged sexual assaults after violence flares in Rakhine state*, 11 November 2016; and *Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide on the situation in northern Rakhine State*, Myanmar, 29 November 2016.

165 *The Global New Light of Myanmar*, "A Flea Cannot Make a Whirl of Dust, But…", 26 November 2016, available at: http://www.globalnewlightofmyanmar.com/a-flea-cannot-make-a-whirl-of-dust-but/

The Myanmar authorities have also effectively barred independent media from accessing northern Rakhine state by refusing requests for the necessary travel permits. As far as Amnesty International is aware, no international journalists have been able to travel to the region since the 9 October attacks. Local journalists who have been to Rakhine State in the past two months said that they were monitored during their visits and that authorities placed severe restrictions on their movements.[166]

On 17 October, BGP officers and soldiers blocked a group of Myanmar journalists from travelling further north than the Kyi Kan Pyin police station in Maungdaw Township.[167] Local journalists were also asked by security forces to delete photographs from their cameras.[168]

Government officials have reacted with anger against local media covering violations by the military in northern Rakhine State. On 27 October, Fiona MacGregor, an investigative editor at the *Myanmar Times* newspaper, published an article on the alleged rape of Rohingya women by security forces.[169] In response, presidential spokesman Zaw Htay accused her of bias against the government in a Facebook post, and reposted other comments calling for a police investigation into her article. On 31 October, the *Myanmar Times* dismissed Ms. MacGregor for "breaching company policy", though credible reports suggested that the newspaper acted under considerable pressure from the Ministry of Information.[170] Other journalists, both international and local, told Amnesty International that they have received threats of legal action from government officials in connection with their efforts to report on the situation in northern Rakhine State.[171] Intimidation and harassment by government officials have led to widespread self-censorship by local media when reporting on military operations in Rakhine State.[172]

The authorities have also intimidated and threatened villagers who have tried to speak out about the situation. Amnesty International spoke to a man who fled Wa Peik after meeting with a diplomatic delegation in early November. During the meeting, which was also attended by members of the security forces, he had said it was impossible that Rohingyas were burning their own homes. Soon afterwards he overheard a senior officer tell a subordinate to detain him. He managed to escape to Bangladesh, however told Amnesty International that he does not think he will be able to return home. He said his family members had told him he had been struck off his household list,[173] and as such was no longer regarded as living in Myanmar and was vulnerable to arrest.[174] Independent human rights monitors and Rohingya activists have told Amnesty International about other cases of reprisals against other villagers who have spoken out about human rights violations, in some cases involving physical violence.[175]

Restrictions on media and the threats and intimidation of Rohingya villagers, indicate that the Myanmar government is failing to uphold the right to freedom of expression, a human right enshrined in Article 19 of the UDHR. Respect for which is crucial in exposing human rights violations, not least in times of crisis.

3.8.2 THE RAKHINE STATE COMMISSIONS

The government, however, has not been impervious to criticism. After considerable international pressure, on 1 December 2016, President Htin Kyaw announced the establishment of an Investigation Commission to probe the attacks on 9 October, 12 and 13 November 2016 and alleged human rights abuses by state security forces.[176] The commission is scheduled to report to the President by 31 January 2017.

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166 Amnesty International interviews, October and November 2016.
167 Lawi Weng, "Burma Army Obstructs Media Access in Northern Arakan State", *The Irrawaddy*, 21 October 2016, available at: http://www.irrawaddy.com/news/burma-army-obstructs-media-access-in-northern-arakan-state.html
168 Amnesty International Interview, October 2016.
169 Fiona MacGregor, "Dozens of rapes reported in northern Rakhine State", *The Myanmar Times*, 27 October 2016, available at: http://www.mmtimes.com/index.php/national-news/23326-dozens-of-rapes-reported-in-northern-rakhine-state.html
170 Sean Gleeson, "Reporter's sacking followed MoI phone call, sparking press freedom fears", *Frontier Myanmar*, 4 November 2016, available at: http://frontiermyanmar.net/en/news/reporters-sacking-followed-moi-phone-call-sparking-press-freedom-fears; and Committee to Protect Journalists (CPJ), *Myanmar obstructs reporters from covering crisis in Rakhine State*, 3 November 2016, available at: https://cpj.org/2016/11/myanmar-obstructs-reporters-from-covering-crisis-i.php.
171 Amnesty International telephone interview, October and November 2016.
172 Even before the current crisis, Myanmar journalists had told Amnesty International that they feared retaliation when reporting on Rohingya issues. See Amnesty International, Caught between state censorship and self-censorship: Prosecution and intimidation of media workers in Myanmar (Index: 16/1743/2015), 17 June 2016.
173 The household list is a list of every person living in a particular house. In northern Rakhine State, the list is checked and monitored by the Border Guard Police and local immigration authorities. People not on the list are not considered to live in Myanmar, and at risk of arrest and imprisonment if they are caught when authorities conduct routine checks of households.
174 Amnesty International telephone interview, December 2016.
175 Correspondence, on file with Amnesty International.
176 The Commission is further mandated to investigate: "Incidents of violent attacks in Maungdaw and their background situations and causes; Deaths, injuries, destruction and other damage; Measures taken for restoring stability and the rule of law; Verification of outside

The 13-member commission is led by Vice-President Myint Swe, a former high-ranking general in the Myanmar army who was the military's proposed candidate for the President and is considered to be a hardliner.[177] The Committee also includes the current Chief of Police as well as former government officials. Given its membership, Amnesty International does not consider the commission capable of carrying out a credible investigation.

It does not meet the required standards of independence and impartiality, as the Myanmar security forces cannot be relied on to hold themselves accountable for their own violations.[178] In a statement issued on 8 December, UN Special Advisor to the Secretary-General Vijay Nambiar noted that the commission's mandate and composition had "*raised some questions*".[179]

In early December 2016, the Rakhine State Advisory Commission, chaired by Kofi Annan, was allowed to visit Myanmar and parts of northern Rakhine State. After the visit, Mr Annan said he was "*deeply concerned by the reports of alleged human rights violations*" in the region and called for unimpeded access for aid agencies.[180] Amnesty International received credible reports that Rohingya community leaders were intimidated by local government officials before speaking to the Commission, and did not feel safe sharing information about human rights violations.

The Rakhine State Advisory Commission serves as an advisory body to the government and its mandate is limited to making recommendations concerning humanitarian assistance and promoting reconciliation between ethnic groups in Rakhine State. While the Commission could play a useful role in advising the government on how to address endemic and long-term discrimination and humanitarian concerns in Rakhine State, Amnesty International does not believe that it possesses the mandate to conduct any investigations into the recent abuses.

Under international human rights law, states are required to ensure that any person whose rights or freedoms are violated has access to redress and an effective remedy.[181] This includes any individual whose rights or freedoms are violated by persons acting in an official capacity. The failure to independently and effectively investigate allegations of human rights violations would itself constitute a violation of the right to an effective remedy.[182]

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allegations during area clearance operations; Guarantee for security and human rights of the people; Conflict prevention and humanitarian aids; Measures to avoid similar incidents in the future." See Republic of the Union of Myanmar President's Office Notification 89/2016 2nd Waxing of Nadaw, 1378 ME, Formation of Investigation Commission, 1 December 2016, available at: http://www.president-office.gov.mm/en/?q=briefing-room/news/2016/12/05/id-6883

177 ICG, *Myanmar: A New Muslim Insurgency in Rakhine State,* Crisis Group Asia Report N°283, 15 December 2016, p. 23; and *Myanmar Now*, "Army's choice for 'hardline' VP met with surprise and concern", 16 March 2016, available at: http://www.myanmar-now.org/news/i/?id=168669de-bddb-4c41-b731-f0f08ae25b94

178 Amnesty International, *Myanmar: Rakhine investigation commission must be credible*, 3 December 2016.

179 Mr. Viyay Nambiar, *Statement by Mr. Vijay Nambiar, Special Adviser of the United Nations Secretary-General on Myanmar*, 8 December 2016, available at: https://www.un.org/sg/en/content/sg/note-correspondents/2016-12-08/note-correspondents-statement-mr-vijay-nambiar-special

180 Kofi Annan, *Remarks by Kofi Annan, Chairman of the Advisory Commission on Rakhine State*, 6 December 2016, available at: http://www.rakhinecommission.org/remarks-kofi-annan-chairman-advisory-commission-rakhine-state/.

181 UDHR, Article 8 and ICCPR, Article 2(3).

182 UN Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 15.

Bangladesh
LEGEND
Official refugee camp
Unofficial refugee camp
State capital
Town
INDIA
INDIA
Dhaka
Cox's Bazar District
BANGLADESH
Cox's Bazar
Kutupalong
Kutupalong
Makeshift Camp
MYANMAR
Leda
Nayapara
MYANMAR
0 2.5 15 km
0 50 100 km
(C) GADM, Natural Earth, MIMU 2016

4. DESPERATION ACROSS THE BORDER

Since violence erupted in Myanmar, Rohingya refugees have poured into Bangladesh in search of safety. While the Bangladeshi government has since October 2016 strengthened its long-standing – and unlawful – policy of closing the border and pushing back those trying to cross, many thousands have still managed to enter the country over the past two months.

The exact number of new arrivals is impossible to determine as they have not been formally registered by the government or any other international agency and are living spread out across numerous villages and camps. But according to OCHA at least 27,000 people arrived between 9 October and 11 December.[183] The number and rate of new arrivals appears to have increased significantly since mid-November, when the military campaign in Rakhine State intensified. The true figure could be much higher as hundreds of refugees continue to arrive on a daily basis according to aid workers.[184]

In Bangladesh, the constant risk of arrest and deportation has forced newly arrived Rohingya refugees into hiding. They are by and large living in extremely poor conditions without adequate access to food, health care and other basic services, as the government has provided limited aid to the new arrivals, apparently in order to avoid creating conditions that would lead to even more refugees arriving.

↑ *Rohingya refugees crossing the border into Bangladesh close to Whaikyang in Cox's Bazar District, south-eastern Bangladesh. The refugees said they had arrived the night before in Bangladesh but had been hiding in a nearby forest to avoid being caught by the Border Guard Bangladesh. 22 November, 2016. @Amnesty International*

183 OCHA, Asia and the Pacific: Weekly Regional Humanitarian Snapshot (6 - 12 December 2016), available at http://reliefweb.int/sites/reliefweb.int/files/resources/ROAP_Snapshot_161212.pdf
184 Amnesty International interviews with aid workers in Bangladesh and Myanmar in November and December 2016.

4.1 UNLAWFUL PUSHBACKS

> **"Rohingya infiltration is an uncomfortable issue for Bangladesh. We don't want illegal Rohingya immigration."**
>
> Asaduzzaman Khan, Bangladesh Home Minister, 23 November 2016.[185]

In clear violation of international law, the Bangladeshi government has attempted to keep its border to Myanmar sealed since 9 October and claims to have pushed back thousands who have attempted to flee. As the number of people attempting to enter the country increased significantly towards the end of November, the government deployed additional Border Guard Bangladesh (BGB) and coastguard ships to patrol the border.[186]

According to the BGB, at least 2,320 Rohingya were pushed back into Myanmar during November alone,[187] and at least another 2,400 additional people during the first half of December.[188] Such pushbacks violate international law, in particular the principle of *non-refoulement*, an absolute ban on returning refugees to countries where they are at risk of serious human rights violations or persecution. *Non-refoulement* is a norm of customary international law, which is binding on all states.[189] While Bangladesh is not a party to the 1951 Refugee Convention, it is obliged under international customary law, and as state party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, not to return individuals – in any way whatsoever – to a situation where they would be at risk of serious human rights violations.[190]

The border closure has also forced the Rohingya to put their lives at risk as they attempt to enter Bangladesh without being detained. The overwhelming majority of people fleeing arrive by boat across the Naf River that separates Myanmar and Bangladesh. Such journeys are often taken at night in small, overcrowded wooden vessels, which are at serious risk of capsizing.[191]

There have been several reports of boats sinking, with many of the passengers feared drowned.[192] Most recently on 5 December, one boat carrying 35 Rohingya capsized in the Naf River close to Jadimura village in Cox's Bazar, according to two survivors interviewed by local media. The BGB could not establish whether the other 33 people on board survived.[193]

Crossing the border irregularly can also be prohibitively expensive, providing an additional obstacle for refugees to reach the relative safety of Bangladesh. Most Rohingya Amnesty International spoke to reported having to pay at least one and sometimes several people in Myanmar, including people smugglers and boatmen. Others said they had to bribe private citizens on the Bangladeshi side of the border in order to be able to enter.

One 37-year-old man said:

> "*I crossed the border in a small boat with 11 other people in it. We had to pay 10,000 kyat (USD7.50) per person to the boatman. The military in Myanmar had taken everything from us, but we managed to borrow the money.*"[194]

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185 Haroon Habib, "Bangladesh shuts border to Rohingya refugees", *The Hindu*, 23 November 2016, available at http://www.thehindu.com/news/international/Bangladesh-shuts-border-to-Rohingya-refugees/article16683927.ece
186 *bdnews24.com*, "Bangladesh strengthens border patrol to stop intrusion of Rohingyas fleeing Myanmar", 19 November 2016, available at http://bdnews24.com/bangladesh/2016/11/17/bangladesh-strengthens-border-patrol-to-stop-incursion-of-rohingyas-fleeing-myanmar
187 The total number of pushbacks between January and November 2016 is 5,716. Amnesty International interview with BGB official over the phone, 9 December 2016.
188 As of 14 December 2016. Amnesty International, interview with BGB personnel in Cox's Bazar.
189 Convention relating to the Status of Refugees, adopted 28 July 1951, Article 33(1); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Article 3(1); International Convention for the Protection of All Persons from Enforced Disappearance, Article 16(1).
190 UNHCR, UNHCR Note on the Principle of *Non-Refoulement*, November 1997.
191 Amnesty International interviews with Rohingya community leaders in Cox's Bazar, Bangladesh, 22-23 November 2016.
192 Mohammad Nurul Islam, "More Rohingyas flee to Bangladesh as violence spreads in Myanmar", *Reuters*, 23 November 2016 available at http://www.reuters.com/article/us-myanmar-rohingya-idUSKBN13I15B
193 Abdul Aziz, "33 Rohingyas missing as boat capsizes off Myanmar", *Dakha Tribune*, 5 December 2016 available at http://www.dhakatribune.com/bangladesh/2016/12/05/33-rohingyas-missing-boat-capsizes-off-myanmar/.
194 Amnesty International interview with Rohingya refugee in Cox's Bazar, Bangladesh, 23 November 2016.

Others reported having to pay 25,000-30,000 kyat (USD19-23) per person to boatmen to cross the Naf river.[195]

Some of those who did not have the money to make such payments had to cross the border by other means. One 29-year-old man said he was forced to swim across the Naf River when he arrived in mid-October:

> "*I had to flee Myanmar when I heard that the military were asking my father where I was. We owned a small shop so I took an empty barrel from it, and clung on to it when I swam across the river at night. It took four or five hours. I feared for my life but sometimes you have to do anything to survive.*"[196]

However, from late November, the Bangladeshi authorities appear to have unofficially loosened their control over the border to increasingly allow select refugees in. Credible sources confirmed that BGB personnel sometimes allow those most obviously vulnerable to cross the border, in particular women and children.[197] It is unclear to the extent that this happens on the initiative of individual BGB personnel at local level or if it has been sanctioned by the government at the central level, although at least one government official has also publicly confirmed that this is the practice.[198]

4.2 RESTRICTIONS ON AID

The government of Bangladesh, at least throughout October and November, refused to provide aid to newly arrived refugees in order to avoid creating a pull factor. As one local government official told media on 3 December amidst reports that local officials had been prevented from handing out aid in camps: "*Distribution of relief among the refugees will encourage more Rohingyas to enter the country.*"[199]

International aid agencies have made formal requests to the government to assess the needs of, and to assist, the newly arrived refugees, but these requests have been rebuffed. UNHCR, for example, has asked the government to be able to register and provide aid to newly arrived refugees as they cross the border, while the International Committee of the Red Cross (ICRC) has made formal requests from the authorities to access newly arrived people in need, but both requests went unanswered.[200] National and international aid workers interviewed by Amnesty International in Cox's Bazar in November expressed frustration about having the means and resources to assist recent refugees, but being instructed by the government not to open up their services or to provide aid to the newly arrived, since it would contribute to a pull factor.[201] The lack of effective relief distribution by the authorities has meant that aid, including food, donated by the local population in Cox's Bazar has gone to waste.[202]

The threat of arrest and deportation back to Myanmar has also become a *de facto* barrier to aid for the newly arrived refugees, since many are too afraid to approach aid workers or distribution centres.[203]

Since early December, the Bangladeshi government appears to have, at least informally, relaxed some of the restrictions on aid to the new arrivals. On 6 December, the International Organization for Migration (IOM) reported having provided some basic aid, including non-food items such as clothes and blankets, to newly-arrived refugees in camps.

Other aid agencies have been privately told by the government that they can provide aid to newly arrived refugees, mainly in the form of non-food items, and allow refugees to access other services, but the government has not been willing to officially grant them permission to do so in order to avoid a pull-factor.

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195 Amnesty International telephone interview, December 2016.
196 Amnesty International interview with Rohingya refugee in Cox's Bazar, Bangladesh, 23 November 2016.
197 Amnesty International interviews in Dhaka and Cox's Bazar, November 2016.
198 On 30 November 2016, Bangladesh Foreign Minister Abul Hasan Mahmud Ali said that "in some instances we have some very vulnerable cases that we could not ignore from the humanitarian point of view", and that those refugees had been allowed to enter Bangladesh. See, *Radio Free Asia*, "10,000 Rohingya from Myanmar Have Landed in Bangladesh: U.N", 30 November 2016, available at: http://www.rfa.org/english/news/myanmar/myanmar-bangladesh-11302016164938.html
199 Emran Hossain and Nurul Islam, "Rohingyas starve as influx continues", *New Age*, 3 December 2016, available at http://bangladeshchronicle.net/2016/12/101974/
200 Shahidul Islam Chowdhury, 'Humanitarian assistance for Rohingya: UN seeks govt permission', *New Age*, 2 December 2016, available at http://www.newagebd.net/article/3947/humanitarian-assistance-for-rohingya-un-seeks-govt-permission
201 Amnesty International interviews with national and international aid workers in Cox's Bazar, 21-24 November 2016.
202 Emran Hossain and Nurul Islam, '1,000 more Rohingyas enter', *New Age*, 9 December 2016, available at http://www.newagebd.net/print/article/4454
203 Amnesty International interviews with Rohingya refugees in Cox's Bazar, 21-24 November 2016.

The change in attitude on behalf of the government appears to be due to the obvious humanitarian needs of the newly arrived as well as domestic pressure.[204]

4.3 LACK OF FOOD AND SHELTER

> **"We are sleeping outside in the mud. My son is two years old and is crying all the time, he is very cold in the mornings."**
>
> 40 year old Rohingya woman in Cox's Bazar, 22 November 2016.[205]

The threat of arrest and deportation back to Myanmar by the BGB has meant that the thousands of new refugees have essentially been forced into hiding.[206] Many are living with relatives in the informal refugee camps of Kutupalong and Leda, while others have settled in villages or are even hiding in surrounding forests.[207] Without access to aid, many of the new refugees are living in extremely poor conditions and on the brink of survival. They have been almost entirely dependent on the local communities or long-term refugees for food and other basic necessities. According to aid agencies, the most pressing needs include food, clothing, shelter and medical care.[208]

Cox's Bazar is already one of the poorest districts in Bangladesh, and the large movement of new arrivals has strained the resources of the local community.[209] In Kutupalong makeshift camp (KMC), which already houses some 40,000 unregistered Rohingya refugees, levels of malnutrition were alarmingly high and sanitation very poor even before violence flared in Myanmar.[210]

One man, who has lived in KMC since fleeing from Myanmar in 2012, said:

> "*I am the only breadwinner in my family. We are seven people, but some family members arrived from Myanmar last week so now we are 15 people living in the same small hut. We did not have any food this morning. I only own two longyis [traditional garment], I gave one to my cousin, I am wearing the only clothes I own.*"[211]

A 40-year-old woman, who said she had fled to Bangladesh after the Myanmar army killed her husband and one of her sons, was not able to find shelter for herself and her two young children in KMC. She explained:

> "*We are sleeping outside in the mud. My son is two years old and is crying all the time, he is very cold in the mornings. Still, compared to Myanmar, Bangladesh seems like heaven to me*."[212]

A 55-year man who arrived in early December and is living with relatives in KMC said:

> "*We are in a very hard situation and have nothing. We have no clothes and we can't eat – we have no food. We lost everything. The people are helping us, but we are living hand to mouth. If I eat in the morning, I don't have anything to eat in the evening."*[213]

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204 There have been large-scale street protests across Bangladesh calling for the government to open its border to Myanmar since mid-November. High-level officials from the opposition Bangladesh National party have also urged the government to provide aid to the refugees. See for example, *The Daily Star*, "Khaleda Zia calls for sheltering Rohingyas", 27 November 2016, available at http://www.thedailystar.net/politics/khaleda-zia-calls-sheltering-rohingyas-1321255.
205 Amnesty International interview with Rohingya refugee in Cox's Bazar, 22 November 2016.
206 Undocumented Rohingya refugees are under threat of arrest of "trespassing" under Bangladesh's Foreigner's Act, which carries a five-year jail sentence.
207 Amnesty International interviews with humanitarian workers and others in Cox's Bazar, 21-24 November 2016.
208 Amnesty International interviews with aid workers in Bangladesh over the phone, December 2016.
209 WFP, "Enhancing food security in Cox's Bazar", available at http://documents.wfp.org/stellent/groups/public/documents/communications/wfp279524.pdf.
210 Amnesty International interviews with aid worker in Dhaka, 14 November 2016. See also PHR, *Stateless and Starving: Persecuted Rohingya Flee Burma and Starve in Bangladesh*, March 2010.
211 Amnesty International interview with Rohingya refugee in Cox's Bazar, 21 November 2016.
212 Amnesty International interview with Rohingya refugee in Cox's Bazar, 22 November 2016.
213 Amnesty International interview with Rohingya refugee in Cox's Bazar, 22 November 2016.

Many of those arriving are in poor health and in need of urgent medical attention. The most frequent medical problems on arrival are dehydration, diarrhoea, fever, pneumonia, coughing and skin diseases. Reliable sources also confirmed to Amnesty International that several people have crossed the border having suffered untreated bullet wounds or sexual violence.

Some new refugees have managed to access medical clinics in Cox's Bazar. However, local clinics are monitored by BGB personnel, and some Rohingya told Amnesty International that they did not seek medical attention out of fear of being detained and deported.[214] In this sense, the Bangladeshi authorities' attempts to prevent people crossing the border are further jeopardising the health of those who have managed to enter the country.

One villager, a man from Dar Gyi Zar who arrived in Bangladesh on 15 November said:

> "*We are very much afraid these days. The refugees are giving food to us at the moment, but we are worried that we'll be sent back to Myanmar. The authorities can do anything at any time. We have no protection.*"[215]

Amnesty International recognises the enormous strain the unfolding crisis in Myanmar's Rakhine has placed on the resources of Bangladesh. There are growing signs of frustration on the Bangladeshi government's part with the Myanmar authorities' inability or unwillingness to end the widespread violations across the border, and the consequences these have for Bangladesh.[216]

Bangladesh, however, has a duty under international law to allow refugees fleeing prosecution to cross its border, and to ensure that their humanitarian needs are met. The border closure is putting fleeing Rohingya at risk in several ways. It is forcing Rohingya to use dangerous, irregular routes to cross, while also confining those who do manage to cross to a life of hiding, where many are too afraid to seek aid or medical care.

While it is positive that some of the restrictions on aid have been at least informally lifted, the measures undertaken not go far enough. The humanitarian needs of those who flee Myanmar in desperation must be met immediately. Bangladesh will need international support to do this. However, for this to be possible the government must also allow aid agencies unfettered access to all Rohingya in Bangladesh.

214 Amnesty International interview with Rohingya refugees in Cox's Bazar, 22 November 2016.
215 Amnesty International interview, 5 December 2016.
216 Mohiuddin Alamgir, "Bangladesh can't allow 'waves' of Myanmar citizens: Hasina", *New Age*, 16 December 2016, available at: http://www.newagebd.net/article/4337/bangladesh-cant-allow-waves-of-myanmar-citizens-hasina

5. CONCLUSION AND RECOMMENDATIONS

5.1 COLLECTIVE PUNISHMENT AND POSSIBLE CRIMES AGAINST HUMANITY IN MYANMAR

Evidence collected by Amnesty International suggests that Myanmar security forces have deliberately targeted Rohingya civilian populations in the aftermath of the 9 October attacks. The military response to the actions of Rohingya militants have not satisfied the standards of necessity and proportionality, either on the use of force or other measures, as required by international law.

The security forces have carried out operations that clearly targeted individuals with no known links to militants, instead of than investigating attacks and arresting individuals linked by evidence to acts of violence. Furthermore, they have failed to use proportional force against those using or threatening the use of force. Women, men, children, whole families and entire villages have been attacked and abused. The actions of Myanmar security forces evince a clear intent to target Rohingya collectively on the basis of their ethnicity and religion. As such, this clearly amounts to collective punishment of the Rohingya population in Rakhine State, in violation of international law.

COLLECTIVE PUNISHMENT AND INTERNATIONAL LAW

It is a basic principle of justice generally, and human rights specifically, that punishment for an offence may be imposed only on the individual convicted of an offence. This principle obviously rules out any acts constituting collective punishment.

The UN Human Rights Committee has affirmed this principle, stating: "States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence." [217]

The Rome Statute of the International Criminal Court defines crimes against humanity in Article 7(1): "crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack …".

The term 'attack directed against any civilian population' is defined in Article 7 as "… a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack." Article 7 lists 11 crimes, several of which may have been committed against the Rohingya in northern Rakhine State since the October attacks, as demonstrated in this report. They include:

217 Human Rights Committee, General Comment No. 29 States of Emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 11.

(a) Murder; […]

(d) Deportation or forcible transfer of population; […]

(f) Torture; […]

(g) Rape… or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender… or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons; […]

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The definition of crimes against humanity in the Rome Statute reflects to a large extent rules of customary international law binding on all states, including Myanmar, regardless of whether or not a state is party to the Statute.

STRONG INDICATION OF CRIMES AGAINST HUMANITY

Based on the evidence available to Amnesty International, the organization is deeply concerned that there may have been a widespread, as well as systematic attack, against the civilian population of the Rohingya community in northern Rakhine State. They have already been subjected, for decades, to systematic denial and severe restrictions on their human rights on a collective and clearly discriminatory basis, including on the rights to nationality, to freedom of thought, conscience and religion, to freedom of movement – and subsequently the rights to education, access to healthcare and to an adequate standard of living.

Within this context, there has clearly been large-scale, violent attacks on villages in the past few months - involving death, destruction and looting, rape and other forms of torture, forcing tens of thousands to flee while confining others to their villages and the denial of access to humanitarian aid bringing thousands to the brink of starvation.

Specifically, Amnesty International has documented the following crimes in this report:

- Unlawful killings ("murder");
- Deportation and forcible displacement, through random armed attacks, burning of buildings, looting and other acts threatening civilians and forcing them to flee;
- Torture;
- Rape;
- Persecution based on ethnic and religious discrimination, through burning of homes, other buildings and sometimes whole villages, looting, severe restrictions on freedom of movement and denial of humanitarian aid, all imposed overwhelmingly on Rohingyas;
- Enforced disappearances, since the vast majority of families of the hundreds of people detained since 9 October have not heard their loved ones' fate or whereabouts.

The list above is partial as restrictions on access to the affected area imposed by the Myanmar authorities have made it difficult to gather further evidence. However, based on our research, which was gathered from multiple sources, corroborated and verified by secondary sources and analysis of satellite imagery, photographs and videos (where this was possible), Amnesty International believes the security forces' actions in northern Rakhine State since 9 October may amount to crimes against humanity.

The significance of Amnesty International's findings in this respect lies in the fact that crimes against humanity are exactly what the term suggests, crimes so serious that they are the concern not only of their victims, survivors, or the state in question, but of humanity as a whole.[218]

218 On crimes against humanity in the context of universal jurisdiction, see Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation* (Index: IOR 53/008/2001), 1 September 2001, Chapter Five.

It is also important to note that such crimes are also the subject of universal jurisdiction;[219] any state may, under customary international law take action against suspected perpetrators of crimes against humanity, even where the suspects are neither nationals nor residents of the state concerned, and the crime(s) did not take place in its territory.[220]

In the case of torture (including, as noted, all cases of rape by officials), states parties to the UN Convention against Torture are actually obliged by that treaty to exercise universal jurisdiction over any suspect found in their territory or otherwise subject to their jurisdiction.[221]

At the very least, the concerns expressed and substantiated here that crimes against humanity may have been committed in northern Rakhine State warrant a prompt, impartial, independent and effective investigation. Amnesty International sincerely hopes that the Myanmar authorities will initiate such an investigation, otherwise the gravity of the concerns would justify the involvement of the international community in such investigation.

5.2 NEED FOR PROTECTION IN BANGLADESH

Amnesty International recognises the incredible strain the Bangladeshi government has been under by hosting hundreds of thousands of Rohingya refugees for decades, as well as the resources required to support the thousands who have arrived since 9 October. As such, we call on the international community to further support the government in providing humanitarian aid.

However, in accordance with its international legal commitments, the Bangladeshi government must immediately end its policy of pushing back refugees attempting to flee Myanmar. It is also crucial that the authorities allow the registration, without any negative repercussions, of all newly arrived refugees, and do their utmost to meet the humanitarian needs of the newly arrived refugees, including by immediately allowing aid groups unfettered access to those in need.

5.3 RECOMMENDATIONS

TO THE MYANMAR AUTHORITIES:

- Publicly condemn human rights violations against the Rohingya in Rakhine State and immediately order members of all state security forces to refrain from all conduct which violates international law, including random attacks on civilians, unlawful killings, arbitrary arrests, of torture and other acts of ill-treatment, rape and other sexual violence, destruction of property, looting, arbitrary restrictions on movement and denial of humanitarian aid;
- Grant humanitarian organizations unimpeded access to northern Rakhine State so they can assess and respond to the needs of newly displaced populations and resume ongoing humanitarian activities in the area;
- Allow immediate and unhindered access to northern Rakhine State to independent journalists and international human rights monitors, including UN bodies and officials and non-governmental organizations;
- Immediately initiate an independent, impartial and, effective investigation, with the assistance of the UN, into alleged violations of international law in northern Rakhine State. The investigation must apply international law and standards in both documenting and assessing violations.

  Investigators must reach out to victims and witnesses, who in turn must be allowed to speak to investigators without fear of intimidation or reprisal.

219 On crimes against humanity in the context of universal jurisdiction, see Amnesty International, *Universal Jurisdiction: The duty of states to enact and enforce legislation* (Index: IOR 53/008/2001), 1 September 2001, Chapter Five.
220 Such action would be bringing such persons before its own courts; extraditing such persons to any state party willing to do so, or surrendering such persons to an international criminal court with jurisdiction to try persons for these crimes.
221 See UN Convention Against Torture, Article. 5.

- Where sufficient, admissible evidence is gathered, prosecute individuals suspected of responsibility for offences involving violations of international law, regardless of rank or position, in fair trials before civilian courts without recourse to the death penalty;
- Suspend from active duty any military or police personnel suspected of responsibility for ordering or committing violations of international law pending the completion of investigations;
- Immediately provide to families and other concerned parties information concerning the fate and whereabouts of individuals detained during security operations and provide details concerning the basis for their arrest;
- Ensure all detainees have prompt and unhindered access to their families, medical professionals, legal counsel and independent, civilian courts. All detainees must be released, unless they are charged with internationally recognisable offences and remanded by such courts. Where there is evidence of criminal activity, similarly charge detainees with internationally recognizable crimes and ensure that all trials meet international standards of fairness, without recourse to the death penalty;
- Develop and implement a programme guaranteeing access to health care, psychological assistance and other support for all victims of sexual violence in northern Rakhine State and beyond; develop the programme with the involvement of the survivors and relevant non-governmental organizations; and ensure that it includes measures designed to eliminate the stigma and discrimination experienced by survivors of sexual violence and the gender stereotypes that underlie violence against women;
- Facilitate the safe, voluntary and dignified return of displaced communities – regardless of their ethnicity or religion – to their homes or to permanent resettlement in adequate alternative housing elsewhere in the country, while ensuring the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration;
- Condemn unequivocally and take concrete steps to end all incitement to racial or religious discrimination, hostility and violence;
- Take effective measures to end long-standing discrimination against the Rohingya and other Muslim minorities in Rakhine State, and, in particular:
- Revoke all local orders and policies which place arbitrary and discriminatory restrictions on Rohingyas and other Muslims, including restrictions on their freedom of movement;
- Amend the 1982 Citizenship Act to ensure that citizenship is granted free of any discrimination such as on the basis of race, colour, ethnic origin, gender, language or religion, and ensure that the law is implemented, in practice, in a non-discriminatory manner; and
- Allow Rohingya and other Muslims the freedom to manifest their religion peacefully through worship, observance, practice and teaching, both publicly and privately.

TO THE RAKHINE STATE ADVISORY COMMISSION:

- Ensure that respect, protection and fulfilment of human rights are central to all recommendations made to the State Counsellor and government of Myanmar, and in particular, suggest effective measures towards ending discrimination against Rohingya, ethnic Rakhine and other minorities in Rakhine State; and
- Recommend that the Myanmar authorities initiate a genuinely independent and impartial investigation in to the situation in Rakhine State, and that they invite the UN to assist with such an investigation.

TO THE GOVERNMENT OF BANGLADESH:

- Allow all persons fleeing violence and persecution in Myanmar to enter Bangladesh without delay or restriction;
- Strictly apply the principle of *non-refoulement*, by ensuring that no one fleeing Myanmar is transferred to any place, including Myanmar, where their lives or human rights are at risk;

- Ensure that individuals are not, detained, prosecuted or punished solely for their method of arrival in Bangladesh;
- Allow UNHCR to undertake their mandate to protect refugees and asylum-seekers by granting them access all new arrivals, as well as existing unregistered refugees;
- Provide for the immediate humanitarian needs of refugees and migrants, including food, water, shelter and health care, as well as education for children;
- End all restrictions – formal and informal – preventing the UN and NGOs from providing aid to refugees;
- Allow OHCHR and any other independent investigators immediate access to newly arrived Rohingyas to document alleged human rights violations; and
- Ratify the 1951 Refugee Convention and ensure that people claiming asylum are able to access refugee status determination procedures without discrimination of any kind.

TO ASEAN MEMBERS STATES:

- Use all diplomatic and political tools at your disposal, to put pressure on the Myanmar military to immediately cease violations of international law in northern Rakhine State;
- Call on the Myanmar government to allow immediate and unhindered access to international human rights monitors, including UN monitors, and independent journalists to all parts of northern Rakhine State;
- Call on the Myanmar government to initiate an independent, impartial and, effective investigation, with the assistance of the UN, into alleged violations of international law in northern Rakhine State and to ensure that individuals responsible for violations of domestic law and international human rights law are held accountable, regardless of rank or position, in fair trials before civilian courts without recourse to the death penalty;
- Provide international co-operation and assistance to the government of Bangladesh to help meet the humanitarian needs of Rohingya refugees from Myanmar; and
- Ratify the 1951 Refugee Convention and ensure access to refugee status determination procedures.

TO THE US, THE EU AND ITS MEMBER STATES, THE GOVERNMENTS OF AUSTRALIA AND JAPAN:

- Use all diplomatic and political tools at your disposal, to put pressure on the Myanmar military to immediately cease violations of international law in northern Rakhine State;
- Call on the Myanmar government to allow immediate and unhindered access to international human rights monitors, including UN monitors, and independent journalists to all parts of northern Rakhine State;
- Call on the Myanmar government to initiate an independent, impartial and, effective investigation, with the assistance of the UN, into alleged violations of international law in northern Rakhine State and to ensure that individuals responsible for violations of domestic law and international human rights law are held accountable, regardless of rank or position, in fair trials before civilian courts without recourse to the death penalty; and
- Provide international co-operation and assistance to the government of Bangladesh to help meet the humanitarian needs of Rohingya refugees from Myanmar.

THE THE UNITED NATIONS (UN):

- Offer to assist the Government of Myanmar in conducting independent, impartial and effective investigations into allegations of violations of international law in Northern Rakhine State;
- Bearing in mind the principle of complementarity but also concerns that crimes against humanity may have been committed in northern Rakhine State, unless such investigations take place within a

reasonable time, consider initiating a preliminary international investigation into the possibility that such crimes have taken place; and

- Provide international cooperation and assistance to the government of Bangladesh to help meet the humanitarian needs of Rohingya refugees from Myanmar.

ANNEX: ONGOING DESTRUCTION IN NORTHERN RAKHINE STATE

AMNESTY INTERNATIONAL

Myanmar

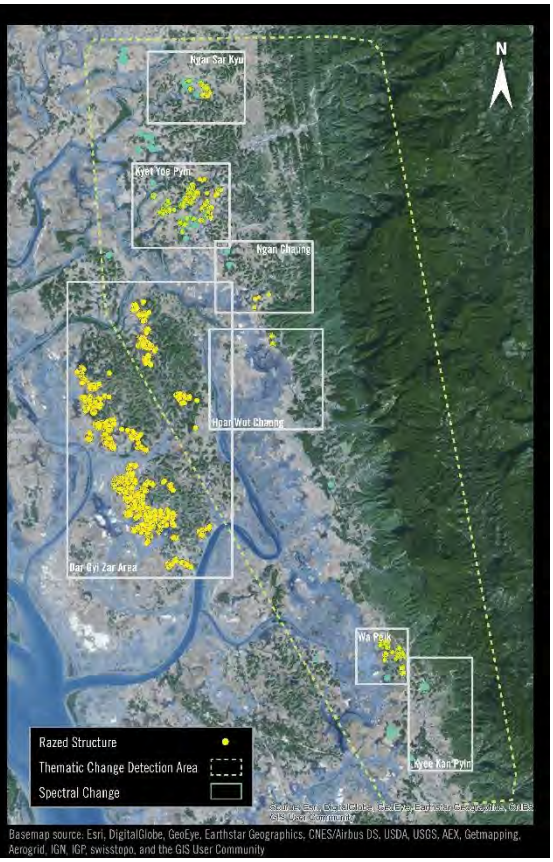
Ongoing destruction in northern Rakhine State

After reports of attacks in northern Rakhine State in October, 1.5 meter resolution satellite imagery was used to conduct a spectral analysis on the changes in the region. A thematic change detection was run on two image dates – 7 November 2015 and 23 October 2016 – over 100 square kilometres of land. Specific spectral changes in village areas were extracted from the results. With the 1.5 meter resolution of the imagery, false negatives are predictable when determining possible change to small structures.

The areas of significant change in the spectral analysis were then compared to the first 50 centimetre, high resolution satellite images captured on 3 November and 10 November 2016. The spectral changes were confirmed with over 400 structures visibly damaged or destroyed in five village areas. Many of the structures in the villages are surrounded by tall vegetation and some were also obscured by clouds resulting in a lower estimate of impacted structures if compared to a ground survey.

Following more accounts of attacks on villages in the Dar Gyi Zar area in November, two images from before and after the events were acquired to corroborate the stories across 25 square kilometres of land. High resolution, 40 and 50 centimetre imagery from 10 November and 23 November was used to compare changes in the environment. The near-infrared band was especially important in determining the health of the vegetation and confirming the use of fire to raze many of the villages. The near-infrared band becomes highly visible using false colours to highlight the healthy vegetation in shades of red and the burned areas in shades of gray. Using this method, over 850 structures were found to be razed by burning between 10 November and 23 November.

Together, across the 125 square kilometres of area analyzed, over 1250 structures were determined to have been damaged or destroyed over the four dates where high resolution imagery was sourced.



Basemap source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

AMNESTY INTERNATIONAL
Myanmar
Wa Peik
Imagery from 7 November 2016 shows the Wa Peik village area. Yellow dots pinpoint a portion of the 96 structures found to be razed in the village. The green polygons highlight the spectral change detected in the villages between 7 November 2015 and 23 October 2016
7 November 2016
N
Razed Structure
Spectral Change
Coordinates: 20.9194°, 92.3887°
Pleiades, 50cm © CNES 2016, Distribution AIRBUS DS

AMNESTY INTERNATIONAL
Myanmar
Hpar Wut Chaung
On 10 November 2016, imagery shows 9 razed structures in the Hpar Wut Chaung (Ywar Thit) area – represented here with yellow dots. The green polygons highlight the spectral change detected in the villages between 7 November 2015 and 23 October 2016.
10 November 2016
N
Razed Structure
Spectral Change
Coordinates: 20.9874°, 92.3614°
WorldView 3, 50cm © 2016 DigitalGlobe, Inc.

AMNESTY INTERNATIONAL

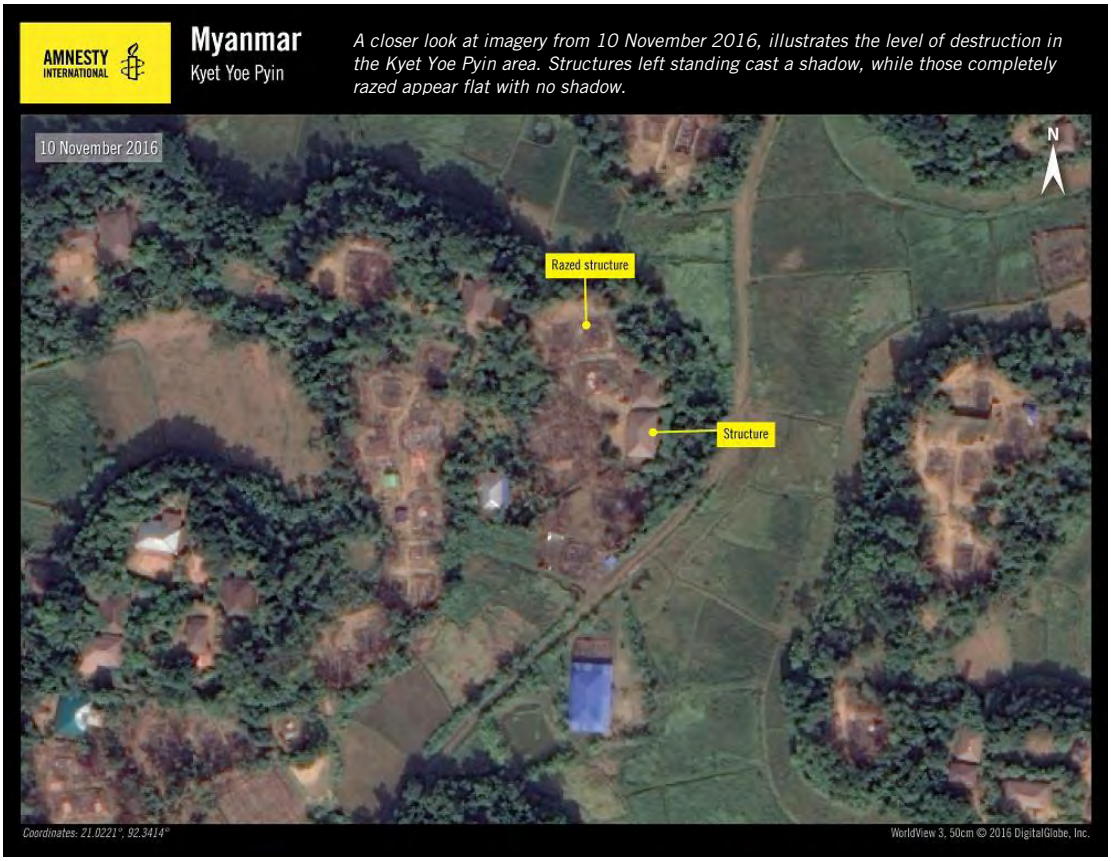
Myanmar
Ngar Chaung

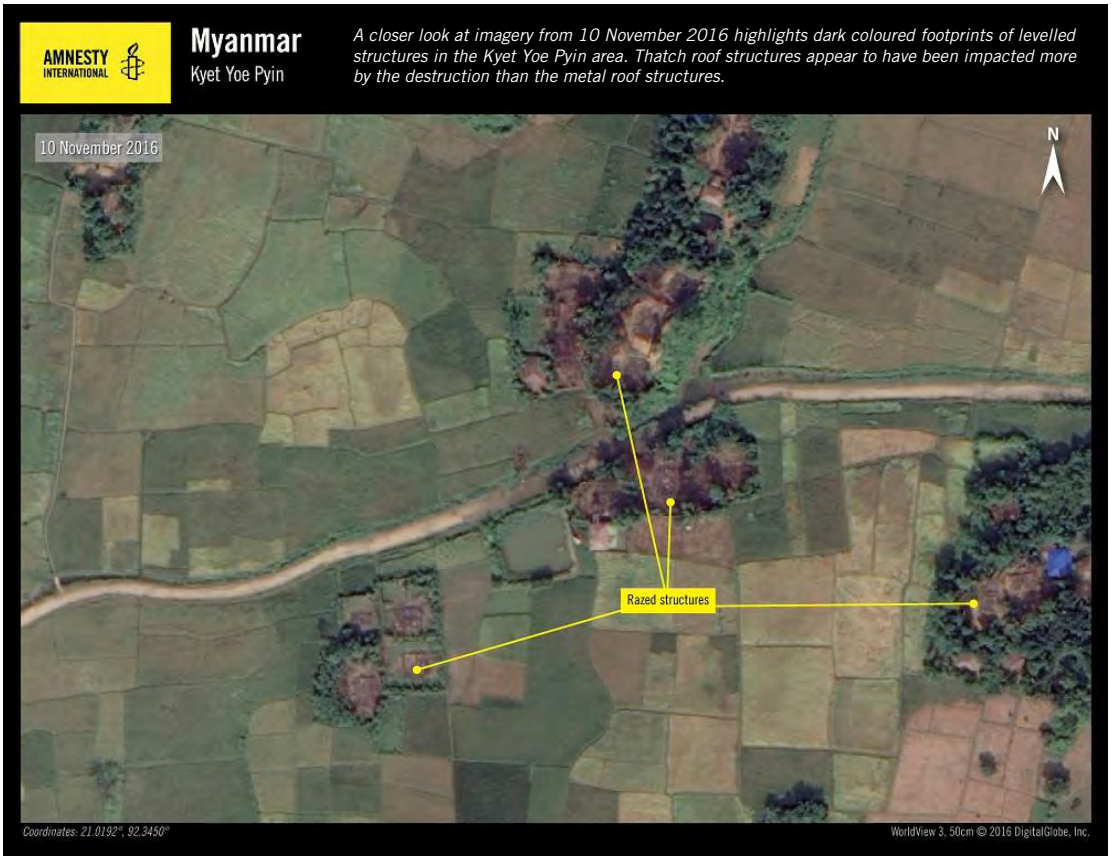
On 10 November 2016, imagery shows four razed structures in the Ngar Chaung area. Three of the razed structures are highlighted here with yellow dots. The thematic change detection did not find these locations because the small area impacted could not be detected in the 10 meter resolution imagery.

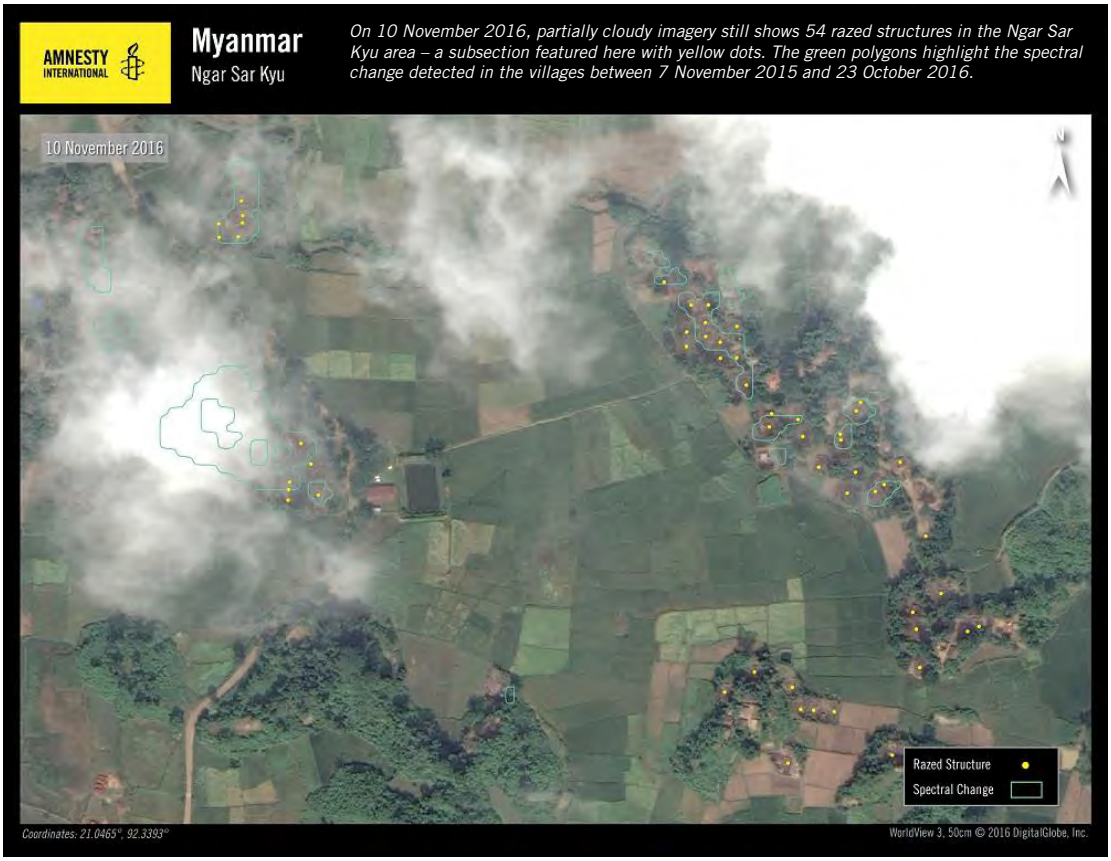
AMNESTY INTERNATIONAL

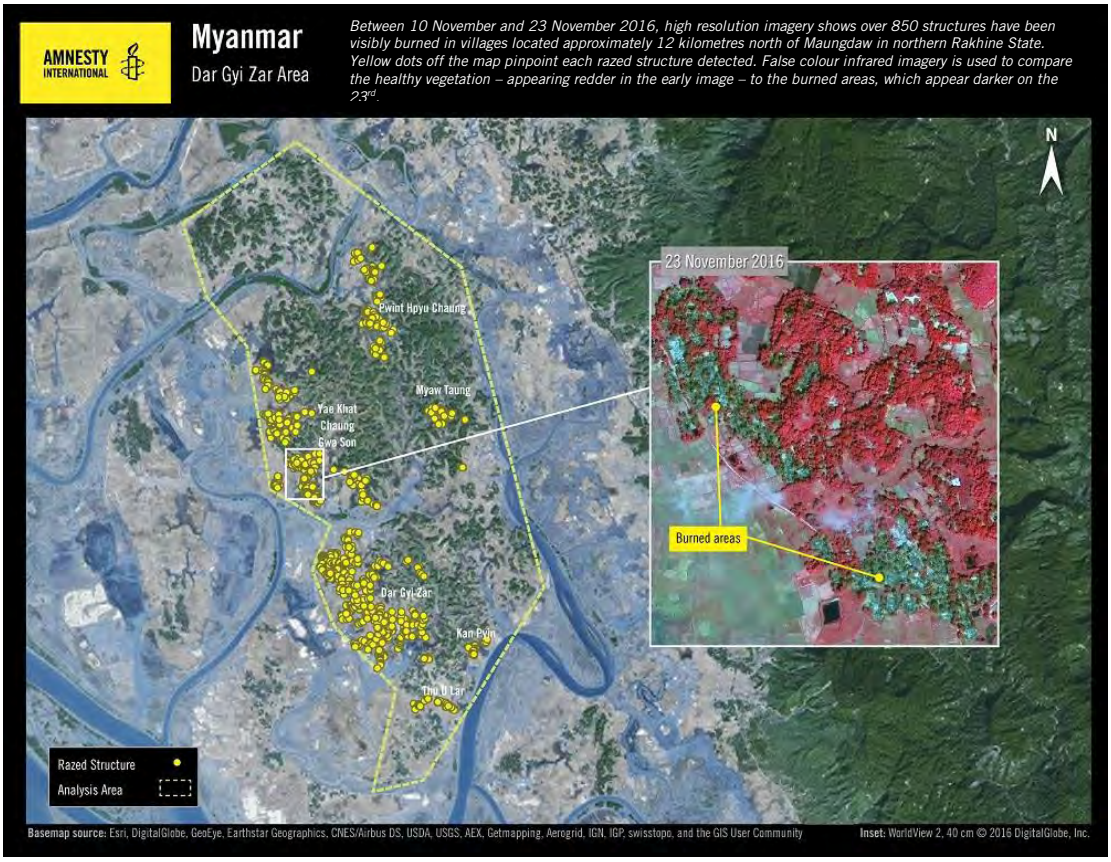
Myanmar
Kyet Yoe Pyin

On 10 November 2016, imagery shows approximately 243 structures in the Kyet Yoe Pyin area have been razed. A small subsection is shown here with yellow dots representing razed structures. The green polygons highlight the spectral change detected in the villages between 7 November 2015 and 23 October 2016.


AMNESTY INTERNATIONAL
Myanmar
Kyet Yoe Pyin
A closer look at imagery from 10 November 2016, illustrates the level of destruction in the Kyet Yoe Pyin area. Structures left standing cast a shadow, while those completely razed appear flat with no shadow.
10 November 2016
N
Razed structure
Structure
Coordinates: 21.0221°, 92.3414°
WorldView 3, 50cm © 2016 DigitalGlobe, Inc.


AMNESTY INTERNATIONAL
Myanmar
Kyet Yoe Pyin
A closer look at imagery from 10 November 2016 highlights dark coloured footprints of levelled structures in the Kyet Yoe Pyin area. Thatch roof structures appear to have been impacted more by the destruction than the metal roof structures.
10 November 2016
N
Razed structures
Coordinates: 21.0192°, 92.3450°
WorldView 3, 50cm © 2016 DigitalGlobe, Inc.


AMNESTY INTERNATIONAL
Myanmar
Ngar Sar Kyu
On 10 November 2016, partially cloudy imagery still shows 54 razed structures in the Ngar Sar Kyu area – a subsection featured here with yellow dots. The green polygons highlight the spectral change detected in the villages between 7 November 2015 and 23 October 2016.
10 November 2016
N
Razed Structure
Spectral Change
Coordinates: 21.0465°, 92.3393°
WorldView 3, 50cm © 2016 DigitalGlobe, Inc.


AMNESTY INTERNATIONAL
Myanmar
Dar Gyi Zar Area
Between 10 November and 23 November 2016, high resolution imagery shows over 850 structures have been visibly burned in villages located approximately 12 kilometres north of Maungdaw in northern Rakhine State. Yellow dots off the map pinpoint each razed structure detected. False colour infrared imagery is used to compare the healthy vegetation – appearing redder in the early image – to the burned areas, which appear darker on the 23rd.
N
23 November 2016
Pwint Hpyu Chaung
Myaw Taung
Yae Khat Chaung
Ewa Son
Burned areas
Dar Gyi Zar
Kan Pyin
Thu U Lar
Razed Structure
Analysis Area
Basemap source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community
Inset: WorldView 2, 40 cm © 2016 DigitalGlobe, Inc.

AMNESTY INTERNATIONAL

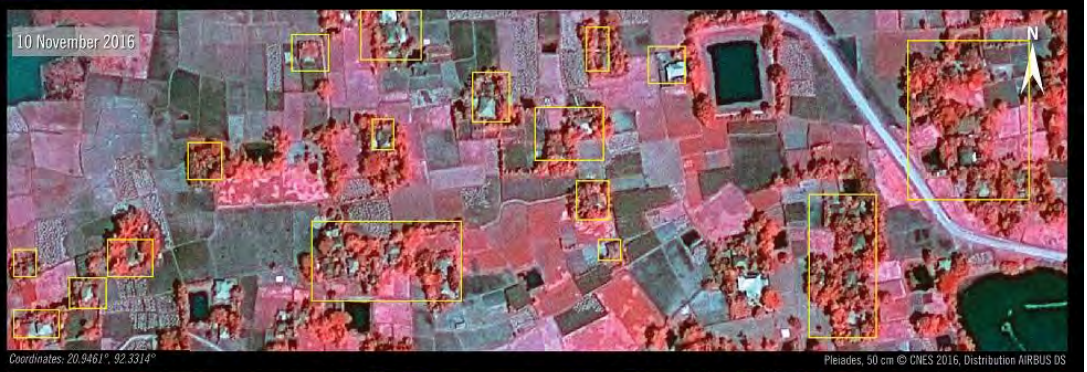
Myanmar
Yae Khat Chaung Gwa Son

Over 320 structures have been razed in Yae Khat Chaung Gwa Son in imagery from 23 November 2016. The images shown below highlight the visual differences between false colour infrared and natural colour imagery. False colour infrared imagery shows burned areas in varying shades of grey. The red hue of healthy vegetation, often appears brown to black after being burned.

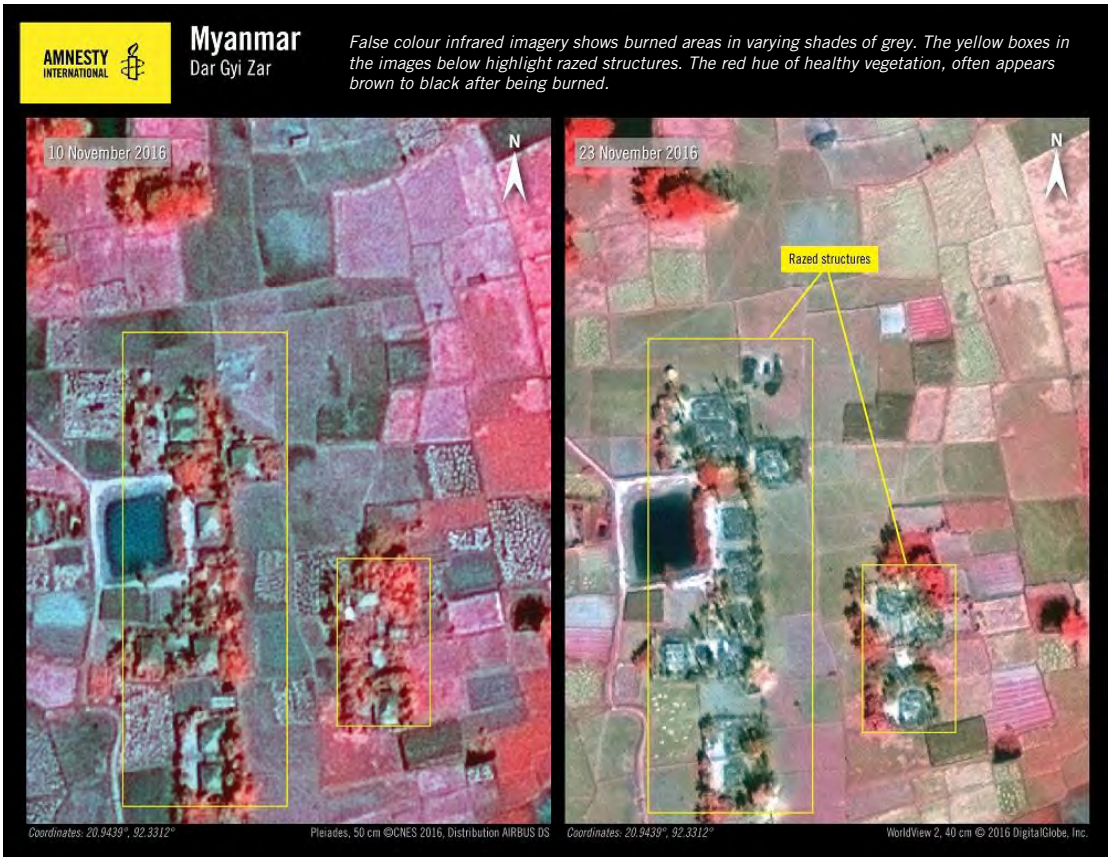
AMNESTY INTERNATIONAL

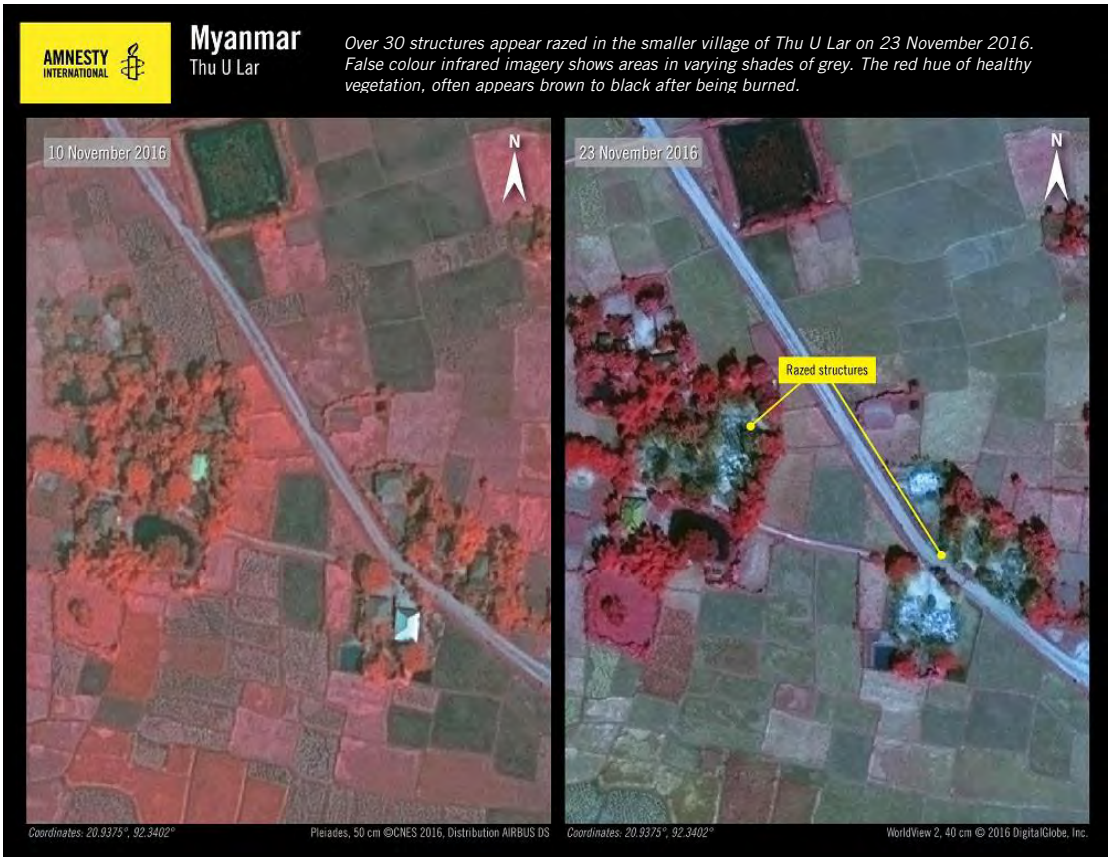
Myanmar
Dar Gyi Zar

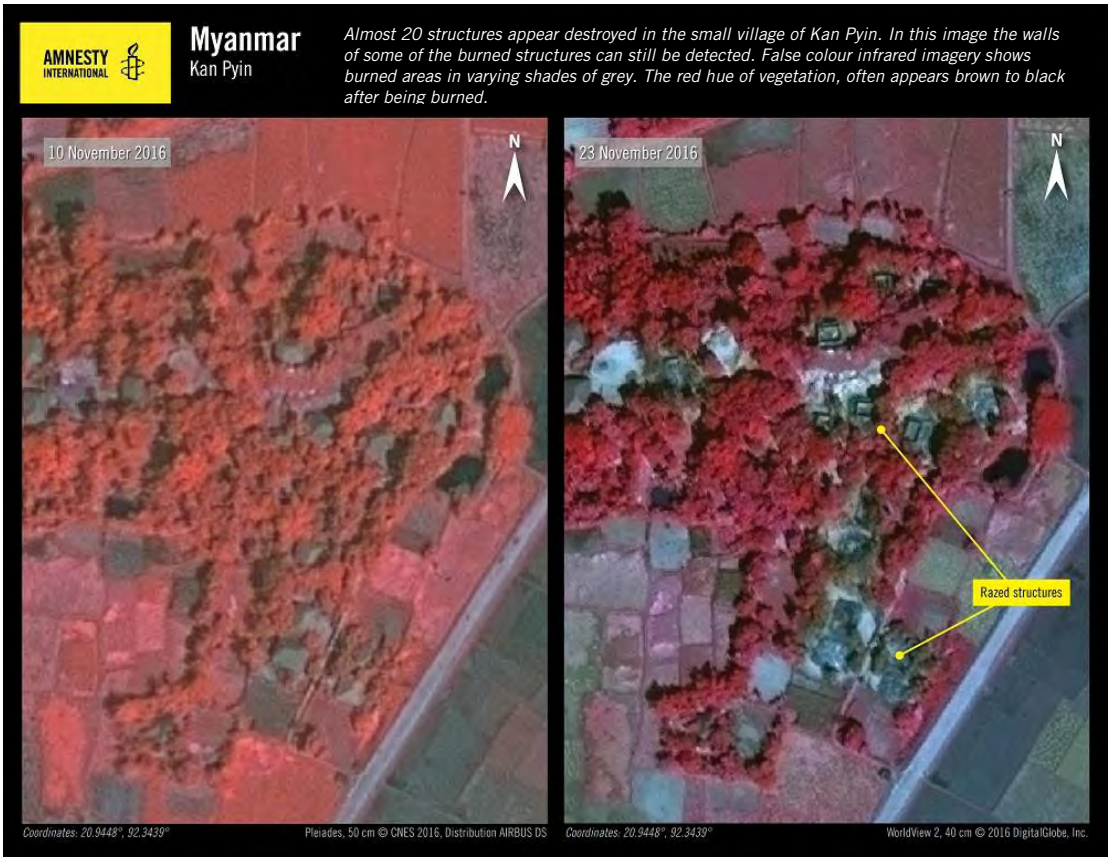
Over 350 structures have been razed in Dar Gyi Zar between 10 November and 23 November. False colour infrared imagery shows burned areas in varying shades of gray. The red hue of healthy vegetation, often appears brown to black after being burned. The yellow boxes in the images below highlight the areas before and after being burned.



AMNESTY INTERNATIONAL
Myanmar
Dar Gyi Zar
Imagery from 10 November and 23 November shows changes in the agriculture fields surrounding the villages. After the area was burned piles of probable harvested grains also appear burned.
10 November 2016
N
Probable harvest
Coordinates: 20.9464°, 92.3353°
Pleiades, 50 cm © CNES 2016, Distribution AIRBUS DS
23 November 2016
N
Burned harvest
Coordinates: 20.9464°, 92.3353°
WorldView 2, 40 cm © 2016 DigitalGlobe, Inc.


AMNESTY INTERNATIONAL
Myanmar
Dar Gyi Zar
False colour infrared imagery shows burned areas in varying shades of grey. The yellow boxes in the images below highlight razed structures. The red hue of healthy vegetation, often appears brown to black after being burned.
10 November 2016
N
Coordinates: 20.9439°, 92.3312°
Pleiades, 50 cm ©CNES 2016, Distribution AIRBUS DS
23 November 2016
N
Razed structures
Coordinates: 20.9439°, 92.3312°
WorldView 2, 40 cm © 2016 DigitalGlobe, Inc.


AMNESTY INTERNATIONAL
Myanmar
Thu U Lar
Over 30 structures appear razed in the smaller village of Thu U Lar on 23 November 2016. False colour infrared imagery shows areas in varying shades of grey. The red hue of healthy vegetation, often appears brown to black after being burned.
10 November 2016
N
Coordinates: 20.9375°, 92.3402°
Pleiades, 50 cm ©CNES 2016, Distribution AIRBUS DS
23 November 2016
N
Razed structures
Coordinates: 20.9375°, 92.3402°
WorldView 2, 40 cm © 2016 DigitalGlobe, Inc.


AMNESTY INTERNATIONAL
Myanmar
Kan Pyin
Almost 20 structures appear destroyed in the small village of Kan Pyin. In this image the walls of some of the burned structures can still be detected. False colour infrared imagery shows burned areas in varying shades of grey. The red hue of vegetation, often appears brown to black after being burned.
10 November 2016
N
Coordinates: 20.9448°, 92.3439°
Pleiades, 50 cm © CNES 2016, Distribution AIRBUS DS
23 November 2016
N
Razed structures
Coordinates: 20.9448°, 92.3439°
WorldView 2, 40 cm © 2016 DigitalGlobe, Inc.

AMNESTY INTERNATIONAL
Myanmar
Border Guard Post Base
Two helicopters are visible at the Border Guards Post Base No. 1 near Wa Peik in northern Rakhine State. Some reports of attacks describe helicopter gunship being involved.
29 November 2016
N
Possible Mi-17
Possible Mi-2
Coordinates: 20.9126, 92.4007°
© 2016 Terraserver, DigitalGlobe, Inc.

Burned mosque in Kyet Yoe Pyin, Rakhine State, October 2016
Satellite image (c) DigitalGlobe Inc., 2016. Screenshots from video (c) private

Burned market in Kyet Yoe Pyin, Rakhine State, October 2016
Satellite image (c) DigitalGlobe Inc., 2016. Screenshots from video (c) private

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“WE ARE AT BREAKING POINT”

ROHINGYA: PERSECUTED IN MYANMAR, NEGLECTED IN BANGLADESH

This report documents a campaign of violence by the Myanmar security forces against Rohingya since 9 October 2016. Soldiers and police have randomly fired on and killed civilians, raped women and girls, torched whole villages and arbitrarily arrested Rohingya men without any information about their whereabouts or charges. These actions have been a form of collective punishment targeting Rohingya in northern Rakhine state, and may amount to crimes against humanity.

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