“CAGED WITHOUT A ROOF”

APARTHEID IN MYANMAR’S RAKHINE STATE

AMNESTY INTERNATIONAL

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Cover photo: *Rohingya children in a rural village in Buthidaung township, northern Rakhine State, March 2016. © Amnesty International.*

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GLOSSARY

APARTHEID CONVENTION	International Convention on the Suppression and Punishment of the Crime of Apartheid.
BGP	Border Guard Police which operates in northern Rakhine State and was established in 2014 to replace the force known as the NaSaKa.
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women.
CERD	Convention on the Elimination of all forms of Racial Discrimination.
CRC	Convention on the Rights of the Child.
CRPD	Convention on the Rights of People with Disabilities.
CSC	Citizenship Scrutiny Card, identity document issued under the 1982 Citizenship Law.
FORM 4	Travel authorization document.
HOUSEHOLD LIST	A document which lists all the members of a household. In northern Rakhine State, it is often referred to as "family list" and is checked on an annual basis by MaKaPa.
ICCPR	International Covenant on Civil and Political Rights.
ICESCR	International Covenant on Economic, Social and Cultural Rights.
MAKAPA	Committee for the Prevention of Illegal Immigration of Foreigners. The immigration wing of the Boarder Guard Police (BGP).
NRC	National Registration Card, identity document issued under 1948 Citizenship Law.
NVC	National Verification Card, temporary identification card for those applying to undergo citizenship "verification", also previously known as INVC (Identity Card for National Verification).
VILLAGE DEPARTURE CERTIFICATE	A document confirming that the holder has received permission from his or her Village Administrator to leave his village.
WHITE CARD OR "TRC"	Temporary Registration Card, used for identification purposes.
WHITE CARD RECEIPT	Receipt given to those who surrendered their "white cards" or TRCs. Sometimes referred to as a Temporary Approval Card.

N
NEPAL
BHUTAN
CHINA
INDIA
BANGLADESH
INDIA
MYANMAR
Sittwe
Naypyitaw
LAOS
Rakhine State
Bay of Bengal
Yangon
THAILAND
Andaman Sea
Gulf of Thailand
0 100 200 km
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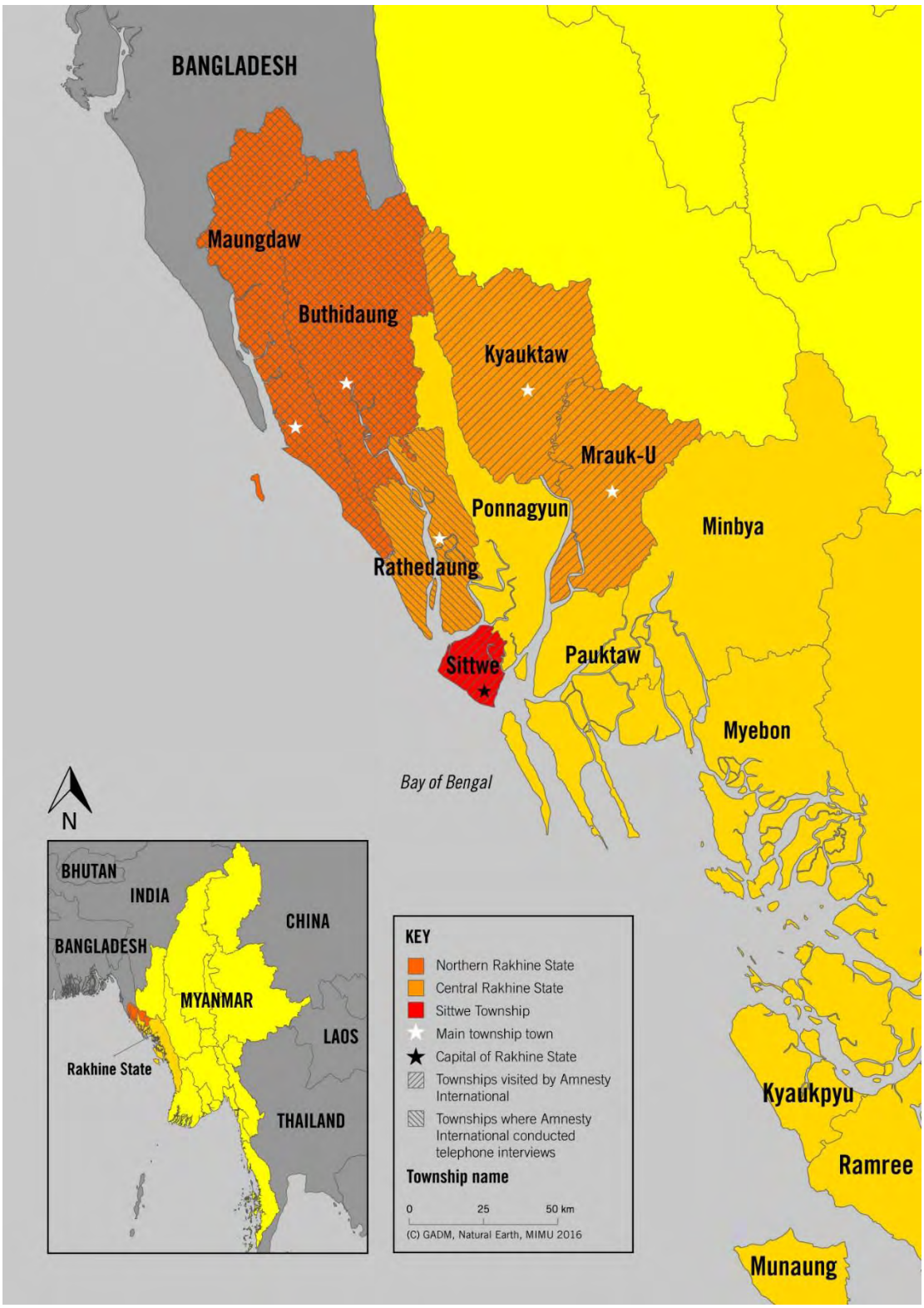

BANGLADESH
Maungdaw
Buthidaung
Kyauktaw
Mrauk-U
Ponnagyun
Minbya
Rathedaung
Sittwe
Pauktaw
Myebon
Bay of Bengal
N
BHUTAN
INDIA
CHINA
BANGLADESH
MYANMAR
LAOS
Rakhine State
THAILAND
KEY
Northern Rakhine State
Central Rakhine State
Sittwe Township
Main township town
Capital of Rakhine State
Townships visited by Amnesty International
Townships where Amnesty International conducted telephone interviews
Township name
0
25
50 km
(C) GADM, Natural Earth, MIMU 2016
Kyaukpyu
Ramree
Munaung

TIMELINE OF KEY EVENTS

1948: Myanmar (then Burma) gains independence from Britain.

1962: Ne Win seizes power in a military coup. Ethnic minorities across the country face increasing discrimination and human rights abuses.

1977-78: Up to 200,000 Rohingya flee Myanmar to Bangladesh after a nationwide crackdown on "illegal immigration". Most returned to Myanmar the following year.

1982: Myanmar enacts the 1982 Citizenship Law. The Law is blatantly discriminatory on ethnic grounds, and its implementation in Rakhine State allowed authorities to deprive Rohingya of citizenship *en masse*.

1990: General elections. The National League for Democracy (NLD) wins a landslide victory but the military government refuses to hand over power. Many NLD candidates are instead imprisoned. Candidates from Rohingya parties run for election, and some are elected to Parliament.

1991-2: 250,000 Rohingya flee Myanmar to Bangladesh amidst reports of forced labour, summary executions, torture including rape and arbitrary arrests by Myanmar security forces.

1992: The Myanmar authorities establish the NaSaKa border force in northern Rakhine State.

1995: The authorities begin issuing Rohingya with Temporary Registration Cards (TRCs).

1997: The Rakhine State Immigration Department issues an order requiring "Bengali race and foreigners" to apply for permission to travel.

2001: Anti-Muslim riots across Myanmar also affect Rakhine State, leading to displacement of Rohingya.

November 2010: Myanmar holds its first general elections since 1990. Rohingya are allowed to vote, and a Rohingya candidate is elected as a Member of Parliament. Aung San Suu Kyi is released from house arrest soon after.

2011: Official transfer of power to a quasi-civilian government led by President Thein Sein, a former military General. The new administration begins enacting wide-ranging social, political and economic reforms.

April 2012: Parliamentary by-elections in Myanmar. Aung San Suu Kyi is elected as an MP.

2012: Violence between Muslims and Buddhists, sometime supported by state security forces, sweeps across Rakhine State leading to scores of deaths, destruction of property and mass displacement. Myanmar authorities separate communities, and displaced Rohingya and other Muslim communities are moved to camps where their movement is restricted. Curfews are imposed in several townships, however by September 2014 are lifted in all areas except for the Rohingya-majority townships of Maungdaw and Buthidaung.

March-April 2014: Myanmar holds its first nationwide census since 1983. Rohingya are not allowed to self-identify, meaning most are not enumerated during the count.

July 2014: President Thein Sein begins implementing a pilot "citizenship verification" process in Rakhine State. The process is met with local resistance and is later abandoned after continued protests from Rakhine and Rohingya communities.

February 2015: President Thein Sein announces the revocation of all TRCs, leaving the majority of Rohingya without any forms of identity document and effectively preventing them from voting in the upcoming national elections.

November 2015: General elections. Aung San Suu Kyi's NLD wins a landslide victory. Rohingya were not allowed to vote or stand as candidates for Parliament.

March/April 2016: Transfer of power to the NLD-led administration. Aung San Suu Kyi is appointed State Counsellor.

April 2016: The NLD-led government restarts the citizenship "verification" process in Rakhine State.

August 2016: Aung San Suu Kyi establishes the Advisory Commission on Rakhine State, chaired by former UN Secretary-General Kofi Annan.

October 2016: A Rohingya armed group, now known as the Arakan Rohingya Salvation Army (ARSA) attacks three police posts in Maungdaw and Rathedaung townships, killing nine police officers. The military responds with a major security operation marked by widespread human rights violations. More than 87,000 Rohingya flee to Bangladesh over the next 10 months.

March 2017: The UN Human Rights Council (HRC) establishes an independent, international Fact Finding Mission (FFM) to establish the facts and circumstances about human rights violations in Myanmar, and in particular in Rakhine State.

24 August 2017: The Advisory Commission on Rakhine State presents its final report. The government welcomes the report and agrees to implement recommendations.

25 August 2017: Hours later, ARSA launches coordinated attacks on around 30 security posts in townships in northern Rakhine State. The military responds with a brutal campaign of violence against the Rohingya community, committing crimes against humanity. More than 600,000 Rohingya flee to Bangladesh over two months.

17 October 2017: The Office of the President establishes the Committee for the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine. The Committee chaired by Aung San Suu Kyi is set to "carry out the effective provision of humanitarian aid; coordinate the resettlement and rehabilitation efforts; and carry out regional development and work towards durable peace."

EXECUTIVE SUMMARY

> **"I don't even know where to start and where to end… Since 2012 there has been such a lack of everything. We don't have access to healthcare, to education, there are restrictions on travelling. We can't go anywhere on the road because there are checkpoints along the way. We are struggling for survival, our children are struggling for their future… It's like being caged without a roof"**
>
> Faisal (not his real name), a 34-year-old Rohingya man living in a village in Mrauk-U township.

The situation for Myanmar's Rohingya minority has deteriorated dramatically since August 2017, when the military unleashed a brutal campaign of violence against the population living in the northern parts of Rakhine State, where the majority of Rohingya normally live. This campaign, launched in response to coordinated attacks on security posts by the armed group the Arakan Rohingya Salvation Army (ARSA), was unlawful and grossly disproportionate. Instead of attempting to bring the assailants to justice, it targeted the entire Rohingya population on the basis of their identity.

To date, more than 600,000 women, men and children have fled into neighbouring Bangladesh, where they have brought with them accounts of killings, torture, rape and burning of entire villages by the Myanmar security forces, often accompanied by local vigilantes. The UN has described the situation as a "textbook example of ethnic cleansing", while Amnesty International has concluded the military's actions amount to crimes against humanity.

This report exposes the human rights crisis that was, and remains, the backdrop to the current crisis. The report maps in detail the violations, in particular discrimination and racially-based restrictions in law, policy and practice that Rohingya living in Rakhine State have faced for decades, and how these have intensified since 2012, following waves of violence between Muslims and Buddhists, often supported by security forces.

The authorities' response was to separate communities, essentially segregating Muslims from the rest of Rakhine State society. Since then, and as Faisal's words attest, almost every aspect of their lives has been severely restricted, and for five years their human rights – including to freedom of movement, to a nationality, to adequate healthcare, education, work and food – have been routinely violated.

These human rights violations may not be as visible as those that have hit headlines in recent months, but that does not make them any less serious. What Amnesty International has uncovered in Rakhine State is an institutionalized system of segregation and discrimination of Muslim communities.

In the case of the Rohingya this is so severe and extensive that it amounts to a widespread and systemic attack on a civilian population, which is clearly linked to their ethnic (or racial) identity, and therefore legally constitutes apartheid, a crime against humanity under international law.

Understanding this apartheid system, how it manifests itself and how it is enforced, is essential both to understanding the root causes of the current Rakhine State crisis and to seeking solutions to it. While the Myanmar authorities have often been quick to frame the situation in Rakhine State as one of inter-communal tension or more recently in terms of a "terrorist" threat, the reality is that the state itself plays a central role in the systemic discrimination and segregation of Rohingya and other Muslim communities in Rakhine State.

The situation must not be allowed to continue. It is not just unacceptable and unlawful, it is unconscionable. The government, and the international community, cannot expect to address the plight of Rohingya refugees from Rakhine State without tackling its root causes, and particularly the systematic violations that have gone on for years, and are still ongoing, in the state itself.

Failure to do so will only further entrench discrimination, perpetuate human suffering and risks exacerbating conflict. Dismantling this system of apartheid is essential to ensure the dignified return of the hundreds of thousands of Rohingya who have fled death, destruction and poverty in Myanmar, but is equally pressing for the hundreds of thousands who continue to live in in Rakhine State and who remain subject to this appalling regime.

UNDERSTANDING ROOT CAUSES: SYSTEMIC DENIAL OF HUMAN RIGHTS

In the five years since the 2012 violence, Myanmar's state policy has been one of institutionalized discrimination and segregation of Rohingya and other Muslim communities from the rest of Rakhine State society, and for most, from Myanmar as a whole. Longstanding restrictions on the Rohingya population living in northern Rakhine State have tightened, and policies of discrimination and segregation have expanded, now affecting Muslims across the state. Today, virtually every aspect of Rohingya and other Muslims' lives have been restricted, and their rights routinely violated.

DENIAL OF THE RIGHT TO A NATIONALITY

The Rohingya have no clear legal status in Myanmar. They cannot even be described as "second class citizens" since most are not recognized as citizens at all, having been effectively deprived of a nationality as a result of discriminatory laws, policies and practices, most significantly the 1982 Citizenship Law and its application. The law discriminates on racial grounds and in Rakhine State was implemented in a way which allowed the Myanmar authorities to strip the Rohingya *en masse* of citizenship rights and status. Rohingya are not considered among the "national races" of Myanmar, including those identified in law, a situation which has created a clear "racial" perception of "us and them".

To make matters worse, authorities in Rakhine State have engaged in an active policy of depriving Rohingya of vital identity and residency documentation. Rohingya families find it extremely difficult, in some cases impossible, to register newborn babies, while in northern Rakhine State, Rohingya who are not present during mandatory annual "household inspections" risk being deleted from official residency lists. Without proof of residence it is extremely difficult to acquire any form of citizenship in the future, and for those who have left Myanmar, whether they were driven out by violence or left in search of education and livelihood opportunities, it means it is virtually impossible to return.

Government attempts to resolve the status of Rohingya through a citizenship "verification" process have been deeply problematic, and will be as long as the process uses the 1982 Citizenship Law as its basis. This law is blatantly discriminatory on racial grounds, and establishes different "classes" of citizen, some of whom are entitled to greater rights than others. Lack of citizenship has had a cascade of negative impacts for the Rohingya, who find other rights, such as freedom of movement, access to healthcare, education and work opportunities, severely restricted as a result.

EXTREME RESTRICTIONS ON FREEDOM OF MOVEMENT

Since 2012, long-standing state-imposed restrictions on movement for the Rohingya have tightened, and in many ways have expanded. Movement restrictions include formal government-imposed restrictions implemented by the state against the Rohingya specifically, and informal restrictions on Muslim communities more generally which are communicated verbally by state officials. Self-imposed limitations on movement by communities fearful of inter-communal violence have also limited movement. While movement restrictions manifest themselves differently in different parts of the state, in all places they target the Muslim population in a discriminatory manner, controlling and regulating their movement in order to segregate them from other communities.

All Rohingya in Rakhine State are required to obtain official permission to travel between townships and out of the state to other parts of the country. Permits can only be obtained – if at all – through excessively bureaucratic and time-consuming procedures. In the northern townships of Maungdaw and Buthidaung, until recently home to the vast majority of Myanmar's Rohingya, travel between villages is also tightly controlled by permits and checkpoints, and Rohingya are vulnerable to threats, physical violence constituting torture or other ill-treatment, and extortion. Continuous 'curfew' orders which prohibit people from being outside their homes and travelling at night have been disproportionately applied in the area, and have further exacerbated restrictions on movement.

Rohingya and other Muslim communities living in other areas of Rakhine State are either confined to their villages or to displacement camps which were established in the wake of the 2012 violence and have become an alarmingly permanent fixture in the state. In these areas, Rohingya and other Muslim communities are unable to travel to their nearest towns, and in central Rakhine State townships, are only able to travel to other Muslim villages via waterways.

Communal tensions also play a role in movement restrictions, and five years of segregation has significantly eroded trust between communities who fear fresh outbreaks of violence. Lack of trust in the state security forces and consistent state failures to take effective action against threats and violence has only made the situation worse. All communities, but especially Rohingya and other Muslims, are at risk from a state policy that has fostered rather than challenged discrimination.

WIDE-RANGING VIOLATIONS OF ECONOMIC AND SOCIAL RIGHTS

Movement restrictions and other policies of segregation have had serious consequences on the enjoyment of other rights, and prevent Rohingya and Muslims in Rakhine State from accessing health care, education and livelihood opportunities.

Rohingya and other Muslims also face multiple arbitrary restrictions on their ability to access health care, including life-saving emergency medical treatment. In the northern townships of Maungdaw and Buthidaung, travel permits and checkpoints delay Rohingyas' access to local hospitals, health centres and clinics, while a curfew makes it impossible to travel and seek emergency treatment at night. In townships in central Rakhine State, Rohingya are unable to access their nearest towns, and thus their nearest hospitals. Muslims living across the state can only access better equipped facilities at Sittwe General Hospital in cases of serious medical emergency with prior approval from the authorities. Those who make it there are kept in segregated wards, where they are vulnerable to extortion.

Since 2012, segregation and discrimination have resulted in many Muslim children in Rakhine State villages being unable to access official government education, either because they are not allowed to attend schools with ethnic Rakhine children, or because government teachers have refused to come to schools in Muslim villages and village tracts. The government has failed to provide adequate alternatives, and as a result Muslim students have often been left to rely on local community schools staffed by untrained volunteer teachers. Government-imposed restrictions also mean that since 2012 Muslims have not been able to access higher education at the state university in Sittwe. Because Rohingya are not allowed to travel outside of Rakhine State without official permission, this essentially means they cannot access university education. Without comprehensive access to education, it is hard for Rohingya and others Muslims to build a better life for themselves and their families.

While Rakhine State is an extremely poor state and all communities suffer from lack of access to jobs, the situation is compounded for Rohingya and other Muslim communities as movement restrictions prevent them from accessing places they rely on for their livelihoods such as farmlands, fishing areas, and local markets. The inevitable result is that most Rohingya and other Muslims are poor. Many Rohingya are dependent on humanitarian assistance for their basic survival, and their situation and overall food security is further threatened by government-imposed restrictions on international aid access. According to UN agencies, northern Rakhine State, where most Rohingya lived until recently, has alarming rates of malnutrition, in particular among children.

SYSTEMIC SOCIAL AND POLITICAL EXCLUSION

Muslim communities in Rakhine State are prevented from freely practicing their faith. In Rohingya communities in northern Rakhine State, gatherings of more than four people in one place are prohibited, which essentially prevents them from worshiping together. When they do gather to worship, it is often in secret, risking arrest or extortion. Across Rakhine State, and indeed Myanmar as a whole, Muslim communities face severe difficulties repairing and renovating mosques and other religious buildings. In towns outside of northern Rakhine State, mosques are shuttered, left as they have been since the 2012 violence.

Restrictions on movement and policies of segregation make it almost impossible for Rohingya and Muslims in Rakhine State to gather, mobilise and advocate collectively for their rights. Cut off from much of the outside world, those who speak out risk arrest, detention and torture or other ill-treatment. Adding to Rohingyas' isolation was their exclusion from participation in the 2015 general elections on blatantly discriminatory grounds relating to their lack of citizenship status. This exclusion was further cemented when all Rohingya candidates applying to contest the 2015 general election were disqualified either on the basis of their citizenship status or the status of their parents. The result was the total political disenfranchisement of hundreds of thousands of Rohingya.

This social and political exclusion risks deepening still further in the aftermath of the August 2017 attacks. Tensions in Rakhine State, and Myanmar as a whole, are high, in particular anti-Rohingya and anti-Muslim sentiment. The civilian government has to date failed to de-escalate the situation or counter rising discrimination and advocacy of hatred. Instead, they have inflamed the situation through derogatory statements about the Rohingya and deeply irresponsible accusations against international aid organizations operating in Rakhine State.

Meanwhile, there is no indication that the government will ensure accountability for the horrific violence perpetrated against the Rohingya during recent military campaigns. In mid-November, an internal military probe claimed security forces had not committed any human rights violations in northern Rakhine State.

A SYSTEM, AND A CRIME, OF APARTHEID

Almost every institution of the state, at the township, district, state and even Myanmar-wide levels, is involved in the discrimination and segregation of the Rohingya community and Muslims generally in Rakhine State. The discriminatory and excluding regime described in this report is created by numerous laws, regulations, policies and practices. It is impossible for officials in Rakhine State and in Myanmar generally to maintain and enforce such a system without being fully aware of, and therefore fully responsible for, the atrocious consequences it has for the life of the Rohingya population.

Amnesty International has concluded, after careful consideration of the factual findings presented in this report, that these laws, policies and practices form part of a systematic attack against a civilian population and that crimes committed within the context of this attack constitute crimes against humanity as defined in international law. Specifically, the racial base of the discrimination against and segregation of the Rohingya, the way in which they have been characterized as "outsiders", and the laws, policies and practices' clear aim of dominating and isolating these communities have led us to conclude that they amount to the crime against humanity of apartheid.

Under the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the International Criminal Court (ICC), apartheid is defined as a crime against humanity covering a range of acts, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and with the intention of maintaining that regime. Specific acts committed in this context and criminalized as apartheid range from openly violent ones such as murder, rape and torture to legislative, administrative and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and deny them basic human rights and freedoms.

A clear example of where officials in Rakhine State have combined regulatory and violent acts, is their imposition of a ghetto-like existence on the Rohingya through extreme restrictions on freedom of movement, which constitutes the crime of "severe deprivation of physical liberty" as defined in the Rome Statute.

The crimes against humanity committed by Myanmar security forces on the Rohingya civilian population in October 2016 and August 2017, crimes of murder, torture, rape, forcible displacement or transfer of population, persecution, enforced disappearance, and other inhuman acts were additional manifestations of the crime against humanity of apartheid.

Entrenched discriminatory attitudes within Rakhine State also play a significant role in the current situation, and communal tensions and mistrust have only increased during the past five years, though that too is partially attributable to government policies and practices. The State has often fostered rather than challenged discrimination.

The situation in Rakhine State raises a further complexity: the enduring role of the military in Myanmar's political and social life. Ultimately, many of the ministries and departments responsible for violations identified in this report or for failure to prevent abuses, are not under the control of the civilian administration but the military authorities. The General Administration Department (GAD), the police, the Boarder Guard Police and the Army itself, all fall under the control of the army's Commander in Chief, not the civilian government, which under the Constitution has no powers over it. While State Counsellor Aung San Suu Kyi and her civilian-led administration can seek solutions for the situation, the reality is that without the support or at least acquiescence of the military, the situation is unlikely to improve.

None the less, the situation cannot continue. While the emergence of the Rohingya armed group has added a further layer of complexity to the situation in Rakhine State, the security forces' response has been completely out of proportion and criminal under international law. Rather than seek to arrest suspected perpetrators, security forces appear to have used the threat of "terrorist" attacks to deliberately target the Rohingya population and inflict new suffering on them. The government, and the international community, cannot expect to address the situation in Rakhine State without tackling its root causes.

While the NLD-led government has repeatedly stated it sees prioritizing investment and development of Rakhine State as a key solution, such development must not be planned without effective action to address the structural discrimination Rohingya face in Myanmar, and in Rakhine State in particular. Development without addressing discrimination will entrench and amplify existing inequalities thereby exacerbating conflict and perpetuating human rights violations and abuses.

KEY RECOMMENDATIONS

At the end of this report, Amnesty International makes extensive and wide-ranging recommendations to the Myanmar government, the United Nations (UN) and other stakeholders.

The Myanmar government must as a matter of priority dismantle the regime of apartheid currently in place. Amnesty International is calling on the authorities to:

- Urgently adopt a comprehensive action plan on combating discrimination and segregation, with the active consultation and cooperation all stakeholders. The plan should include a defined timeline and specific targets, identify necessary financial, human and technical resources, and designate bodies responsible for its implementation and monitoring, and a mechanism of yearly public reporting on progress. Specific efforts should be made to consult women and address the gendered impacts of discrimination and segregation;
- Undertake a review of all laws, regulations, policies and practices which discriminate on racial, ethnic or religious grounds to bring them into line with international human rights law and standards. Particular attention should be paid to local regulations issued in northern Rakhine State, and which discriminate against Rohingya and other Muslims either explicitly or through their implementation or impact; and
- Ensure accountability for crimes against humanity and other serious violations and abuses of human rights. Where there is sufficient, admissible evidence, those reasonably suspected of criminal responsibility, including command responsibility, must be brought to justice in proceedings which meet international standards of fairness without recourse to the death penalty. Victims and their families should be provided with reparations. If the authorities fail to ensure domestic accountability they must fully cooperate with all international efforts to ensure accountability including through investigations and prosecutions by international tribunals or foreign jurisdictions.

Resolving the situation in Rakhine State and creating an environment in which all people can exercise their human rights will require significant resources and investment, and Myanmar will require international support. It is essential that international donors, partners and others ensure that such development is undertaken in a way which benefit all communities without distinction and ensures respect for and protection of human rights.

Amnesty International is therefore calling on the international community to:

- Ensure that any international aid, development projects or financial assistance in Rakhine State are explicitly conditioned on non-discrimination, non-segregation and equality. Conduct rigorous and ongoing assessments of all projects and assistance operations to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation, whether directly or indirectly; and
- Ensure accountability for human rights violations and crimes against humanity, either through supporting and monitoring investigations and prosecutions by Myanmar or through carrying out such investigations and prosecutions under universal jurisdiction.

Amnesty International is further calling on the UN to:

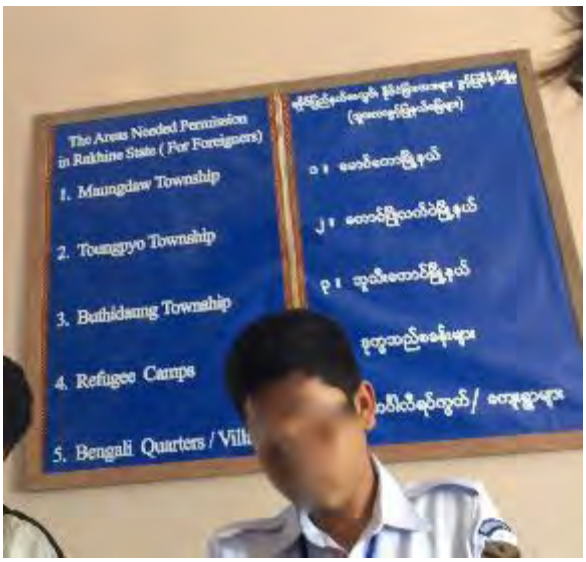
- Ensure human rights are given sufficient prominence and resources across all UN operations relating to Myanmar, and develop a comprehensive plan for operationalizing the Human Rights Up Front initiative. This should include detailed timelines for implementation, clearly identified indicators of success and an early warning mechanism designed to prevent and respond to serious human rights violations.

METHODOLOGY

The research for the report was carried out between November 2015 and September 2017, and included four field trips to Rakhine State, over 200 interviews, extensive review of legislation, academic and other literature, as well as review of photographs, videos and other documentation.

Amnesty International representatives interviewed 166 people living in Rakhine State. Most interviews were conducted in person during field research in November 2015, and in February, March and September 2016. Interviews were conducted with people who identified themselves as being of Rohingya, Rakhine, Kaman, Maramagyi, or Mro ethnicity, and with individuals who identified as being of Muslim, Buddhist, Christian and Hindu faiths. Further interviews were conducted in Yangon during March and September 2016 and May 2017. Some people were interviewed multiple times, and remained in close contact with Amnesty International up until the time of publication. For security reasons and as a result of restrictions on access, 15 interviews were conducted by telephone.

Rakhine State has a total of 17 townships which are grouped together in to five administrative areas known as districts. Amnesty International representatives travelled to five townships in three different districts: Maungdaw and Buthidaung townships in Maungdaw District; Kyauktaw and Mrauk-U townships in Mrauk-U District; and Sittwe township in Sittwe District. They visited a total of 38 locations comprising: 31 villages, some of which were directly affected by the 2012 violence and others which were not; the Aung Mingalar Muslim quarter in Sittwe; and four Internally Displaced Persons (IDP) camps and two IDP resettlement sites in Sittwe township. Some locations were visited several times. Telephone interviews allowed researchers to gather information from a further five locations, including three villages in Rathedaung township. These locations were chosen because they have larger populations of Muslims living outside of displacement camp settings.



Access to Rohingya communities in Rakhine State is extremely restricted, and foreigners are required to apply for permission to travel to the northern townships of Maungdaw and Buthidaung; to visit Rohingya villages across Rakhine State; the Aung Mingalar Muslim enclave in Sittwe township; and the IDP camps which are home to tens of thousands of Rohingya and other Muslims. Amnesty International extends its appreciation to the Rakhine State government for granting its researchers access to these areas.

Sign at Sittwe airport, makes clear that foreigners need official permission to visit Rohingya areas (called Bengali in Myanmar), March 2016. ©Amnesty International

Amnesty International researchers met with township and state level government officials in Rakhine State; current and former members of the security forces; staff at the state general hospital in Sittwe; Rohingya and Rakhine activists and religious leaders; UN and international non-governmental organizations (INGO) representatives, academics, journalists and other relevant stakeholders.

All interviewees were informed about the nature and purpose of the research 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, and confirmed again at the end of the interview. No incentives were provided to interviewees in exchange for their accounts.

Researching human rights violations in Rakhine State is challenging, in particular because of pervasive surveillance and monitoring by the state security forces. While interviewees were keen to provide information to Amnesty International, they expressed concerns that there would be reprisals from government authorities if they were identified as having spoken to the organization. The risk of retaliation and hostility from hard-line nationalist groups also makes researching abuses against Muslim communities in Rakhine State difficult. These risks are not only felt by Rohingya and other Muslim communities, but also by members of other ethnic and religious groups, among them Buddhists and ethnic Rakhine and members of civil society and community members. As a result, pseudonyms have been used in most cases, and information that could identify interviewees has been withheld for their security.

International humanitarian organizations and other agencies operating in Rakhine State are also fearful of reprisals by the government or members of hardline nationalist groups if they speak out about the situation in Rakhine State. Most organizations Amnesty International met with during the course of this research asked not to be identified, and in some cases expressed concern about even meeting Amnesty International's representatives in country for fear it could expose their staff and beneficiaries to risk or affect their operational access.

Amnesty International extends its thanks to the individuals and organizations who consented to meet with its representatives and provided information for this report. In particular, the organization is deeply grateful to the victims, their families and representatives who shared their stories, often at great personal risk, and entrusted Amnesty International with raising their experiences and concerns.

Amnesty International actively sought to engage with the Myanmar authorities in relation to our findings and travelled to Nay Pyi Taw in July and September 2017 to meet with government officials and seek their input and feedback on some of the findings outlined in this report. Representatives of the organization met with officials from the Ministry of Social Welfare, Relief and Resettlement and the Ministry of Education, and information provided in these meetings is reflected in this report. In October 2017, the organization met with the State Counsellor to discuss some of our findings and recommendations. Amnesty International also sent an advanced copy of the report to the State Counsellor the week prior to publication.[1]

In addition to field research, Amnesty International analysed relevant legislation, regulations and other official documents – including 16 local orders issued by authorities in northern Rakhine State, the most recent of which is dated August 2017. The organization also reviewed reports from UN agencies, national and international NGOs and humanitarian organizations, local monitoring groups and the media. The organization also reviewed photographic and video evidence linked to specific cases of human rights violations, all of which remain on file.

TERMINOLOGY AND LOCATIONS

The word Rohingya is extremely sensitive in Myanmar, and has become increasingly politically charged. Successive governments have refused to use the term, as have many people across the country, asserting that there is no such group in Myanmar. Instead, Rohingya are often referred to as "Bengalis", a divisive term used to imply that the Rohingya are migrants from Bangladesh, or the pejorative "kalar".[2] After the NLD-led government came to power in March 2016, Aung San Suu Kyi asked diplomats to "refrain" from using the word Rohingya, and instead refer to them as "Muslims living in Rakhine State."[3]

[1] TG ASA 16/2017.036.
[2] A derogatory term, derived from the Sanskrit for "black" used in Myanmar to describe Muslims, Indians or others of South Asian descent.
[3] Richard C. Paddock, 'Aung San Suu Kyi Asks U.S. Not to Refer to 'Rohingya'", *The New York Times*, 6 May 2016, www.nytimes.com/2016/05/07/world/asia/myanmar-rohingya-aung-san-suu-kyi.html

The request was met with international criticism, although it is less often reported that Aung San Suu Kyi also instructed government officials to stop referring to the community as Bengali, even though the request is often ignored.[4]

While noting these sensitivities, Amnesty International recognizes that people have a right to self-identify, which is established in international human rights law and standards.[5] Amnesty International asked all interviewees in Rakhine State how they would describe their ethnicity and religion, and they are referred to in this report using the ethnicity and religion with which they self-identified.

Locations in Rakhine State are referred to differently by different organizations and entities. For the purposes of this report, "northern Rakhine State" refers to the two northern townships of Maungdaw and Buthidaung, which together fall under the administrative authority of Maungdaw District. Until recently, northern Rakhine State was home to the vast majority of Myanmar's estimated one million Rohingya. The term "central Rakhine State" is used to refer to Mrauk-U, Kyauktaw and Rathedaung townships. While Sittwe township is part of central Rakhine State, for the purposes of this report it is referred to distinctly as Sittwe township, and locations within are described as being either in Sittwe town, surrounding villages, or displacement camps.

As previously stated, Rakhine State is divided into five districts, each of which contains several townships. Townships are comprised of towns and village tracts, and towns are further divided in to wards and quarters, while village tracts contain several villages and hamlets. In each township across Rakhine State, the main town bears the name of the township it is in, thus Maungdaw town is in Maungdaw township.

Each town is the administrative centre of the township, and home to most state institutions and offices, including the GAD, which oversees all aspects of local administration, township police headquarters, immigration offices, hospitals and courts. Each village tract, ward and quarter is overseen by an administrator (Village Administrator, Ward Administrator or Quarter Administrator), who is an official government employee. As their title suggests, Village, Ward and Quarters Administrators are responsible for the administration of their respective village tract, ward or quarter, including registering births and deaths. Individual villages and hamlets are usually informally administered by local leaders.[6]

[4] Lun Min Maung, 'State counsellor urges avoidance of words 'Rohingya' and 'Bengali'', *The Myanmar Times*, 26 May 2016, www.mmtimes.com/index.php/national-news/yangon/20438-state-counsellor-urges-avoidance-of-words-rohingya-and-bengali.html

[5] See box: International law and the right to self-identify.

[6] For further information about how the General Administration Department (GAD) administers Myanmar from the national level down to the village level, see Kyi Pyar Chit Saw and Matthew Arnold, *Administering the State in Myanmar*, Asia Foundation, October 2014, asiafoundation.org/resources/pdfs/GADEnglish.pdf

1. BACKGROUND

Rakhine State is situated in the west of Myanmar (see maps page 6 and 7). Bordering Bangladesh at its most northerly tip, its coastal plains are separated from the rest of Myanmar by the Rakhine Yoma mountain range. Its coastline extends some 500km south along the Bay of Bengal which lies to the west. Despite its strategic location and a wealth of natural resources, it remains one of the poorest states in Myanmar, characterized by decades of chronic underdevelopment and economic marginalization. Most of the population live in rural areas where they work in agriculture.

The state is a diverse region, home to around 3.2 million people of different ethnicities and religions. The population comprises several communities, or groups, who self-define in terms of ethnicity, religion or both. The vast majority of the population is ethnic Rakhine, who are predominantly Buddhist, while the mainly Muslim Rohingya constitute the second largest group. A small number of other minorities, including ethnic Kaman (another predominantly Muslim group), Chin, Mro and Maramagyi (who are Buddhist, Christian or Animist), live in the state. The state is also home to a small Hindu community.

LIMITATIONS IN AVAILABLE DATA ON THE ROHINGYA POPULATION IN RAKHINE STATE

Establishing precise figures for the Rohingya population living in Rakhine State is difficult as the Rohingya were not enumerated in Myanmar's 2014 national census. Shortly before the population count, the Government of Myanmar reneged on a promise to allow individuals to self-identify in the data collection forms, and instead required Rohingya to register as "Bengali", a term which they categorically reject.[7] As a result, Rohingya refused to register and were not included in the count. According to the final report of the 2014 Population and Housing Census, 1,090,000 people, all believed to be Rohingya/Muslims, were not enumerated out of a total population of 3,188,963 people for Rakhine State.[8]

In 2017, the number of Rohingya living in Rakhine State dramatically decreased following an ethnic cleansing campaign by Myanmar's military in response to coordinated attacks on security force posts by a Rohingya armed group on 25 August 2017. As of 5 November 2017, 615,500 people, almost all Rohingya, had fled Myanmar to Bangladesh. Most of them fled their homes in the northern townships of Maungdaw, Rathedaung and Buthidaung.[9] This group joined some 87,000 Rohingya who had fled northern Rakhine State as the result of a disproportionate military response to similar, smaller-scale, attacks on security posts by the same armed group on 9 October 2016.[10]

The lack of official data means that it is difficult to establish exactly how many Rohingya lived, and still live, in different parts of the state. According to the Myanmar government the vast majority of Muslims, some 755,371 people, lived the two northern townships of Maungdaw and Buthidaung,[11] while an estimated 395,000 Muslims lived in the rest of the Rakhine State. Most Rohingya living outside of the northern

[7] United Nations Population Fund (UNFPA), *UNFPA Concerned about Decision Not to Allow Census Respondents to Self-Identify as Rohingya*, 1 April 2014, myanmar.unfpa.org/news/statement-unfpa-concerned-about-decision-not-allow-census-respondents-self-identify-rohingya. International Crisis Group (ICG), *Counting the costs of Myanmar's problematic census*, Crisis Group Asia Briefing N°144, 15 May 2014, p. 13.

[8] Republic of the Union of Myanmar, *The 2014 Population and Housing Census, Rakhine State, Census Report Volume 3-K*, May 2015, p.8, www.themimu.info/sites/themimu.info/files/documents/Census_Rakhine_Report_Eng_2015.pdf

[9] Inter Sector Coordination Group, *Situation Update: Rohingya Refugee Crisis Cox's Bazar*, 12 November 2017, reliefweb.int/sites/reliefweb.int/files/resources/171112_weekly_iscg_sitrep_final_0.pdf

[10] International Organization for Migration (IOM), *Bangladesh: Needs and Population Monitoring Undocumented Myanmar Nationals in Teknaf and Ukhia, Cox's Bazar*, July 2017, reliefweb.int/sites/reliefweb.int/files/resources/170814_NPM_RIV_Final.pdf

[11] Summary of the Report of the Investigation Commission for Maungdaw in Rakhine State, 6 August 2017, on file with Amnesty International.

townships of Maungdaw, Buthidaung and Rathedaung remain in Myanmar, as they were not directly affected by the military violence of October 2016 and August 2017. Some 120,000 of them live in displacement camps or in host communities.[12]

1.1 A HISTORY OF DISCRIMINATION AND PERSECUTION

The history of Rakhine State, and in particular the Rohingya's place in it, is heavily contested. Successive governments have denied the existence of the Rohingya as an ethnic group of Myanmar, insisting instead that they are migrants from Bangladesh who settled in the country "illegally", and refer to them as "Bengalis". This sentiment is shared by much of the wider Myanmar society, and there is a great deal of hostility towards the Rohingya community across the country.

The Rohingya, however, assert long-standing ties with Rakhine State, citing a long documented history of Muslim residence and influence in the region, stretching back centuries.[13] While the precise origins of the term Rohingya are unclear (and also contested), the reality is that the overwhelming majority of Rohingya and other Muslims living in Rakhine State (as well as those who have recently fled from Rakhine State to Bangladesh and other states) were born in Myanmar, as were their parents.[14] Virtually all of them have no citizenship and no reasonable claim to citizenship other than in Myanmar.

Despite this, the vast majority of Myanmar's Rohingya have no legal status, having been effectively deprived of a nationality as a result of discriminatory laws, policies and practices, most significantly the 1982 Citizenship Law and its application. The law discriminates on racial grounds and in Rakhine State, was implemented in a way which allowed the Myanmar authorities to strip the Rohingya *en masse* of citizenship rights and status (for more information on the denial of a legal status, see Chapter 2, section 2.1).

In addition to violations of their right to a nationality, Rohingya have over several decades been subjected to widespread and systematic human rights violations by successive governments. These violations, at the heart of which lies systematic racial and religious discrimination, include severe and arbitrary restrictions on their freedom of movement which have negatively impacted access to healthcare, education and livelihood opportunities; unlawful killings; arbitrary detentions; torture and other ill-treatment; forced labour; land confiscations and forced evictions in addition to various forms of extortion and arbitrary taxation.[15] Most of these violations continue to this day and are documented in detail this report.

In addition to discriminatory policies, the Rohingya have been subjected to waves of violence at the hands of the state, often forcing many to flee Myanmar and seek refuge in neighbouring countries, mainly in Bangladesh. In 1978, up to 200,000 Rohingya fled Myanmar during and after a major military crackdown on "illegal immigration" codenamed "Operation *Nagamin*" (Dragon King).[16] In Rakhine State, the crackdown was accompanied by reports of wide-ranging human rights violations against the Rohingya, including unlawful killings, rape and destruction of property.[17] A further 250,000 Rohingya are estimated to have fled in 1991 and 1992, amidst reports of forced labour, summary executions, torture including rape and arbitrary detention by Myanmar security forces.[18] In 2001, anti-Muslim riots across Myanmar also affected Rakhine State and again led to displacement of Rohingya.[19]

[12] Unofficial, Office of the Coordination for Humanitarian Affairs (OCHA) planning estimates, on file with Amnesty International. Of the estimated 40,000 Rohingya living in Rathedaung prior to the 25 August 2017 attacks, around 30,000 have since fled Myanmar.
[13] Amnesty International interviews November 2015, March and September 2016, May 201. ICG, *Myanmar: The Politics of Rakhine State*, Asia Report No. 261, 22 October 2014; Green, P., MacManus, T., de la Cour Venning, A. *Countdown to Annihilation: Genocide in Myanmar*, International State Crime Initiative, 2015.
[14] Amnesty International interviews, Yangon, September 2016, May 2017, and correspondence November 2017.
[15] Amnesty International, *Union of Myanmar (Burma): Human Rights Abuses against Muslims in the Rakhine (Arakan) State*, (Index: ASA 16/06/02), 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.
[16] HRW, *Burma: The Rohingya Muslims: Ending a Cycle of Exodus?*, September 1996, p. 10 and p. 12.
[17] Martin Smith, *The Muslim "Rohingyas" of Burma*, Paper delivered at Conference of Burma Centrum Nederland, 11 December 1995, p. 9.
[18] Amnesty International, *Union of Myanmar (Burma): Human Rights Abuses against Muslims in the Rakhine (Arakan) State*, May 1992.
[19] HRW, *Crackdown on Burmese Muslims*, July 2002, p. 10-12.

INTERNATIONAL LAW AND THE PRINCIPLE OF NON-DISCRIMINATION

"Everyone is entitled to the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The Universal Declaration of Human Rights (UDHR).[20]

As a member state of the UN, Myanmar is obliged, under the UN Charter, to encourage respect for human rights for all "without distinction as to race, sex, language, or religion."[21] This principle of non-discrimination is one of the most fundamental principles underpinning international human rights law, and appears in virtually every major human rights treaty or instrument.

Moreover, it is recognized as a rule of customary international law (that is, an international rule derived from consistent state practice and consistent reception by states of the rule as binding on them), and as such is legally binding on all states, including Myanmar, irrespective of whether or not it has ratified relevant treaties. Thus, the International Court of Justice has stated that the prohibition of racial discrimination is a legal obligation for all states.[22] This obligation is also reinforced in Myanmar's obligations as a state party to the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)[23] and the Convention on the Rights of the Child (CRC).[24]

Article 1 of the UN International Convention on the Elimination of All Forms of Racial Discrimination (CERD) elaborates the non-discrimination principle by defining "racial discrimination" a" meaning "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."[25]

The UN Committee on Economic, Social and Cultural Rights, the expert body charged with overseeing the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), describes discrimination as "any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights."[26]

Under the International Covenant on Civil and Political Rights (ICCPR), even measures taken "in time of public emergency which threatens the life of the nation" may not "involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."[27]

Discrimination can take different forms. It can be formal, for example written into legislation or policy documents, or substantive, that is, consisting of practices and attitudes which cause or perpetuate substantive or de facto discrimination. Discrimination can be direct (individuals in the same situation are treated differently) or indirect (individuals are disproportionately impacted by a law or policy which on face value appears to be neutral). Discrimination also includes incitement to discrimination and discrimination-based harassment.[28]

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[20] Universal Declaration of Human Rights (UDHR), UNGA res. 217 A(III), adopted 10 December 1948, Article 2.
[21] Charter of the UN, adopted and signed on 26 June 1945, entered into force 24 October 1945, Articles 1(3), 55(c) and 56.
[22] International Court of Justice (ICJ), *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)* (1962-1970), Second Phase, Judgment ICJ Reports, 1970, paras 33-4
[23] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979 entry into force 3 September 1981, for instance Articles 2-3.
[24] Convention on the Rights of the Child (CRC), adopted 20 November 1989, entered into force 2 September 1990, Article 2.
[25] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted 21 December 1965, entered into force 4 January 1969, Article 1.
[26] Committee on Economic, Social and Cultural Rights (CESCR), *General Comment 20: Non-discrimination in economic, social and cultural rights* (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), UN Doc: E/C.12/GC/20, 2 July 2009, para. 7. Myanmar signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 16 July 2015, however has yet to ratify it.
[27] International Covenant on Civil and Political Rights (ICCPR), adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976, Article 4.
[28] CESCR, General Comment 20, paras 7-10.

1.2 THE 2012 VIOLENCE AND DISPLACEMENT

In June 2012, while Myanmar was experiencing unprecedented economic, social and political reforms under the quasi-civilian administration of President Thein Sein, violence erupted in Rakhine State between Buddhists on the one hand, and Rohingya and other Muslim groups on the other. The large-scale violence started soon after the rape and murder of a Buddhist Rakhine woman allegedly by Muslim men in Thandwe township, and the subsequent revenge killing of 10 Muslim men in Ramree township, both in southern Rakhine State.

Rioting quickly spread to townships across the state, and sporadic incidents of violence continued in the following months until a major escalation occurred in October 2012. In total, over 200 people were killed during the violence and hundreds of homes and buildings were destroyed. Tens of thousands of people, mostly Rohingya, but also ethnic Rakhine, Maramagyi and Kaman, were displaced.

The government at the time portrayed the violence as spontaneous and inter-communal in nature; however, human rights groups and other independent experts have documented what appears to have been systematically planned and well-coordinated attacks specifically targeting the Rohingya population, with security forces playing an active role in the violence in some areas and failing to protect Rohingya in others.[29] To date, there has been no independent investigation into the violence, and most of those responsible, including security forces and state officials, have not been held to account.

In an attempt to contain the violence, security forces separated the Muslim and Buddhist communities, and Rohingya and other Muslims were moved to displacement camps on the outskirts of town.[30] A smaller number of ethnic Rakhine and Maramagyi communities were also displaced, but whereas they were able to move freely and eventually leave the camps, displaced Rohingya and other Muslims were not, and have not been allowed to return to their homes or places of origin since. Five years later, an estimated 120,000 people, mostly Rohingya, remain in displacement camps and unofficial temporary shelters.[31] Most live in squalid conditions without sustained access to adequate food, medical care, sanitation facilities, and other essential humanitarian assistance.[32]

↑ *Displacement camp, Sittwe, Rakhine State, Myanmar. March 2016. ©Amnesty International*

[29] HRW, '*All you can do is pray': Crimes against humanity and ethnic cleansing of Rohingya Muslims in Burma's Arakan State*, 22 April 2013; Green, P., MacManus, T., de la Cour Venning, A. *Countdown to Annihilation: Genocide in Myanmar*, International State Crime Initiative, 2015.
[30] ICG, *Myanmar: Storm Clouds on the Horizon*, Crisis Group Asia Report N°238, 12 November 2012, p. 5.
[31] OCHA, Myanmar: IDP Sites in Rakhine State (May 2017), reliefweb.int/sites/reliefweb.int/files/resources/MMR_0367_IDP_Site_Rakhine_A0_May_2017.pdf
[32] International Rescue Committee (IRC), *Poor Shelter Conditions: Threats to Health, Dignity and Safety*, June 2017, www.rescue.org/sites/default/files/document/1664/ircsittweshelterbriefupdated.pdf; Danish Refugee Council, European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, UN High Commissioner for Refugees, CCCM Cluster, *Joint IDP Profiling Service, Sittwe Camp Profiling report*, 30 June 2017, reliefweb.int/sites/reliefweb.int/files/resources/sittwe_camp_profiling_report_lq.pdf

1.3 FURTHER VIOLENCE AND DISPLACEMENT: 2016

Tens of thousands more Rohingya were forced to flee Rakhine State between October 2016 and 24 August 2017, after the Myanmar security forces responded with a brutal campaign of violence against the Rohingya population following attacks on security posts by an armed Rohingya group, which left nine police officers dead. The first incident occurred on 9 October 2016 when an armed group now known as the ARSA[33] launched attacks on three security posts in Maungdaw and Rathedaung townships in the north of Rakhine State.

The military responded by carrying out what they have described as "clearance operations", marked by widespread and systematic human rights violations, including unlawful killings, rape and other forms of torture, enforced disappearances, and arbitrary detentions, which Amnesty International and the UN Office of the High Commissioner on Human rights (OHCHR) concluded may have amounted to crimes against humanity.[34] The violence forced around 87,000 Rohingya to flee to Bangladesh.[35]

↑ *Smouldering debris of burned houses in Maungdaw, northern Rakhine State on 14 October, 2016 © AFP/Getty Images*

[33] The group at the time identified itself as the Harakat Al-Yaqin (Faith Movement). A December report by the ICG stated 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 Rohingya living in Saudi Arabia. ICG, *Myanmar: A New Muslim Insurgency in Rakhine State*, Crisis Group Asia Report N°283, 15 December 2016. On 29 March 2017, a statement from the group announced it had changed its name to ARSA, see Joe Freeman, 'Myanmar's Rohingya Insurgency Strikes Pragmatic Note', *VOA (Voice of America)*, 30 March 2017, www.voanews.com/a/myanmar-rohingya-insurgency-strikes-pragmatic-note/3788483.html

[34] Amnesty International, *"We are at breaking point": Persecuted in Myanmar, neglected in Bangladesh* (Index: ASA 16/5362/2016), 19 December 2016; and Office of the High Commissioner for Human Rights (OHCHR), *Flash Report: Report of OHCHR mission to Bangladesh, Interviews with Rohingyas fleeing from Myanmar since 9 October 2016*, 3 February 2017, www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf

[35] IOM, *Bangladesh: Needs and Population Monitoring Undocumented Myanmar Nationals in Teknaf and Ukhia*, Cox's Bazar, July 2017, reliefweb.int/sites/reliefweb.int/files/resources/170814_NPM_RIV_Final.pdf

1.4 ARSA ATTACKS AND THE CAMPAIGN OF ETHNIC CLEANSING: 2017

Less than a year later, on 25 August 2017, ARSA launched a second wave of larger, coordinated attacks on around 30 security posts across townships in northern Rakhine State. What followed was another brutal military response, targeting the Rohingya population of northern Rakhine State as a whole. Often working with Border Guard Police (BGP) and local vigilantes, the military carried out an attack on a civilian population that was both widespread and systematic, constituting serious human rights violations and crimes against humanity.

Amnesty International and others have documented unlawful killings, rape and other crimes of sexual violence, deliberate and targeted burning of entire Rohingya villages and the laying of antipersonnel landmines by the Myanmar security forces.[36] The organization has also received reports about abuses by ARSA, but has yet to verify these.

To date more than 615,000 Rohingya have fled to neighbouring Bangladesh in what the UN High Commissioner for Human Rights has described as a "textbook example of ethnic cleansing".[37] It remains unclear if, and under what conditions, those who want to will be able to return to Myanmar. As this report will clearly show, effective action must be taken to dismantle the institutionalized system of discrimination and segregation still in place in Rakhine State, so as to enable any Rohingya who wish to go home to return to a country where their rights, dignity and safety are protected.

↑ New Rohingya refugees arrive to Bangladesh by boat from Myanmar with what few possessions they were able to carry when fleeing their villages in northern Rakhine State days before, Teknaf, Bangladesh, 28 September 2017. © Andrew Stanbridge / Amnesty International

[36] Amnesty International, *"My world is finished": Rohingya targeted in crimes against humanity in Myanmar*, 18 October 2017; *Myanmar: Scorched-earth campaign fuels ethnic cleansing of Rohingya from Rakhine State*, 14 September 2017; and OHCHR, *Mission report of OHCHR rapid response mission to Cox's Bazar*, Bangladesh 13-24 September 2017, 11 October 2017, www.ohchr.org/Documents/Countries/MM/CXBMissionSummaryFindingsOctober2017.docx

[37] Inter Sector Coordination Group, *Situation Update: Rohingya Refugee Crisis Cox's Bazar*, 12 November 2017, reliefweb.int/sites/reliefweb.int/files/resources/171112_weekly_iscg_sitrep_final_0.pdf; and UN News Centre, 'UN human rights chief points to 'textbook example of ethnic cleansing' in Myanmar', 11 September 2017, www.un.org/apps/news/story.asp?NewsID=57490#.Wf8h2Fu0PIU

1.5 THE POLITICAL CONTEXT

The recent crisis has had a major impact on efforts by Myanmar's government, headed by Aung San Suu Kyi, to try to resolve the situation in Rakhine State. Her party, the NLD took office in March 2016, just over four months after winning a landslide victory in the November 2015 general elections. 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.

Aung San Suu Kyi came to power asking for "time" and "space" to deal with the situation in Rakhine State, and in the early months of 2016 it was unclear how the new administration planned to address a situation which in many ways had been created and inflamed by its predecessor.

On 30 May 2016 the new administration formed the Central Committee on Implementation of Peace, Stability and Development of Rakhine State, chaired by Aung San Suu Kyi and comprising 27 members, most of them Union level Ministers or high-ranking Rakhine State officials.[38] The committee is mandated to work on a range of issues, including security and citizenship.[39] Over a year after its establishment, its exact mandate and activities remain unclear.

On 23 August 2016, Aung San Suu Kyi announced the establishment of the Advisory Commission on Rakhine State, chaired by former UN Secretary General Kofi Annan and tasked with proposing "concrete measures for improving the welfare of all people in Rakhine State."[40] The Commission published its final report on 24 August 2017, in which it made detailed recommendations towards ensuring freedom of movement and equal access to essential services, the closure of displacement camps, and access to citizenship among other things. The government welcomed the report and announced the establishment of a mechanism to oversee implementation of its recommendations.[41] Just hours later, ARSA attacked security posts across northern Rakhine State townships.

While the civilian government has repeatedly stated its commitment to implement the Commission's recommendations following the 25 August ARSA attacks, it is unclear to what extent it has the ability or willingness to do so. This is because despite the NLD's leading role in the civilian government, the Myanmar military retains significant political and economic power. Under the 2008 Constitution, 25% of seats in Parliament are reserved for serving military officials, giving it an effective veto over key Constitutional changes. The military also remains independent of civilian oversight, including courts, and retains control of the key ministries of Defence, Border Affairs and Home Affairs, the latter of which *inter alia* oversees the Myanmar Police Force, the BGP and GAD. These institutions play a central role in creating, maintaining and enforcing the abusive policies and practices directed against the Rohingya and other Muslims documented in this report.

The current administration also has so far shown itself to be unwilling or unable to stand up to the military when it comes to accountability for serious violations in Rakhine State, and elsewhere in the country.[42] Government officials, including Aung San Suu Kyi herself, have largely dismissed allegations of human rights violations by security forces in Rakhine State, even in the face of clear and mounting evidence. [43]

Government attempts to investigate human rights violations in the aftermath of the October 2016 ARSA attacks were neither independent nor impartial,[44] and in March 2017 the HRC adopted a resolution mandating the creation of an independent, international Fact-Finding Mission (FFM) to establish the truth

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[38] 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, www.president-office.gov.mm/en/?q=briefing-room/notifications/2016/06/01/id-6378

[39] Republic of the Union of Myanmar President's Office Notification No. 24/2016, *Formation of Working Committees on Implementation of Peace, Stability and Development of Rakhine State*, www.president-office.gov.mm/en/?q=briefing-room/notifications/2016/06/01/id-6380

[40] Ministry of the Office of the State Counsellor, *Establishment of the advisory commission on Rakhine State*, 23 August 2016, www.statecounsellor.gov.mm/en/node/228

[41] Republic of the Union of Myanmar Office of the State Counsellor, *Statement by the Office of the State Counsellor on the Final Report of the Advisory Commission on Rakhine State,* 24 August 2017, www.moi.gov.mm/moi:eng/?q=news/25/08/2017/id-11350

[42] For example in northern Myanmar, where Amnesty International and others have documented war crimes and grave violations of international humanitarian law by the Myanmar military during armed conflict. Ethnic armed groups have also committed human rights abuses against the civilian population. Amnesty International *"All the civilians suffer": Conflict, displacement and abuse in northern Myanmar* (Index: ASA 16/6429/2017), 14 June 2017.

[43] James Griffiths, 'Is The Lady listening? Aung San Suu Kyi accused of ignoring Myanmar's Muslims', *CNN,* 25 November 2016, 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, www.nytimes.com/2016/12/01/world/asia/myanmars-leader-faulted-for-silence-as-army-campaigns-against-rohingya.html

[44] Amnesty International, *National efforts to investigate Rakhine violence are inadequate* (Index: ASA 16/ 5758/2017, 21 February 2017; and The Arakan Project, *Investigation Commissions to whitewash atrocities? The need for an independent international investigation mechanism,* 15 March 2017, www.burmalibrary.org/docs23/The_need_for_an_independent_international_investigation_mechanism.pdf

about human rights violations and abuses in Myanmar, in particular in Rakhine State.[45] The move was met with strong opposition by Aung San Suu Kyi and her government which disassociated itself from the resolution. To date, the Myanmar authorities have refused to cooperate with the FFM or allow its investigating team access to the country.

Instead, and in the midst of the recent violence and the flight of more than half a million Rohingya, the civilian government has chosen to focus on repatriation, redevelopment and reconciliation in Rakhine State. On 11 October, Aung San Suu Kyi announced the establishment of the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State, tasked with providing humanitarian aid, coordinating resettlement and rehabilitation efforts and carrying out development to establish "durable peace" in the region.[46]

The body is chaired by Aung San Suu Kyi herself, with Dr Win Myat Aye, Myanmar's Minister for Social Welfare, Relief and Resettlement, the vice-chair .[47] At the time of writing, it was unclear what activities the body would undertake.

1.6 UNDERSTANDING ETHNIC RAKHINE GRIEVANCES

It is important to emphasize that all communities in Rakhine State, including the majority ethnic Rakhine who are themselves form an ethnic minority in Myanmar, have faced decades of human rights violations, including discrimination, land confiscations, forced evictions, and forced labour at the hands of the Myanmar state. [48] The vast majority of these violations have been committed with impunity. In addition, as noted above, Rakhine State continues to suffer from decades of chronic under-development, lack of investment and infrastructure and economic marginalization. Myanmar is a highly centralized state, and most economic and political power resides with the country's leaders who are mainly ethnic Burman, that is, from the largest ethnic group in the country. Ethnic Rakhine communities, and indeed other minority communities in the country, have for years complained about a lack of political autonomy, and this has in turn exacerbated fears about losing their ethnic Rakhine identity, language and cultures.

This situation has fuelled mistrust of the central government and exacerbated tensions between the ethnic Rakhine population and the Rohingya. Yet, since coming to power, the NLD-led government has been unable to alleviate many of these tensions. For instance, the decision to further centralize at the Union level decision making on Rakhine State through the establishment of various government committees, and the fact that no Arakan National Party (ANP) parliamentarians were on them, has been taken by some Rakhine as further proof that the central government is not interested in listening to their grievances.[49]

A major concern among the ethnic Rakhine community, and other non-Muslim communities, is the lack of access to livelihood opportunities, and deep frustration about the central government failures to improve the situation in the state. [50] There is also a major mistrust of the international community among the ethnic Rakhine population, and a strong belief that international aid and assistance post-2012 was and continues to be biased towards the Rohingya.

Mistrust is further fuelled by perceptions that the situation of Rohingya and other Muslims in the State receives a great deal of attention from the international media, humanitarian organizations and others, while ethnic Rakhine grievances are not acknowledged or addressed. There is also resentment about the framing of the situation in Rakhine state as inter-communal, casting the ethnic Rakhine as oppressors and Rohingya as victims, while ignoring the role that the state plays in discrimination and abuses.[51]

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[45] UN Human Rights Council (HRC) 34th session, Agenda item 4 Human rights situations that require the Council's attention…situation of human rights in Myanmar, UN Doc. A/HRC/34/L.8/Rev.1, 22 March 2017, para. 11.
[46] *Global New Light of Myanmar*, 'Join hands for peace in Rakhine', 12 October 2017, www.globalnewlightofmyanmar.com/join-hands-peace-rakhine/
[47] State Counsellor Office, *Establishment of the Committee for the Union Enterprise for humanitarian Assistance, Resettlement and Development in Rakhine*, 17 October 2017, www.statecounsellor.gov.mm/en/node/1102
[48] Earth Rights International, *The Burma-China Pipelines: Human Rights Violations, Applicable Law, and Revenue Secrecy*, Situation Briefer No. 1, March 2011, www.earthrights.org/sites/default/files/documents/the-burma-china-pipelines.pdf ; Amnesty International, *The repression of ethnic minority activists in Myanmar* (ASA 16/001/2010), 16 February 2010.
[49] Amnesty International interviews with political analysts, October 2016.
[50] Amnesty International visits to ethnic Rakhine and Maramagyi villages, Rakhine State in November 2015, March 2016 and September 2016; and interviews with A.M., A.N., A.O., A.P., F.H., March 2016; C.C., C.D., C.F., D.T., and G.G., September 2016, and ongoing communication.
[51] For more information about ethnic Rakhine perceptions, see Gabrielle Aron, *Reshaping Engagement: Perspectives on Conflict Sensitivity in Rakhine State*, CDA Collaborative Learning Projects (CDA), May 2016, cdacollaborative.org/wordpress/wp-content/uploads/2017/04/Perspectives-on-Conflict-Sensitivity-in-Rakhine-2017-Format.pdf

Understanding and addressing ethnic Rakhine grievances and ending human rights violations against them will be key to developing long-term stability in the State, and all stakeholders must ensure they consult and engage with ethnic Rakhine groups and representatives on future plans for Rakhine State, in addition to other minorities living in the state. However, the Myanmar government, international donors, and other relevant actors must ensure that no action is taken which entrenches or enables discrimination and marginalization of any community in the state.

2. DENIAL OF THE RIGHT TO A NATIONALITY

> **"It has already been announced that there is no race termed Rohingya in Myanmar. The Bengalis in Rakhine State are not the Myanmar nationalities but the immigrants"**
>
> Senior General Min Aung Hlaing, Commander-in-Chief of the Myanmar Army, speaking at the 72nd Anniversary of the Armed Forces Day, March 2017.[52]

2.1 THE DENIAL OF A LEGAL STATUS

Most Rohingya are deprived of a nationality by the country's discriminatory 1982 Citizenship Law and its application. The 1982 Law creates three categories of citizens: "citizens" (more commonly referred to as "full citizens), "associate citizens" and "naturalised citizens," each of which affords different rights and entitlements. People belonging to one of the officially recognized "national races" are considered to be full citizens by birth, as are people belonging to ethnic groups that are considered to have settled in the country prior to 1823.[53] The Rohingya are not among the eight "national races" listed in the Law, nor are they included in a list of 135 officially recognized ethnic groups which was subsequently published by the government.[54] The Law also provides that children can acquire full citizenship by descent if both their parents are citizens or else belong to specific combinations of citizenship categories.[55]

Under the Law, people who were already citizens on the day it came into force continued to be citizens,[56] however in practice this provision was applied selectively and officials in Rakhine State refused to register Rohingya who were citizens under the 1948 Citizenship Act.[57]

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[52] Pyae Thet Phyo, 'Sen-Gen Min Aung Hlaing calls for military modernisation', *The Myanmar Times*, 28 March 2016, www.mmtimes.com/national-news/nay-pyi-taw/25471-sen-gen-min-aung-hlaing-calls-for-military-modernisation.html

[53] Section 3 of the 1982 Citizenship Law provides that citizens are: "Nationals such as the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine or Shan and ethnic groups as have settled in any of the territories included within the State as their permanent home from a period anterior to 1185 B.E., 1823 A.D."

[54] *The Working People's Daily*, "Our Union of Myanmar where 135 national races reside", 26 September 1990.

[55] 1982 Citizenship Law, Sections 5 and 7.

[56] 1982 Citizenship Law, Section 6.

[57] Nick Cheesman, *How in Myanmar "National Races" Came to Surpass Citizenship and Exclude Rohingya*, Journal of Contemporary Asia, 2017, p. 12. Under the 1948 Citizenship Act and 1947 Constitution, citizenship could be acquired automatically in one of three ways: 1) If a person was considered as belonging to one of the "indigenous races"; 2) If they had at least one grandparent who belonged to one of the "indigenous races"; or 3) If their parents were born in Myanmar (then Burma) and all four grandparents had made Myanmar their permanent home (Article 4(1). The 1948 Act allowed for others to apply to become naturalized citizens.

Rohingya never received new identity cards created under the 1982 Law known as the Citizenship Scrutiny Cards (CSCs). Those who had submitted their old identity cards (known as National Registration Cards, or NRCs) with their applications, as was required, did not have them returned.[58]

While other groups were also affected, some observers have suggested that the Law specifically targeted Rohingya and was part of a deliberate attempt to deny citizenship to individuals previously recognized as citizens.[59] International bodies and experts, including successive UN Special Rapporteurs on the situation of human rights in Myanmar, have for years expressed concern about the Law and called on the government to address the issue of Rohingya citizenship.[60]

In 1995, the authorities began issuing Rohingya (and other minorities not officially recognized among the "national races") with Temporary Registration Cards (TRCs) or "white cards" while their citizenship status was being determined.[61]

Although TRCs are not proof of citizenship and were meant to be temporary, they served as the Rohingya's primary form of documentation until March 2015, when they were revoked by then President Thein Sein. TRC holders were required to surrender their white cards by 31 May 2015, and were issued with a Temporary Approval Card (often called the white card receipt).[62]

MYANMAR'S COLOUR CODED IDENTITY CARDS

Since independence from the UK in 1948, several identity cards have been issued at different times to the population of Myanmar, under different laws, and often different colours.[63]

National Registration Card (NRC): Issued under the 1949 Residents of Burma Registration Act and its 1951 Rules, the NRC was often referred to as a "three-folding card". Men were given green cards and women given pink cards. The card did not indicate a person's race or religion.

Temporary Registration Card (TRC): Also issued under the 1949 Registration Act, TRCs were meant to be temporary identity cards issued to people whose NRC had either been lost or damaged or were awaiting a new identification card. From 1995, the Myanmar authorities began issuing TRCs to Rohingya, however the card does not include information about the bearer's place of birth and cannot be used to claim citizenship.[64] The card is often referred to as the "white card" and was revoked in March 2015. Those who surrendered their TRCs were given a "receipt" also known as a Temporary Approval Card.

Citizenship Scrutiny Card (CSC): Introduced after the promulgation of the 1982 Citizenship Law and its 1983 Procedures. There are three types of CSC: Full Citizen (pink card), Associate Citizen (green card) and Naturalized citizen (blue card). The cards explicitly name the holder's race and religion. Rohingya were not issued with CSCs.[65]

National Verification Cards (NVCs): Issued to people who have applied to undergo citizenship verification. They are not identity documents nor proof of citizenship. They were previously known as INVCs (Identity Card of National Verification), however were rebranded by the NLD soon after the party came to power at the end of March 2016.[66] The cards are turquoise.

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[58] HRW, *The Rohingya Muslims: Ending a cycle of exodus*, September 1996, p. 27.
[59] HRW, *The Rohingya Muslims: Ending a Cycle of Exodus*, pp. 25-26.
[60] See for example, Mr. Yozo Yokota, Special Rapporteur, *Report on the situation of human rights in Myanmar*, UN Doc: E/CN.4/1994/57, 31 January 1994, para. 74(h); Mr. Rajsoomer Lallah, *Report of the Special Rapporteur submitted in accordance with Commission on Human Rights resolution 1997/64*, UN Doc: E/CN.4/1998/70, 15 January 1998, para. 74; Mr. Paulo Sérgio Pinheiro, *Interim report*, UN doc: A/60/221, 12 August 2005, para. 80; Tomás Ojea Quintana, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc: A/64/318, 24 August 2008, para. 70; Yanghee Lee, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc: A/HRC/28/72, 23 March 2015, paras. 40, 67, 67 (e) and 68 (e); Committee on the Rights of the Child (CRC), *Concluding Observations: Myanmar*, UN Doc: CRC/C/15/Add.237, 30 June 2004, paras 34 and 35; Committee on the Elimination of discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of Myanmar*, UN Doc: CEDAW/C/MMR/CO/4-5, 25 July 2016, paras 32 and 33.
[61] ICG, *Myanmar: The Politics of Rakhine State*, Asia Report No. 261, 22 October 2014, p. 11.
[62] Presidential Order No. 19/2015.
[63] Based on information contained in an internal UN analysis of citizenship laws, on file with Amnesty International.
[64] Amnesty International, *The Rohingya minority: Fundamental rights denied*, p. 12.
[65] Chris Lewa, 'North Arakan: an open prison for the Rohingya in Burma', *Forced Migration Review*, Issue 32: Statelessness, April 2009, pp. 11-13, p. 11.
[66] Advisory Commission on Rakhine State, Final Report, pp 26-17, www.rakhinecommission.org/.

Effectively denied the possibility of acquiring full citizenship, the Rohingya's only option is to settle for the two lesser forms of citizenship (associate or naturalized citizen), which do not guarantee the right to stand for election or to own property, and can be arbitrarily revoked by the state.[67] In practice, these two forms of citizenship can also be difficult to acquire.[68] Few Rohingya are in possession of the necessary documents that would satisfy the requisite criteria, while stringent language requirements and other vaguely worded criteria constitute additional obstacles.[69]

The 1982 Citizenship Law is grossly discriminatory in that it denies citizenship to an individual on racial and ethnic grounds, and as a consequence is in clear violation of international law, in particular, the principle of non-discrimination. The discriminatory and arbitrary way in which the Law has been applied not only violates the right to a nationality, which Myanmar is bound to respect, including as a state party to the CRC, it also violates Myanmar's international legal obligations to prevent statelessness.[70]

2.2 A PROBLEMATIC "CITIZENSHIP VERIFICATION" PROCESS

"They told us 'Because you guys don't have any document, you need an NVC to get proper documentation'. No one in this village applied for it though. We don't want it. It identifies us as a guest citizens. We are not guests. I am 45 and have lived here all my life. I am not a guest here."

A 45-year-old Rohingya farmer living in Mrauk-U township, while recounting a meeting with State and Union level officials to discuss the national verification process in September 2016.[71]

"We tried to issue NVCs, but no one in this township would accept it. We told them [the Rohingya] they needed an NVC to get citizenship but they still don't want to take it… There is no other process to get ID cards. If people don't apply, they won't get citizenship rights."

A Township Administrator in central Rakhine State.[72]

In July 2014, President Thein Sein's former administration began implementing a pilot "citizenship verification process" in Taung Pyo IDP camp in Myebon township, in an attempt to register Muslims holding TRCs. Individuals were invited to apply for an National Verification Card (NVC), a temporary identity card valid for two years, while authorities would determine what, if any, type of citizenship each individual was entitled to.

There were serious concerns that the pilot "verification" process was not voluntary, as it was accompanied by reports that the authorities threatened to cut off humanitarian assistance to those who did not accept the card.[73] It was also criticized by Rohingya community leaders and international human rights groups as it required Rohingya to identify as "Bengali" on the application forms.[74] In addition, the verification process itself would use the discriminatory 1982 Citizenship Law to assess and verify citizenship claims.

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[67] 1982 Citizenship Law, Section 8(b).
[68] Associate Citizenship is only available to people who had applied for citizenship before the 1982 law came in to effect, while those applying for Naturalised Citizenship must provide "conclusive evidence" that they or their parents entered or resided in Myanmar prior to 1948 or were born to at least one parent who holds some form of Myanmar citizenship. 1982 Citizenship Law, Sections 42 and 43.
[69] Section 44 of the law requires applicants to have reached the age of 18, be able to speak one of the "national languages" well (Rohingya language is not recognized as a national language), be of "good character and of sound mind."
[70] For more information on the international legal framework relating to the right to a nationality and the prevention of statelessness, as well as Myanmar's obligations, see Box: International human rights law and the impact of depriving Rohingya of a nationality and documentation.
[71] Amnesty International interview with C.X., September 2016.
[72] Amnesty International interview, September 2016.
[73] ICG, *Myanmar: The Politics of Rakhine State*, Asia Report N°261, 22 October 2014, p. 20.
[74] ICG, *Myanmar: The Politics of Rakhine State*, Asia Report No. 261, 22 October 2014, pp. 20-21.

It was also met with criticism by members of the ethnic Rakhine community and members of hardline nationalist groups who protested after some Muslims acquired citizenship, claiming that Rohingya were falsely identifying as Kaman in order to acquire full citizenship.[75] This led to the suspension of the pilot process in October 2014.[76]

Despite problems with the initial pilot process, in 2015 the same government rolled out the exercise across the state, now referring to the cards as the "Identity Card of National Verification" (ICNV). Valid for two years, with the possibility of extension, the cards themselves did not mention ethnicity or religion. However, ethnicity and religion was still included on the citizenship application form.[77] Levels of participation from the Rohingya community in Rakhine State were low. Eventually, state officials stopped going to villages to try to persuade Rohingya to apply for the card, and by the end of 2015 the process had stalled completely.

INTERNATIONAL HUMAN RIGHTS LAW AND THE RIGHT TO SELF-IDENTIFY

The right to self-identify is established in international human rights law and standards.

This right is derived from provisions protecting the right to culture and to express identity in the ICCPR,[78] CERD,[79] CRC,[80] the Convention on the Protection of Migrant Workers and their Families,[81] and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. While Myanmar has not ratified three of the four Conventions listed, denial of the right to express one's identity is a form of discrimination which is prohibited in international human rights law.

These provisions protect the rights of all people, in community with other members of their group, to enjoy their own culture; to profess and practise their own religion; or to use their own language. According to the CERD "if no justification exists to the contrary, identification of members of racial or religious groups should be based upon self-identification by the individual concerned".[82] The existence of an ethnic, religious or linguistic minority in a given State does not depend upon a decision by that State; such existence must be established by objective criteria.[83]

UN experts and bodies have elaborated on the criteria required to establish the existence of a minority group. These include objective criteria, which focuses on the shared characteristics of the group such as ethnicity, national origin, culture, language or religion, and additionally subjective criteria, which focuses on the principle of self-identification and the desire to preserve the group identity.[84]

The right to assert and express one's identity is also further protected as part of the right to freedom of expression, enshrined in the UDHR.[85]

Efforts to restart the citizenship process began soon after the NLD-led government assumed office in April 2016. The process was slightly revised: rebranded as NVCs, the cards no longer include information on the holder's ethnicity or religion and are not limited to a two year period.[86]

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[75] Lawi Weng, 'Muslim Citizenship Procedure Angers Arakanese, Some Rohingya See Opportunity', *The Irrawaddy*, 23 September 2014, www.irrawaddy.com/news/burma/muslim-citizenship-procedure-angers-arakanese-rohingya-see-opportunity.html

[76] Ei Ei Toe Lwin, Citizenship pilot postponed in Myebon', *The Myanmar Times*, 31 October 2014, www.mmtimes.com/index.php/national-news/12112-citizenship-pilot-postponed-in-myebon.html

[77] Amnesty International correspondence, August 2017.

[78] ICCPR, Article 27, and Human Rights Committee, *General Comment No. 23: The rights of minorities (Art. 27),* UN Doc. CCPR/C/21/Rev.1/Add.5, 8 April 1994, paras 5.1 and 5.2.

[79] Committee on the Elimination of all forms of Racial Discrimination, *Identification with a particular racial or ethnic group (Art.1, par.1 & 4)* (Thirty-eighth session, 1990) contained in UN Doc. A/45/18 (1990).

[80] CRC, Article 30.

[81] Convention on the Protection of Migrant Workers and their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, entered into force 1 July 2003, Article 31.1.

[82] Committee on the Elimination of all forms of Racial Discrimination, *General Recommendation no. 8*, Membership of racial or ethnic groups based on self-identification (Thirty-eighth session, 1990), U.N. Doc. A/45/18 at 79 (1991).

[83] HRC, *General Comment No. 23: Article 27 (Rights of Minorities*), adopted at the Fiftieth Session of the Human Rights Committee, on 8 April 1994, CCPR/C/21/Rev.1/Add.5, para. 5.1

[84] United Nations Development Programme (UNDP), *Marginalised Minorities in Development Programming: A UNDP resource guide and toolkit*, May 2010, pp. 7-8.

[85] UDHR, Article 19 and ICCPR, Article 19.

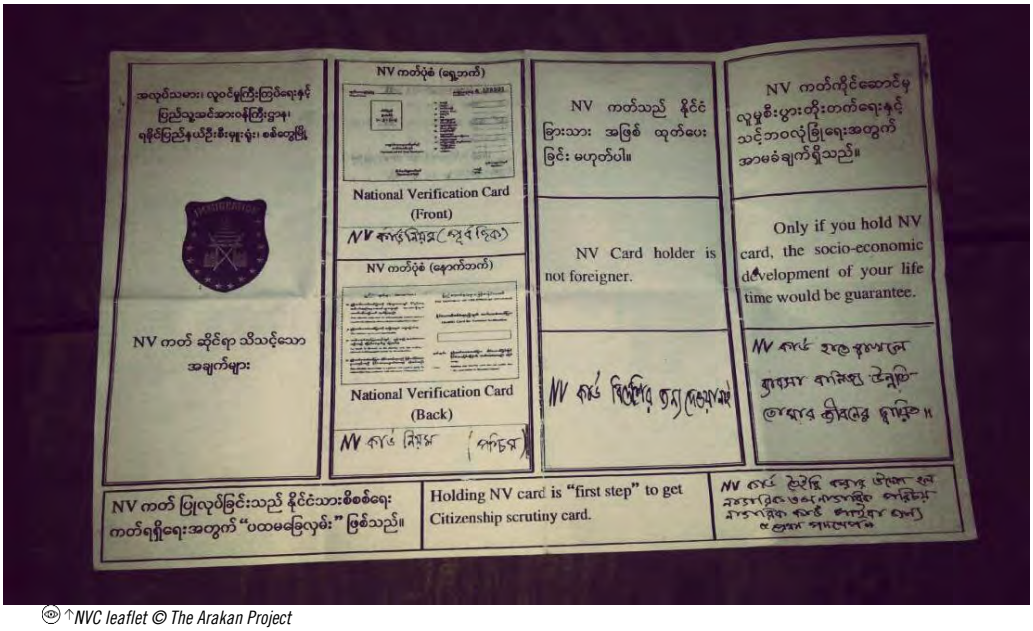
[86] Advisory Commission on Rakhine State, Final Report, p. 27.

The card states that being granted a NVC does not guarantee the holder citizenship; instead, it enables them to apply for citizenship through a formal process at a later date.[87] The fact that the process is based on the 1982 Citizenship Law means that it remains inherently discriminatory.

Since restarting the verification process, state and union level authorities have met with Rohingya communities to try to explain the process and persuade them to apply for the NVC. However, there is deep mistrust among members of the Rohingya, and as a result many continue to refuse to apply for the NVC. Rohingya leaders explained to Amnesty International that, although information on ethnicity and religion is not recorded on the card, the sections requiring this information remain on the application form.[88] Several expressed concerns that local authorities might fill in the empty space with "Bengali" at a later date or that they may be forced to identify as such when they undergo the citizenship verification.[89] Some Rohingya villagers pointed out that they still had their old identification cards, and so shouldn't need to undergo the "verification" process.[90]

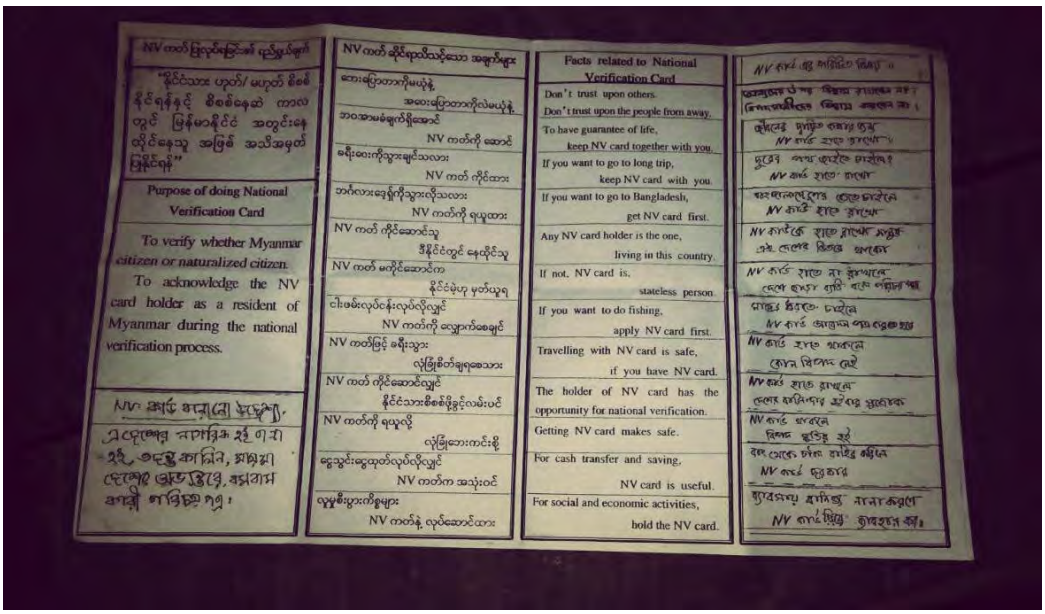
Of further concern are reports by Rohingya activists both inside and outside Myanmar that local authorities have attempted to threaten or coerce communities and individuals into accepting the NVC, especially in northern Rakhine State following the October 2016 ARSA attacks on police posts.[91] In February 2017, a Rohingya villager in northern Rakhine State told Amnesty International that immigration officials and BGP officers in his township had told him that restrictions on movement imposed in the aftermath of the attacks would only be eased for those who hold the NVC.[92]

Leaflets distributed to residents in northern Rakhine State by township authorities in early 2017 explain the benefits of the NVC process, informing communities that "If you want to go to long trip [sic], keep NV card with you," "If you want to go to Bangladesh, get the NV card first," "If you want do fishing, apply for the NV card first," and "For social and economic activities, hold the NV card."[93] For Rohingya the message appears clear: the enjoyment of basic rights is conditional on undergoing the "verification process" (See below).



↑*NVC leaflet © The Arakan Project*

[87] The card states, in both English and Burmese, "This identity card holder is a person who need [sic] to apply for citizenship in accordance with Myanmar Citizenship Law" and notes "Holding this identity card does not testify that "the card holder is Myanmar Citizen". Copy of NVC, on file with Amnesty International.
[88] The cards, which are a turquoise colored, include the name of the holder, their father's name, their sex, date of birth, place of birth, occupation, marital status, details of visible marks and their address. There is also space for the holder's signature and left thumb print.
[89] Amnesty International interview with F.X., September 2016 and F.Y., June 2017.
[90] Amnesty International interview with F.X., September 2016.
[91] Amnesty International communication, February 2017.
[92] Amnesty International telephone interviews, January and February 2017.
[93] 'Purpose of doing National Verification Card, leaflet', on file with Amnesty International.



Purpose of doing National Verification Card

To verify whether Myanmar citizen or naturalized citizen.

To acknowledge the NV card holder as a resident of Myanmar during the national verification process.

Facts related to National Verification Card

Don't trust upon others.
Don't trust upon the people from away.
To have guarantee of life, keep NV card together with you.
If you want to go to long trip, keep NV card with you.
If you want to go to Bangladesh, get NV card first.
Any NV card holder is the one, living in this country.
If not, NV card is, stateless person.
If you want to do fishing, apply NV card first.
Travelling with NV card is safe, if you have NV card.
The holder of NV card has the opportunity for national verification.
Getting NV card makes safe.
For cash transfer and saving, NV card is useful.
For social and economic activities, hold the NV card.

↑*NVC leaflet © The Arakan Project*

In one instance of individual coercion documented by Amnesty International in February 2017, two men were pressured to accept the NVC by immigration authorities while applying for permission to travel from Buthidaung to Maungdaw townships (for information on movement restrictions, see Chapter 3). Township immigration authorities confiscated their white card receipts, asserting that they were no longer valid for travel. The two men refused to apply for an NVC, fearing their entire family could be labelled "Bengalis" if they did.[94]

Interviews with Rohingya villagers still living in northern Rakhine State after the 25 August 2017 ARSA attacks and major military crackdown indicate that local authorities have renewed attempts to pressure the remaining Rohingya community to accept the card.[95] Refugees arriving in Bangladesh have also reported that they were told to accept the NVC or leave Myanmar.[96]

In addition to pressure from the Myanmar government to accept the NVC, Rohingya also face pressure from within the community not to accept the card and to reject the citizenship "verification" process completely. This is primarily because many do not see that they should have to be verified as citizens at all, most consider themselves as citizens anyway, and point to the fact that the Rakhine State authorities already have extensive evidence of their residence and ancestry in Myanmar which has been collected through annual population checks (for more information on these checks, see Section 2.3). They also worry about what would happen to those who do not qualify for citizenship.[97] Amnesty International also received reports that members of the armed group ARSA had threatened and intimidated Rohingya villagers into refusing to accept the card.[98]

The revamped process has also been met with resistance by members of the Rakhine community, and in March 2017, hundreds of residents across the state staged a week of protests. Underscoring the sensitivity of the issue, and the difficulties facing local authorities, the protesters accused the Rakhine State Immigration Minister of granting citizenship and ID cards to "Bengalis" whose parents were not from Myanmar and called for his arrest.[99]

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[94] Amnesty International telephone interview, April 2017. For more information about obtaining travel permits in northern Rakhine State, see Section 3.1: Restrictions on movement in northern Rakhine State.
[95] Amnesty International correspondence, October 2017.
[96] Tarek Mahmud, 'Take National Verification Card or leave Myanmar', *Dhaka Tribune*, 31 October 2017, www.dhakatribune.com/world/south-asia/2017/10/30/take-national-verification-card-leave-myanmar/
[97] Amnesty International interviews, February 2017 and correspondence with The Arakan Project researcher, August 2017.
[98] Amnesty International interview, Yangon, May 2017.
[99] Wunna Kwanyo, 'Hundreds protest Rohingya ID cards in Arakan', *DVB (Democratic Voice of Burma),* 20 March 2017, www.dvb.no/news/hundreds-protest-rohingya-id-cards-arakan/74674; Su Myat Mon, 'Fresh protests in Rakhine over citizenship verification', *Frontier Myanmar*, 22 March 2017, frontiermyanmar.net/en/fresh-protests-in-rakhine-over-citizenship-verification

Concerns about the citizenship "verification" process have become more pronounced since August 2017, after the Myanmar government said it would allow refugees to return who had been "verified".[100] Any citizenship determination process, whether for those inside or outside Myanmar that is underpinned by a law that is inherently discriminatory on racial grounds, cannot be presented as a process which will respect and protect human rights. Moreover, it remains unclear what would happen to individuals who do not qualify for any form of citizenship.

2.3 DELIBERATE AND ARBITRARY DEPRIVATION OF VITAL DOCUMENTATION

In parallel to government attempts to verify the citizenship status of Rohingya and other Muslims in Rakhine State, Amnesty International's research found that since 2012, authorities have engaged in active efforts to deliberately deprive Rohingya of documentation, without which it will be difficult for them to later acquire citizenship and without which they are unable to exercise some key human rights. According to the 2015-16 Myanmar Demographic and Health Survey, children in Rakhine State are least likely to have their births registered.[101]

In Myanmar, every household is required to keep a list of all of its permanent residents, known as a "household list". The Ministry of Immigration and Population and the Ministry of Home Affairs share responsibility for issuing and updating household lists, which includes adding and removing people to and from them in the case of new births, deaths and marriages. All households are obliged to present the lists to government officials on request and must report any changes to the authorities.

For Rohingya living in Rakhine State, the household list is their main form of documentation. This is especially true for children and young people, as Myanmar stopped issuing birth certificates to Rohingya children in the early 1990s.[102] While they are not identity documents or proof of place of birth, registration in the household list is a pre-requisite for the issuance of identity documents, permission to travel and enrolment in government schools, among other things.

2.3.1 FAILURE TO REGISTER NEWBORN BABIES ON HOUSEHOLD LISTS

↑ *Rohingya children in Buthidaung. The baby boy's parents explained that he had not be added to his household list during annual population checks, March 2016. ©Amnesty International*

"We're very worried… If the babies aren't added to the household lists, they'll be stateless. Their lives will be ruined. They'll have no education, no healthcare. I don't know if they'll be able to stay in the village."

A father of a baby boy in Maungdaw township.[103]

"Muslim children aren't listed anywhere else, so if they are not on the family list, they don't exist."

A former humanitarian worker operating in northern Rakhine State.[104]

[100] Yuichi Nitta, 'Myanmar ready to begin refugee verification process: Suu Kyi', *Nikkei Asian review*, 19 September 2017, asia.nikkei.com/Spotlight/Rohingya-crisis/Myanmar-ready-to-begin-refugee-verification-process-Suu-Kyi

[101] According to the survey, just 45% of children under five in Rakhine State have had their births registered, compared with 81.2% nationally. The survey does not explain reasons why rates of birth registration are so low in Rakhine State compared to elsewhere in the country. Levels of birth registration in other ethnic minority areas and areas affected by armed conflict are also high. Myanmar Demographic and Health Survey 2015-16, p. 22, dhsprogram.com/pubs/pdf/FR324/FR324.pdf

[102] It should be noted that following interim recommendations from the Rakhine State Advisory Commission in March 2017, the Myanmar government began a programme of issuing birth certificates to children in Rakhine State, and as of the end of July, had reportedly issued over 20,000 birth certificates. It is unclear how many of certificates have been issued to Rohingya children and whether there will be further registration efforts or if it is a onetime process. Yanghee Lee, *End of Mission Statement by Special Rapporteur on the situation of human rights in Myanmar*, 21 July 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21900&LangID=E

[103] Amnesty International interview with F.Z., March 2016.

[104] Amnesty International interview, March 2016.

IN NORTHERN RAKHINE STATE

In northern Rakhine State household lists, more commonly known there as "family lists", are updated on an annual basis during population checks conducted by the MaKaPa (Committee for the Prevention of the Illegal Immigration of Foreigners).[105] The annual checks, known as "*swe-tin-sit*" (map-record-check), are only conducted in northern Rakhine State. Amnesty International representatives visited a village in Buthidaung township during one such check in March 2016, and in addition has obtained copies of five different local orders which refer to the inspections, the most recent of which is dated January 2016.[106]

New born children in northern Rakhine State are usually recorded on the family list during annual checks. Before 2016, local officials would come to Rohingya villages and systematically check each household list, adding the names of children born since the previous checks, often charging a fee.[107] However, since the start of 2016, authorities stopped adding new-born babies' names during the checks and instead, Rohingya families are required to apply to have their child's name recorded on the list. A new father who was also the administrator of his village in Buthidaung township told Amnesty International:

> "*The process for adding new babies to the household lists has changed. It's been made difficult. The new policy started in 2016. It wasn't pre-announced, we learned of it when we gave the BGP the names of the babies born over the past year and they refused to add them to the household lists. They collected the names of the babies, but didn't add them to the lists. They said they need approval from above.*"[108]

The new process is extremely cumbersome and onerous. Parents are required to submit a range of documents in support of their application to add new-borns to the family list. Another new father explained:

> *"This year the BGP didn't add babies to the household lists... I had to pay 7,000 kyats (US$5) (to apply for his son's addition on his family list). We had to submit the application, a copy of our marriage certificate, a birth certificate (testimony of nurse), a letter from our Village Administrator, letters from [local village administration officials] and a letter from a neighbour. We had to put all these documents together, give them to the BGP, and wait.*"[109]

Amnesty International subsequently obtained copies of an instruction issued to township authorities in December 2015, outlining the official process, in addition to copies of the application forms.[110] The township instruction entitled "Requirements for the programme which will affect the addition of children born to people of Bengali nationality to the list of births on the household population list (Form 66/6)" is clear evidence that the practice specifically and exclusively targets Rohingya on the basis of their ethnicity.[111]

The need to provide multiple supporting documents simply to register their child on the household list is wholly unnecessary and unjustifiable, and can be particularly problematic for some Rohingya families, for example, parents who do not have a valid marriage certificate or who are not on the same household list cannot add their children. Local orders targeting Rohingya in northern Rakhine State require them to obtain specific permission to marry.[112]

Obtaining the necessary supporting documents also places further administrative and financial burdens on families. The father of a baby boy living Maungdaw township explained the process of moving his wife to his family list so they could register their new-born son:

> *"My son is six months old. We knew that to register him on the household list, we first had to add my wife to my household list, so last week I went back to my father's village to try to apply. My wife had to come too, so that the BGP could take a photo of her. We had to submit forms to the Village*

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[105] Up until 2013, household lists in northern Rakhine State were checked by the NaSaKa, a civil-military force established in 1992 operating solely in northern Rakhine State. After the NaSaKa was disbanded in 2013, responsibility for maintaining the family lists was transferred to MaKaPa, the immigration wing of the Border Guard Police (BGP), also operating solely in northern Rakhine State.
[106] All copies, and unofficial translations used here, are on file with Amnesty International.
[107] Amnesty International, *The Rohingya minority: Fundamental rights denied*, pp. 28-31.
[108] Amnesty International with F.Z., March 2016.
[109] Amnesty International interview with G.A., March 2016.
[110] Amnesty International interviews with B.K., B.T., B.G., March 2016; E.J., October 2016, and humanitarian workers, March and September 2016. Local order, application forms and unofficial translations on file with Amnesty International.
[111] Local order and unofficial translation on file with Amnesty International.
[112] Instructions issued by the Maungdaw Border Areas Immigration Inspection Administration Department in 1993 and the Maungdaw Township Peace and Development Council in 2005 confirm the requirement for Rohingya couples to apply for specific permission to marry. Prior to 2014, permission was obtained from the NaSaKa, however today Rohingya apply through their Village Administrator. Rohingya sources report high fees associated with these applications. While researching this report, Amnesty International obtained a copy of an instruction issued by the BGP in February 2016 stating the new process for seeking permission to marry. It explicitly states that "Bengali" couples who marry must provide proof that they are over the age of 18, not already married, do not have a criminal record and are free from communicable diseases. Amnesty International was unable to confirm whether this new order was being implemented in practice, however the discriminatory intent is clear. Local order and unofficial translation on file with Amnesty International.

Administrator who said he would submit them to the BGP headquarters. We had to submit four documents, letters of recommendation from her village administrator and mine, recommendation letters from two family members or neighbours, copies of her family list and mine, and a copy of our marriage certificate. All together we paid 60,000 kyats (US$43) to move my wife to the family list of my father. Once we had done that, we could apply to add our son, but then the authorities told us there was a new procedure to have children added to the lists. We applied but we haven't heard any result yet."[113]

Amnesty International obtained copies of the forms required to apply to transfer someone from one household list to another, which confirm applicants must submit a range of supporting documents in order to move between household lists: a copy of their household list, their marriage certificate, a copy of their TRC or latterly, white card receipt, a letter of recommendation from their ward or village authority, and a "mutual agreement between heads of household."[114]

Humanitarian workers Amnesty International interviewed have expressed concern that some Rohingya families did not apply to register their children during population checks in 2016 and 2017, either because it was too expensive, they did not understand the process or did not have the necessary documents.[115] For those that did apply in 2016 and 2017, it is unclear whether the process would eventually lead to some official form of documentation for the new-born. Amnesty International interviews in Yangon in May 2017 confirmed that new-born Rohingya babies had not been added to household lists since the new process was instituted.[116]

The situation is concerning, in particular because authorities in northern Rakhine State have a history of depriving Rohingya children of official documentation. Even before the new procedure was announced, there were an estimated 5,000 Rohingya children who had not been added to their household lists because their births contravene local orders (for example, because their parents married without official permission or had more than two children).[117] Instead, local authorities (primarily the NaSaKa) recorded their names on a separate list, known as the "blacklist". Blacklisted children can face difficulties accessing education and human rights groups have reported their families can suffer extortion and arbitrary taxation as a result.[118] The UN Special Rapporteur on the situation of human rights in Myanmar has called on the Myanmar authorities to urgently register blacklisted children in northern Rakhine State.[119]

IN CENTRAL RAKHINE STATE AND SITTWE TOWNSHIP

In the 13 Rohingya villages Amnesty International visited in central Rakhine State, Sittwe township and the Aung Mingalar enclave in March and September 2016, residents stated that their household lists had not been checked or officially updated since the 2012 violence. According to villagers, this is in part because they are unable to travel to the Township Immigration Office to update their household lists and in part because township authorities had not come to villages to update lists themselves.[120]

As a consequence, no Rohingya babies in the villages Amnesty International visited had been registered on household lists in these areas since the 2012 violence. UNHCR and other international organizations also report that Muslim communities living outside northern Rakhine State in both displaced and non-displaced communities have not have their household lists updated since the 2012 violence.[121]

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[113] Amnesty International interview with B.K, March 2016.
[114] Documents and unofficial translations on file with Amnesty International.
[115] Amnesty International interviews, March 2016 and May 2017.
[116] Amnesty International interview, Yangon May 2017.
[117] OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar, Report of the United Nations High Commissioner for Human Rights*, UN Doc: A/HRC/32/18, 29 June 2016, para 44. Local orders prohibiting Rohingya couples from having more than two children have been in place since at least 2005 and remain in effect to this day although in practice do not appear to have been enforced in recent years; Fortify Rights, *Policies of Persecution: Ending Abusive State Policies Against Rohingya Muslims in Myanmar*, February 2014, pp23-28; and The Arakan Project, *Key issues concerning the situation of stateless Rohingya women and girls in Rakhine State, Myanmar: Submission to the Committee on the Elimination of Discrimination against Women (CEDAW)*, 10 June, 2016, p. 5.
[118] The Arakan Project, *Issues to be raised concerning the situation of stateless Rohingya children in Myanmar (Burma): Submission to the Committee on the Rights of the Child*, January 2012, p. 7. www.burmalibrary.org/docs12/AP-CRCMyanmar-12-01.pdf
[119] Yanghee Lee, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc: A/71/361, 29 August 2016, para. 75.
[120] See Chapter 4 for further information on movement restrictions in central Rakhine State.
[121] UNHCR, *Study on Community Perceptions of, Citizenship, Documentation and Rights in Rakhine State*, August 2016, p. 9; and Andaman Research and Advisory Initiative, *Rakhine Early Recovery Activity Baseline Assessment*, July 2016 (Executive Summary), p. 4. The Rakhine Early Recovery Activity Baseline Assessment, based on data collected in Mrauk-U, Rathedaung and Minbya townships between March and May 2016, noted that ethnic Rakhine communities also face difficulties updating family lists, but that coverage of identity documentation was "substantially worse for Muslims than Rakhines".

Some villagers told Amnesty International that in the years after the 2012 violence they were required by their Village Administrator to submit updated information about births and deaths to the township authorities but that the additions were never officially recorded on their household list, and township authorities had stopped requesting this information since the start of 2015.[122]

Other villagers explained that village leaders kept unofficial lists in case this information was needed in the future. In one village Amnesty International visited, villagers said it was left up to individual families and households to keep track of births. A Rohingya man and father of five who lives in Sittwe township explained:

> "*Since 2012 we have not registered one single baby on the household list. The government never came to tell us we need to register… When new babies are born we take a blank paper and inform the village tract leader, give him information such as gender and date of birth. Then after that nothing happens. The government doesn't come to collect the information… they don't come to check the household list.*"[123]

The long-term consequences for children who are not registered on household lists are unclear; however, it is likely that obtaining identity documents in the future will be more difficult, as unregistered children are unable to prove residency. Children who are not registered in the household list can also face difficulties accessing education, healthcare and other rights, which can have life-long consequences.[124]

As a state party to the CRC, Myanmar has specific and binding legal obligations to ensure that all children born in its territory are registered "immediately after birth," and that they "have the right from birth to acquire a nationality."[125] The obligation to register new-born children is on the state, and cannot be conditioned on issues such as nationality, religion, ethnicity or whether the parents are married. Myanmar's failure to register new Rohingya babies, in particular the failure to issue them birth certificates, constitutes a violation of its international legal obligations, both in relation to the rights of children and to the prohibition of religious and racial discrimination.

The UN Committee on the Rights of the Child, the expert body tasked with monitoring state compliance with the Convention, has expressed concern about the large number of unregistered children in the country, including Rohingya children, and has noted in particular unofficial fees associated with birth registrations. In its 2012 Concluding Observations on Myanmar, it called on the government to ensure that all children born in the country, including Rohingya children, are registered at birth and given birth certificates and identity cards. The Committee further recommended that the government develop a plan to ensure registration of all children up to the age of 18.[126]

The failure to register Rohingya babies also has wider social-political ramifications. Hardline nationalist groups in Myanmar often propagate discriminatory stereotypes about high birth rates among Muslims, and have used these assertions to call for stricter controls on Muslim reproduction.[127] State failure to register Rohingya babies over an extended period means that any effort to redress the situation, by updating household lists and registering new Rohingya births, could be manipulated to inflame communal tensions and intensify anti-Muslim sentiment across the country.

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[122] Household lists are usually updated by Ward and Village Tract Administrators. Under the 2012 Ward or Village Tract Administration Law, Village and Ward Tract Administrators throughout Myanmar are required to compile and register births and deaths and move people to and from household lists (Article 13(s)).
[123] Amnesty International with C.K., October 2016.
[124] Amnesty International interview with humanitarian workers in northern Rakhine State, March 2016. UNHCR, *Study on Community Perceptions of, Citizenship, Documentation and Rights in Rakhine State*, August 2016, p. 10; and The Arakan Project, *Issues to be raised concerning the situation of stateless Rohingya children in Myanmar (Burma): Submission to the Committee on the Rights of the Child*, January 2012, p. 6.
[125] CRC, Article 7(1).
[126] Committee on the rights of the Child*, Concluding observations: Myanmar*, UN Doc: CRC/C/MMR/CO/3-4, 14 March 2012, paras 43-44.
[127] The Population Health Control Law, one of the four so-called "race and religion laws" adopted by Parliament in 2015 following pressure from hardline nationalist groups, was widely seen as an attempt to introduce legislation which could be used to limit Muslim births. Nobel Zaw, 'Population Control Bill Could 'Stop the Bengalis': Wirathu', *The Irrawaddy*, 18 May 2015, www.irrawaddy.com/news/burma/population-control-bill-could-stop-the-bengalis-wirathu.html

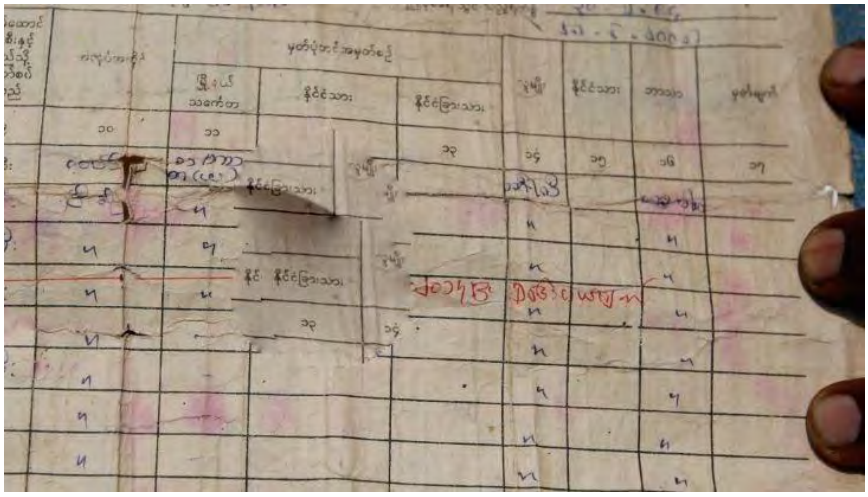
2.3.2 DELETION FROM HOUSEHOLD LISTS

"If someone is not here [during the population checks], you have to prove that they are away for a reason. If you can't, [when] they come back [to Myanmar], they will be illegal. The BGP crosses their name off the list and they write "deserter" next to it."

A 55-year-old Rohingya elder living in Buthidaung township.[128]

Rohingya who leave Myanmar, whether fleeing violence or persecution or in search of livelihood and educational opportunities, find it extremely difficult, if not impossible, to legally return. In northern Rakhine State, those who are not present during the annual population and household list checks and do not have permission to be away from their village, risk being deleted from their household list.

A 40-year-old village leader living in a village south of Buthidaung town explained that his younger brother was deleted from their family list in 2014 after he had fled to Malaysia. He showed Amnesty International representatives the list (pictured below) in which a line runs through his brother's name. The phrase 'escaped to Bangladesh' is written in Burmese at the side. "I'm in touch with my brother in Malaysia", he explained, "he wants to come back and if he could get permission he would come back straight away, but because his name is not on the list, he can't."[129]



A man shows his household list. One of his relatives was deleted from the list during the annual population check, a red pen runs through the relative's name, and Myanmar officials have noted that the person has escaped to Bangladesh and been deleted, March 2016. ©Amnesty International

While household list deletions occur overwhelmingly in northern Rakhine State, Amnesty International documented one case in central Rakhine State where a Rohingya man had been deleted from his family list after leaving Myanmar to find work in Malaysia.[130]

For many Rohingya in Rakhine State, the household list is their only legal proof of residence in Myanmar. Consequently, once a person has been deleted from the list, it is virtually impossible for them to return to Myanmar and those who do risk arrest and imprisonment for immigration offences.

In some cases, families can pay money, in fines or bribes, to the authorities to prevent their relatives from being deleted from the list; however for many families the cost is simply too high.[131] Moreover, payment does not guarantee that the absent person will not be struck off the list during future checks. The family of a 22-year-old woman who had travelled to Bangladesh for medical treatment in early 2016 told Amnesty International that they paid 50,000 kyats (approx. US$36) to MaKaPa officials to keep her name on their list. However, when authorities came to check the lists again a week later the family could not pay again and her name was deleted.[132]

[128] Amnesty International interview with B.C., March 2016.
[129] Amnesty International interview with A.S., March 2016.
[130] Amnesty International interview with D.H., September 2015.
[131] Amnesty International interview with A.S., and G.B., March 2016. Amnesty International has documented a long standing policy of household list deletions in northern Rakhine State; Amnesty International, *The Rohingya: Fundamental rights*, May 2004, pp. 12-3.
[132] Amnesty International interview with G.B, September 2016.

Village administration officials play an important role in monitoring who is or is not present in a village, as a village administration official from Maungdaw explained:

> *"If people come back after they have been deleted they will surely be arrested. It doesn't happen so much these days because people know that if they come back they will be arrested and sent to jail. Being a village leader, when someone who has been deleted comes back, I have to immediately report it to the BGP. If I didn't report it, I would lose my position and be prosecuted."*[133]

In a small number of cases, it appears that Rohingya who pay bribes to local authorities, Village and Township Administrators, can return to their villages. A village leader living in Maungdaw township told Amnesty International about a man who had returned to a village after paying bribes to local authorities. Although he was not added back on to his household list, he was permitted to stay in his village.[134]

In central Rakhine State, the man interviewed by Amnesty International who was deleted from his household list explained that when he decided to return to Myanmar, he could only do so if he paid bribes totalling 700,000 kyats (approx. *US$*500) to the Township Administrator, Village Administrator, local police and immigration officials in order to stay. Even with the payments, he told Amnesty International his name has not been added back on to his household list.

Today, the threat of deletion from household lists has become a deeply concerning issue for the hundreds of thousands of Rohingya who fled to Bangladesh following the violent, unlawful and grossly disproportionate security force operations launched in response to attacks by a Rohingya armed group on security posts in October 2016 and August 2017. In November 2016 local authorities in northern Rakhine State started household checks earlier than usual, and began recording the names of those who had fled. In March 2017, a senior immigration official in northern Rakhine State told Reuters they had made a mark in pencil next to the names of those who had fled, but they were not struck off the list at that time. However, government officials told Reuters that those who are eventually deleted from the list would face legal action if they attempted to return to Myanmar.[135]

People who left Myanmar, and in many cases were forced to flee poverty, unemployment and sometimes death, rape and destruction of their homes, are being punished for doing so through being denied the human right to return and reside in their country. The deletion of Rohingya from their household lists is arbitrary, discriminatory and unlawful. It deprives or severely restricts the ability of Rohingya to exercise a large number of key human rights such as the right to freedom of movement, an adequate standard of living, access to education and not to be arbitrarily deprived of their liberty. Most directly it violates the right of everyone to leave any country, including their own, and to return to it.[136]

International law and standards provide that no one may be arbitrarily deprived of the right to enter their own country, including by legislative, administrative and judicial means.[137] The Human Rights Committee, the body in charge with interpreting the ICCPR, has emphasized that the concept of a person's own country should be interpreted broadly, and not limited simply to the country of their nationality. The Committee has explicitly stated that the right to return applies to nationals of a country who have been stripped of their nationality in violation of international law.[138]

In addition, the threat of deletion from household lists of those wishing to leave the country, as well as the actual deletion of those who have left, impacts the enjoyment of other human rights, including the rights to freedom of movement, an adequate standard of living, access to education and not to be arbitrarily deprived of their liberty. The deletion of Rohingya from their household lists through annual administrative list checks, and the threat of arrest for those who return thus constitutes a multifaceted violation of international human rights law.

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[133] Amnesty International interview with A.Z. March 2016.
[134] Amnesty International interview with G.C. September 2016.
[135] Simon Lewis, Wa Lone, 'With a stroke of red pen, Myanmar's Rohingya fear losing right to return', Reuters, 15 March 2017, uk.reuters.com/article/uk-myanmar-rohingya-cleansing-idUKKBN16M1D3
[136] UDHR, Article 13.
[137] ICCPR, Article 12(4). For elaboration see Human Rights Committee, *General Comment No. 27: Article 12 (Freedom of Movement)*, UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 21.
[138] Human Rights Committee, *General Comment No. 27*, para. 20.

INTERNATIONAL HUMAN RIGHTS LAW AND THE IMPACT OF DEPRIVING THE ROHINGYA OF A NATIONALITY AND DOCUMENTATION

The right to a nationality is a human right enshrined in the UDHR, as well as human rights instruments to which Myanmar is a state party.[139]

It includes the right not to be arbitrarily denied of one's nationality.[140] In order to respect and protect this right, measures leading to deprivation of nationality must meet certain conditions: they must not render anyone stateless; must be in conformity with domestic law; serve a legitimate purpose that is consistent with international law, in particular the principle of non-discrimination; be the least intrusive instrument to achieve the desired result; and be proportional to the interest to be protected.[141] The notion of arbitrariness includes not only acts that are against the law but, more broadly, elements of inappropriateness, injustice and lack of predictability.[142]

The deprivation of essential documentation for Rohingya communities is clearly arbitrary and discriminatory, and as such is contrary to international human rights law and standards. When coupled with the discriminatory 1982 Citizenship Law, they serve as part of an active policy aimed at arbitrarily denying the Rohingya the right to a nationality, and to effectively render them stateless. This in turns violates other human rights.

Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons[143] defines a "stateless person" as a person who is "not considered as a national by any State under the operation of its law" and is thus someone without any nationality or citizenship anywhere. This definition is considered to reflect customary international law.[144] A person is left stateless if he or she did not acquire any nationality at birth or if they lose or are deprived of a nationality without acquiring another.

The obligation of states to avoid statelessness, at the very least when it comes to children, is considered a rule of customary international law, and is therefore binding on all states, regardless of whether or not they are parties to the Convention.[145] In addition, under international human rights law, states may not deprive individuals of their nationality if this would render them stateless and they must not deny a nationality to persons who have relevant links to that state who would otherwise be stateless.[146]

Myanmar is also prohibited from rendering people stateless or otherwise depriving them arbitrarily of their nationality under treaties which it has ratified, namely the CRC (Article 7) and the Convention on the Rights of Persons with Disabilities (CRPD, Article 18). The fact that many adult Rohingya had their right not to be rendered stateless violated by the authorities when they were children, does not release Myanmar from its obligation to redress this violation.

The Rohingya's lack of citizenship status and effective statelessness has a series of negative impacts; their right to freedom of movement is severely restricted, and they have difficulties accessing health care, education and livelihoods. As non-citizens, Rohingya are unable to vote, to run for office in an election, and to study for and be employed in specific vocations, such as medicine and law. If they leave the country to seek such opportunities, they are unable to return.

Ensuring the right to a nationality through citizenship will play an important role in restoring rights to the Rohingya, but it will need to be accompanied by serious efforts to address wider discriminatory policies and practices.

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[139] UDHR Article 15, CRC, Article 7; CEDAW, Article 9.
[140] UDHR, Article 15(2).
[141] Report of the Secretary-General, *Human rights and arbitrary deprivation of nationality*, UN Doc. A/HRC/13/34, 14 December 2009, paras 25, 27.
[142] Report of the Secretary-General, *Human rights and arbitrary deprivation of nationality*, para. 25.
[143] Convention relating to the Status of Stateless Persons, adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954, entered into force: 6 June 1960.
[144] International Law Commission, *Draft Articles on Diplomatic Protection*, Commentary, para. 3, Report of the International Law Commission Fifty-eighth session, UN Doc. A/61/10 (2006)
[145] Ineta Ziemele, '*State succession and issues of nationality and statelessness*,' in Alice Edwards and Laura vn Wass (eds.), *Nationality and Statelessness under International Law* (Cambridge: Cambridge University Press, 2014), pp. 217-246, at pp. 242-3; UNHCR, *NGO manual on international and regional instruments concerning refugees and human rights*, Geneva: July 1998, pp. 210-11, www.unhcr.org/46e660d70.pdf
[146] Convention on the Reduction of Statelessness, adopted on 30 August 1961 by a conference of plenipotentiaries which met in 1959 and reconvened in 1961 in pursuance of General Assembly resolution 896 (IX) of 4 December 1954, entered into force 13 December 1975, Article 1.

As the following chapters will explain, restrictions on movement and other discriminatory policies are not solely based on or applied through denying the Rohingya's citizenship status, they also apply in Rakhine State to other Muslim communities, including the Kaman who are officially recognized as citizens under Myanmar law.

These policies are also deeply rooted in discriminatory attitudes towards the Rohingya and other Muslims in Rakhine State. Removing and dismantling these policies and the attitudes that they reflect and ensuring the equality and security of all communities in Rakhine State will be essential to ensuring overall stability in the state.

3. VIOLATIONS OF THE RIGHT TO FREEDOM OF MOVEMENT

Rohingya, Kaman other Muslim communities in Rakhine State face discriminatory and debilitating restrictions on their right to freedom of movement. For Rohingya, many of these restrictions have been in place for decades, part of a formalized system of abusive control established and enforced by the state. However, Amnesty International's research found that since the 2012 violence, restrictions on movement have not only tightened, they have expanded in both formal and informal ways and do not only apply to Rohingya but all Muslims in the state.

As detailed in this Chapter, movement restrictions in Rakhine State are complex, resulting from a combination of formal government-imposed restrictions, informal restrictions which are communicated and reinforced verbally by state officials, and self-imposed restrictions by communities fearful of inter-communal violence or official reprisals. While they manifest themselves in different ways in different parts of the state, in all areas restrictions on movement target the Muslim population in a discriminatory manner, and are not imposed on any other ethnic and religious minorities.

3.1 RESTRICTIONS ON MOVEMENT IN NORTHERN RAKHINE STATE

> **"Movement is a huge business here... Nothing and nobody moves without the knowledge of the authorities"**
>
> A former humanitarian worker working in northern Rakhine State.[147]

For many years Rohingya living in northern Rakhine State have been isolated from much of the State, and the country as a whole, through a combination of state, district and township policies restricting their movement. This isolation continues to this day, and has deepened further since 2012, as authorities, citing security concerns, no longer permit Rohingya to travel beyond northern Rakhine State, except in cases of serious medical emergency.[148] This has effectively segregated them from the rest of Rakhine State. Restrictions on movement which require official permission to travel have been exacerbated by curfews and checkpoints.

[147] Amnesty International interview, March 2016.
[148] For more information on restrictions on access to university in Sittwe and medical emergency referrals see Chapter 4, Section 4.1.

3.1.1 TRAVEL PERMITS

All Rohingya living in Rakhine State require official permission to travel between townships and outside of Rakhine state to other parts of Myanmar. In Maungdaw and Buthidaung townships local orders further restrict movement, as described below. These movement restrictions were enforced primarily by the NaSaKa, up until 2013 in northern Rakhine State. Since 2014, they have been enforced by the BGP and the GAD, both of which are under the control of the Ministry of Home Affairs, in addition to township immigration officials.

Movement between Maungdaw and Buthidaung townships: The lack of access to other parts of Rakhine State means that many Rohingya communities in northern Rakhine State rely on travel between Buthidaung and Maungdaw townships for their survival, whether for work opportunities, to trade goods, access markets, seek healthcare or access education.

However, to do this, they must first obtain official authorization to travel, which they do by applying for a travel permit known as "Form 4" (See photo on the left side one issued in early 2016, ©Amnesty International). This requirement deliberately restricts Rohingya's movement on the basis of their ethnicity and citizenship status, as is articulated in a June 1997 instruction obtained by Amnesty International.

The instruction issued by the Rakhine State Immigration and National Registration Department, which is still in effect today, explicitly sets out the requirement for "foreigners" and "Bengali races" residing in all of Rakhine State to obtain a "temporary travel permit" known as "Form 4" to travel between and within townships.[149] It also clearly states that there are penalties for non-compliance under Section 188 of the Penal Code (Disobeying an order promulgated by a public servant)[150] and Section 6(2)(3) of the Residents Registration Act.[151]

Amnesty International documented the process to obtain a "Form 4" to travel within northern Rakhine State in detail.[152] Information gathered through interviews confirmed that the process detailed in the 1997 immigration instruction remains in effect today. Interviewees explained that to obtain the travel authorization, they need to submit an application, including details of where they are travelling to, along with two passport photographs, a letter of recommendation from their Village or Ward Administrator, a copy of their household list and two letters of recommendation from relatives or neighbours and a payment of between 1-2,000 kyats (approx. *US$*0.75-1.5) to their Township Immigration Office (located in either Buthidaung or Maungdaw town). Assuming their documents are in order, they receive the Form 4, and must surrender their white card receipts to the Township Immigration Office, which they collect on their return. The Form 4 is then valid for travel for a specified length of time, usually 14 days.[153]

Rohingya must carry the Form 4 with them when they travel, and show it when requested by security forces officials at checkpoints. When they arrive in the township of their destination, they must register with the local Township Immigration Office and later inform them of their departure. Amnesty International interviews indicate that a payment of 1,000 kyats is usually required when registering there.

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[149] Rakhine State Immigration and National Registration Department order, June 1997, and unofficial translation on file with Amnesty International.

[150] Under Section 188 such disobedience is punished with up to one month in prison if it "causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed". Where an act of disobedience "causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray" it is punishable with up to six months' imprisonment.

[151] Under Section 6(3) any infringement of the Residents Registration Act is punishable by up two years' imprisonment.

[152] Amnesty International interviews with A.T., A.U., A.V., A.W., A.Z., B.A., B.C, B.D., B.J., B.O., B.V., and B.W., March 2016, and with E.J., October 2016. Amnesty International remained in contact with sources in northern Rakhine State to monitor any changes to the travel permission process. While the 25 August 2017 attacks have temporarily suspended all movement within northern Rakhine, the formal process remains in effect.

[153] The length of time a Form 4 is valid for varies, and often changes depending on the security situation in the State. Before the 2012 violence, Rohingya reported that the Form 4 was valid for up to 30 days, however in the wake of the 2012 violence, the length was limited to just seven days. This was later increased to 14 days, but after the 2016 violence was reduced again. As of August 2017 sources in northern Rakhine State reported that Form 4 were valid for 14 days.

Since 9 October 2016, when ARSA militants launched lethal attacks on border police posts, Rohingya have reported that it is much more difficult to obtain Form 4s to travel between Maungdaw and Buthidaung townships. According to Rohingya activists, in early 2017 local authorities told community leaders that only holders of the NVC would be able to travel between townships.[154] However, there were reports that until the 25 August 2017, the day ARSA launched another coordinated attack on security posts, Rohingya could travel on payment of a bribe of 20,000-50,000 kyats (US$12.50- 31).[155] At the time of writing, Rohingya still living in northern Rakhine State report that they are unable to travel between village tracts or between Maungdaw and Buthidaung townships, local authorities have cited security concerns as the reason for these restrictions.[156]

Movement between villages of the same township: In addition to requiring permission to travel between townships, Rohingya in northern Rakhine State also face restrictions on their movement between villages within their home township. These restrictions are more arbitrarily enforced: in some areas, Rohingya told Amnesty International they could travel between villages during the day without permission, but had to pay unofficial fees at checkpoints.

In other areas interviewees said that they needed to have a Village Departure Certificate, a document which they obtained from their Village Administrator confirming that they have permission to be outside their village. The document is usually obtained at a cost of 500 and 1,000 kyats (US$0.5-1). Village Departure Certificates are also essential for Rohingya who stay away from their villages overnight. Villagers told Amnesty International that failure to have one could result in arrest.

In addition to obtaining the certificate, Rohingya must register as a guest of the household they are staying in, which they do by notifying their host's Village or Ward Administrator. Until recently, all people living in Myanmar who wished to spend the night outside their home were required to register as overnight guests. However, amendments to the 2012 Ward and Village Tract Administration Law in 2016 removed this requirement.[157] Amendments to this law have not changed the situation in northern Rakhine State however, and discriminatory local orders targeting Rohingya mean they are still required to register with local Village or Quarter Administrators if they stay overnight in a place other than their home.

In addition to being inherently discriminatory, the procedures to travel within northern Rakhine State are excessively bureaucratic and time-consuming. Official and unofficial fees to obtain these different travel permissions can also make travel prohibitively expensive for some families. Interviewees told Amnesty International that failure to comply can result in extortion, arbitrary arrest and detention.

3.1.2 CONTINUOUS 'CURFEWS'

Restrictions on movement in northern Rakhine State have been further exacerbated by 'curfew' orders which prohibit, among other things, people from being outside their homes and travelling at night. Curfews were first imposed in several townships, including predominantly ethnic Rakhine areas, in Rakhine State during 2012 as a way to maintain law and order in the wake of the violence.[158]

While these curfews have now been gradually lifted in all other parts of the state, they have been in continuous effect in Maungdaw and Buthidaung townships since 2012, and were most recently extended by township authorities on 25 October 2017. At the time of writing, a curfew is in place between 6pm and 6am in both Maungdaw and Buthidaung townships.[159] Interviewees and other credible sources report that in practice, the curfew is imposed selectively against Muslims by village and ward administrators and BGP officers.[160]

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[154] Amnesty International communication, February 2017.
[155] Amnesty International communication, October 2017.
[156] Amnesty International communication, October 2017.
[157] Htoo Thant, 'Midnight inspection' clause abolished by parliament', *The Myanmar Times,* 20 September 2016, www.mmtimes.com/index.php/national-news/22620-midnight-inspection-clause-abolished-by-parliament.html .For more information about guest registration and household inspections prior to the amendment of the 2012 Ward and Village Tract Administration Law, see Fortify Rights, *Midnight intrusions: Ending guest registration and household inspections in Myanmar*, March 2015.
[158] It is important to note that curfews have been imposed in other parts of Myanmar in response to a deteriorating security situation, for example during anti-Muslim riots in Meiktila in 2013, and in response to the eruption of fighting between the military and armed ethnic groups in the Kokang region in February 2015, and again in 2017.
[159] Prior to the first ARSA attacks in October 2016 the curfew was in place in both Maungdaw and Buthidaung townships between 11pm and 4am. This was extended to 7pm until 6am in the immediate aftermath of the attacks and shortened in February to 9pm until 5am. Immediately prior to the ARSA attacks of 25 August 2017, the curfew in Maungdaw township was in effect from 9pm until 5am and in Buthidaung township from 10pm until 4am. At 1pm on 25 August 2017, local authorities in both townships announced by loudspeakers that the curfew had been extended and would be in effect between 6pm and 6am.
[160] Amnesty International interview with B.W., March 2016.

A March 2016 written curfew announcement obtained by Amnesty International states that it is in place "for the sake of stability and peace in the community", and warns that undefined legal action will be taken to prosecute those who do not follow the order.[161] Curfews have a significant impact on access to emergency medical treatment at night and the ability to undertake certain forms of work, such as farming and fishing (for more information on the impacts of movement restrictions on health and access to livelihoods, see Chapter 4).

The legal basis for the curfew is Section 144 of Myanmar's Code of Criminal Procedure, which grants the authorities broad discretionary powers to restrict access to certain areas if they consider the restrictions likely to prevent "disturbance of the public tranquillity, a riot, or an affray" among other things. Orders under Section 144 are supposed to be temporary in nature, but can be extended by a magistrate after two months if there is "danger to human life, health or safety, or a likelihood of a riot or an affray."[162]

In Maungdaw and Buthidaung townships, the curfew order has been extended every two months for the last five years. Under Section 144 of Myanmar's Code of Criminal Procedure, such orders are supposed to be imposed by a magistrate, however according to non-governmental sources, in northern Rakhine State are imposed and extended by the Maungdaw and Buthidaung Township Administrators operating under the GAD.[163] Renewals are usually announced by loudspeaker in Maungdaw and Buthidaung towns and written confirmation is also disseminated among Village Administrators in the two townships.

The use of curfews as a temporary measure in Rakhine State during the 2012 violence and in the immediate aftermath of the October 2016 attacks were justified by the authorities on security grounds. However the widespread imposition of the curfew for years, in predominantly Rohingya areas and during periods when there were no reports of violence, cannot be justified. The fact that curfews are only maintained in the two Muslim majority townships strongly suggests that they are applied with discriminatory intent, and further evidence of official policy to deny Rohingya their right to freedom of movement.

3.1.3 CHECKPOINTS, EXTORTION, AND PHYSICAL VIOLENCE BY SECURITY FORCES

↑ *Myanmar border police stand guard at the check point near the entrance of Maungdaw township in northern Rakhine State on 28 August, 2017. © AFP/Getty Images*

[161] March 2016 curfew announcement, unofficial translation, on file with Amnesty International.
[162] Myanmar Code of Criminal Procedure, Section 144(6).
[163] Confidential correspondence, May 2015, on file with Amnesty International. OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, para. 29.

Restrictions on movement in northern Rakhine State are maintained and enforced by checkpoints, which are located throughout the two townships and usually staffed by BGP.[164] While some checkpoints are fixed, in particular those around the two main towns, Rakhine villages and the road between Maungdaw and Buthidaung, others are not. According to many interviewees there had been an increase in checkpoints since 2014, following the establishment of the BGP.

Interviews with Rohingya, humanitarian workers and human rights groups working on Rakhine State indicate that BGP officers regularly harass Rohingya at checkpoints, subjecting them to threats, extortion and physical violence.[165] An Amnesty International representative witnessed first-hand one such instance in March 2016, when a BGP officer kicked a Muslim man at a checkpoint outside Maungdaw town.

Nur Alam*[166] who lives in a village in Maungdaw township where he owns a shop selling rice and snacks, said that extortion and abuse was a regular occurrence for Rohingya at checkpoints. He described an incident he witnessed in September 2016:

> "*I have to go to Maungdaw town regularly to buy supplies for my shop. There are around seven or eight checkpoints between my village and Maungdaw town. Last month, I was travelling on the bus to Maungdaw town at around 8:30 am, when the police beat three people who were travelling without the proper documents. Two were men, while the other was a woman, she was travelling with her son as he was sick and she wanted to take him to the hospital.*
>
> *I saw everything. There were four police in total, two of them beat the guys with a cane on their backs, shoulders and thighs. Another slapped the lady four or five times with his hand. They said to them 'you kalar people why don't you have any documents, we don't want to see you travelling again, use your feet, don't travel with the bus.' After that they took them to the police station. I don't know what happened next, but I heard they were released the next day after they paid a fine.*"[167]

An ethnic Rakhine man also told Amnesty International that poor treatment of Rohingya at checkpoints was common, and described an incident he had witnessed while travelling on a bus between Maungdaw and Buthidaung townships in January 2016:

> "*I was in the bus travelling between Maungdaw and Buthidaung. They took all of the Rohingya off the bus and slapped one person, it was at the three mile checkpoint. The man was put on another bus and sent back to where he was coming from. There were around 10 or 11 BGP, they were wearing uniforms. I saw them slap the man, then I looked away. I looked away because otherwise they would ask me questions. If I intervened, I would also have trouble.*"[168]

Any acts of violence by state officials on helpless people under their control constitutes cruel, inhuman or degrading treatment or punishment, and if it causes severe pain or suffering would amount to torture.[169] The prohibition on torture and other ill-treatment is absolute, and is a rule of customary international law binding on all nations.[170]

In a particularly egregious case, Amnesty International documented the extrajudicial execution of a 23-year-old Rohingya man called Maung Maung (also known as Mohammed Monsal), who was shot in the head by a BGP officer while travelling from Maungdaw to his home in Buthidaung town in the evening of 7 December 2015.

According to a family member, Maung Maung had hired a car and driver to take him to a village in Maungdaw township to buy onions for the family business. His family were in touch with him throughout the day; however when they called him at 10pm, worried that he would not be home before the curfew (which at that time began at 11pm), he did not answer his phone. At around midnight his family received a call.

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[164] In an October 2016 report, Physicians for Human Rights (PHR) mapped 86 security posts in Maungdaw and Buthidaung townships using information gathered from interviews with 112 Rohingya in Bangladesh, communication with key informants in northern Rakhine State and GPS location information from the Myanmar Information Management Unit (MIMU), a database run by the UN. The report's authors stressed that the number of security posts was likely much higher than those documented in the report; PHR, *Where There is Police, There is Persecution: Government Security Forces and Human Rights Abuses in Myanmar's Northern Rakhine State*, October 2016, pp. 1, 5 and 9, s3.amazonaws.com/PHR_Reports/Burma-Rakhine-State-Oct-2016.pdf

[165] Amnesty International interviews November 2015, March and September 2016, and May 2017.

[166] Not his real name. In this report * is used to indicate where a different name has been used protect the interviewee's identity.

[167] Amnesty International interview with E.J., October 2016.

[168] Amnesty International interview with A.N., March 2016.

[169] See for instance, Case of *Bouyid v. Belgium* (Application no. 23380/09), European Court of Human Rights, Grand Chamber Judgement of 28 September 2015.

[170] Amnesty International, *Combating torture and other ill-treatment: A manual for action* (Index: POL 30/4036/2016), 11 November 2016, pp. 60-1.

A man asked if they were Maung Maung's relatives, and then what race Maung Maung was. He then informed them that Maung Maung was dead and told them to come to collect the body. Because of the curfew, Maung Maung's father was not able to travel to Maungdaw until 4am the next morning.

When he arrived at the hospital, two BGP officers informed him Maung Maung had not stopped at a checkpoint and that his death was an accident. Photographs of Maung Maung's body, which were shared with Amnesty International, clearly show a gunshot wound to the head. Two BGP officers were subsequently arrested and family members were told they had been charged with murder and misuse of their weapons. To date, Amnesty International does not know if the two BGP officers have been tried for Maung Maung's death.[171]

Almost every Rohingya Amnesty International interviewed in northern Rakhine State complained about the extortion and arbitrary taxes demanded by the BGP at checkpoints. Indeed, Amnesty International's research indicates that checkpoints serve little other function than to demand and receive bribes from travelling Rohingya. Reasons given by the BGP to extort money include not having the proper documents, unclear or "untidy" handwriting on permission letters and travel permits, and identity documents where the signature was either missing or illegible.[172]

A Rohingya woman living in northern Rakhine State explained that her husband lost his "white card" years ago, and so was not able to surrender the card and collect a receipt from the authorities. As a result, he is often extorted by BGP when passing through checkpoints: "*He doesn't have a temporary approval card so he has to pay 5,000 kyats to get permission to travel outside of the township. I have one, and I still have to pay 1,500 each time."* She continued, *"I worry about him a lot when he travels…They could detain him at any time because he doesn't have documents."*[173]

Interviewees told Amnesty International that failure to pay bribes can result in physical punishment or arbitrary arrest, and as a result, many people limit their travel to avoid harassment at checkpoints.

3.2 RESTRICTIONS ON MOVEMENT IN CENTRAL RAKHINE STATE

> **"Since the conflict [2012 violence] we can't go into the town. The authorities issued a verbal order not to go there after the conflict, and it's never changed since. The Township Administrator communicates it down to the Village Administrators and they inform the villagers. We can only go to other Rohingya villages. We are not allowed to go to the Rakhine villages at all."**
>
> A 45-year-old Rohingya man, who is a head of 100 households in a village in Mrauk-U township.[174]

Amnesty International's research found that while restrictions on movement were not as strictly imposed in central Rakhine State and in Sittwe township (See Section 3.3) as in northern Rakhine State prior to the 2012 violence, since then local authorities have imposed *de facto* restrictions even when they were not declared formally, and actively pressured Muslim communities to remain confined to their villages.

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[171] Amnesty International interview with B.B., March 2016.
[172] Amnesty International interviews with A.N., A.T., A.U., March 2016.
[173] Amnesty International interview with A.T., March 2016.
[174] Amnesty International interview with C.X., September 2016.

3.2.1 CONFINEMENT TO VILLAGES

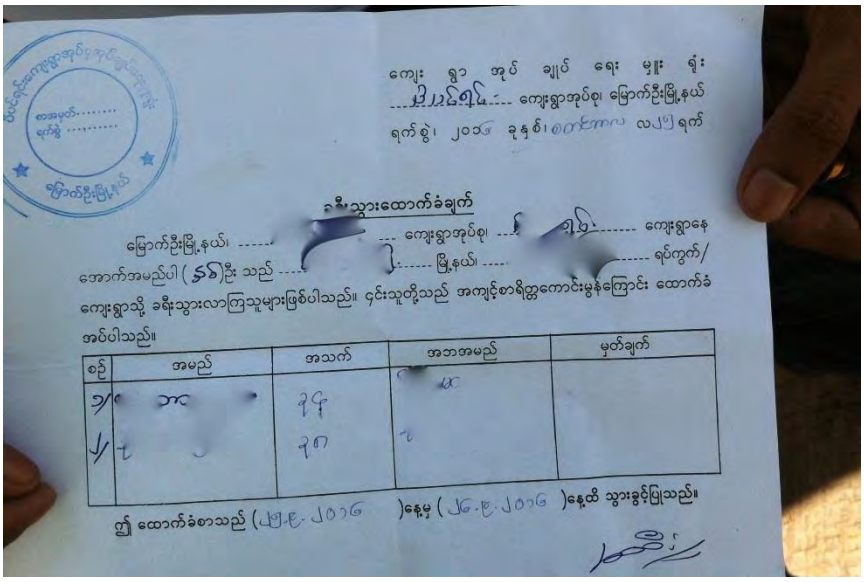
In central Rakhine State, Amnesty International's research paints an extremely bleak picture of Rohingya trapped in villages which they have essentially been unable to leave since 2012. All of the Rohingya Amnesty International interviewed in 11 different villages in central Rakhine State said that they are not allowed to travel to Rakhine villages, and have not been able to travel to the main town of their township (for example Kyauktaw town in Kyauktaw township) since 2012. The only travel permitted is to other Muslim villages in the township, however they are not allowed to use roads and can only use waterways to reach these villages. A Rohingya villager living in Kyauktaw township explained:

> *"We cannot go by land to other Rohingya villages, only by waterway and only to villages inside Kyauktaw township. Most villages are [by the] riverside. We can't go to Rakhine villages, and can't go into Kyauktaw or Mrauk-U towns. We can't go to other townships except Sittwe in an emergency."*[175]

Another Rohingya man living in a different village in Kyauktaw township confirmed these restrictions, explaining that people who do not comply risk complaints and hostility from the local Rakhine community:

> *"The Township Administrator informed us that we cannot travel around (the village), we can only go by boat to other Muslim villages. We cannot use the road, we can go near it, and cross it to go to our paddy fields, but we cannot walk on it. If we do, the Rakhine make problems to us."*[176]

In most villages Amnesty International visited in Mrauk-U and Kyauktaw townships, interviewees reported that they had to request some sort of permission to travel even between Muslim villages. The process for this varied. Some reported they had to verbally inform their Village Administrator, while others said they needed written permission. In both cases, villagers said the cost was around 200 kyats (US$0.10) each and every time they leave their village.[177] Interviewees from two different villages showed Amnesty International copies of the written permission slips, which they said they had obtained from their village administrator.[178]



↑A Rohingya villager shows the permission slip he needed to get in order to leave his village in central Rakhine State, September 2016. ©Amnesty International

[175] Amnesty International interview with A.A., February 2016.
[176] Amnesty International interview with D.O., September 2016.
[177] Amnesty International interview with C.Y., September 2016.
[178] Amnesty International took photographs of these permission forms and obtained professional translations, both of which remain on file with the organization.

Rohingya villages in close proximity to Rakhine communities which were affected by the 2012 violence appear to have stricter permission requirements, likely because of communal tensions and because authorities fear outbreaks of violence.

In addition to restricted travel between villages, Amnesty International's research found that towns in central Rakhine State are completely off-limits to Muslims, and have been since 2012, the sole exception being emergency medical treatment. Unable to travel to towns, Rohingya living in these areas are deprived of access to essential services and government institutions, which has a significant impact on their lives and rights (see Chapter 4 for further details).

Most Rohingya Amnesty International spoke to said they had not travelled outside of their home township since before the 2012 violence. A Township Immigration Officer in central Rakhine State confirmed to Amnesty International that in order to travel to other townships in Rakhine State, Muslims must obtain an official permission from the Township Immigration Office and if they want to travel outside Rakhine State they need to obtain a permission letter from the Rakhine State level Immigration Office. However, because Rohingya are denied access to towns it is now virtually impossible for them to apply for permission to travel outside their township, as they cannot access the immigration office.

The same immigration officer explained further: "*it is the case like this for all Muslims across the country. Other ethnics do no need approval letters, Muslims wherever they are in the country have to get the approval letter.*"[179] This is a clear and explicit admission of the discriminatory nature of these travel permit requirements.

There does appear to be some flexibility with regard to intra-township travel in Mrauk-U township, where authorities do allow Rohingya to travel without permission to Myaung Bway, a small town in neighbouring Minbya township. Myaung Bway has a small hospital where Rohingya can seek treatment, as well as a police station and a high school. For those who can afford to go, it offers a small but important lifeline.

In contrast to the situation for the Rohingya and Muslim communities, Amnesty International's research found that members of other ethnic and religious groups, including the majority ethnic Rakhine, were generally free to travel anywhere, including towns.[180] In practice, there is little travel to Muslim villages, in part because of fears of communal violence, and in part because there is little need or inclination to do so. Non-governmental organizations report that where non-Rohingya and non-Muslims communities do face difficulty travelling, these difficulties are primarily financial, likely a result of a generally poor economic situation for communities in Rakhine State.[181] The situation underscores the importance of increased livelihood opportunities and development in Rakhine State to improve the situation for all people living there.

3.2.2 VERBALLY-ISSUED RESTRICTIONS

Amnesty International representatives met with two Township Administrators from Mrauk-U and Kyauktaw townships, each of whom stated that there were no government imposed restrictions on the movement of Muslims within their townships. Instead, both said that Muslims' fear of the Rakhine community was the primary reason they chose not to leave their villages.[182]

However, while such fears do exist, Amnesty International's research found that, contrary to government claims, there is an established system of restrictions on movement which are verbally communicated from the township level down to the village tract level, and villagers hear about them from their village administrators and elders.

Amnesty International interviewed village leaders in Mrauk-U, Kyauktaw and Rathedaung townships who all reported that they were regularly told by local township authorities and police that they could not leave their villages, travel freely or go to the towns.

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[179] Amnesty International interview, September 2016.
[180] In one mixed Rohingya-Rakhine village tract in Mrauk-U, villagers and the Village Administrator stated that all residents needed permission from the Village Administrator to travel outside of the village tract regardless of their ethnicity. The Village Administrator explained that this was as a result of fighting between militias and the military nearby, a reference to fighting between the Arakan Army, an armed ethnic group and the Myanmar Army which has flared since the start or 2016.
[181] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016 and Centre for Diversity and National Harmony (CDNH), *Rakhine State Needs Assessment*, September 2015. The assessment was conducted between mid-March and mid-April 2015 and included a survey of 2,342 people in towns, villages and IDP camps in the ten different townships of Rakhine State (Maungdaw and Buthidaung in Maungdaw District; Mrauk-U, Kyauktaw, and Myebon in Mrauk-U District; Sittwe and Pauktaw in Sittwe District; Kyaukphyu and Ramree in Kyaukphyu District; and Thandwe in Thandwe District) in addition to focus groups discussions, in depth interviews and informal field observations.
[182] For more details on these fears see Section 2.2.3.

A village leader living in Rathedaung township explained that he was regularly in touch with local authorities who frequently told him that Muslims should not leave their villages:

> "*The Township Administrator and police officers call me and say it is not safe to go out so we should not try. They tell us this very often. I am in touch with them all the time. I last spoke to them yesterday and they told me again then. We cannot even go to other Muslim villages. We have nothing to do in the village so it is very difficult at the moment.*"[183]

In Mrauk-U township, a community leader said that while township authorities acknowledge the restrictions, they insist they are not permanent:

> *"The township authorities come to the village, they gather us in a meeting and say 'you will be able to go in the future, not now, it's too dangerous, so don't go. If anything happens contacts us and we will take action'. The last time they came was around two months ago. There are always government authorities in the village watching us... I don't know why we are not allowed to go out, the government will know."*[184]

All the villagers Amnesty International spoke to said these restrictions had been in place since 2012, when waves of violence between Buddhist and Muslim communities swept the state. Five years later, there are no signs indicating that this situation is changing or likely to change in the near future.

Local security forces, in particular the police, also play a role in communicating and reinforcing restrictions on movement in central Rakhine State. A Rohingya leader living in Kyauktaw township who is regularly in touch with the police was told that they had orders that Muslims should not leave their villages: "We call the police [to ask to travel] but they say we cannot leave. I try quite often but they say on the phone that we cannot. They say that by law we cannot go because the big boss says no. There is a territorial line, we can go to the main road but can't pass beyond. The end of our territory is the Rakhine village."[185]

By verbally "advising" Muslim communities not to travel outside their villages for the sake of their safety, local authorities are not only perpetuating discriminatory restrictions on movement within townships, they are also failing in their obligation to uphold the rule of law and guarantee respect for and the protection of human rights.

3.2.3 CHECKPOINTS AND ARRESTS

Verbal orders restricting movement are reinforced by the presence of security posts and checkpoints which are situated outside most towns, on township borders and in some, but not all, Rohingya villages. Amnesty International researchers noted the presence of checkpoints at the outskirts of Mrauk-U and Kyauktaw towns, which was confirmed by the Mrauk-U Township Administrator who explained they were there for "security".[186] They were staffed by police officers and immigration officials.

While there is no official curfew in place outside of northern Rakhine State, Amnesty International's research indicates that in some villages in central Rakhine State as well as in Sittwe township (See Section 3.3 below), security forces checkpoints are a way to enforce an unofficial curfew.

For instance, Amnesty International representatives travelled by boat to a remote and isolated Rohingya village in Mrauk-U township where at 3:30pm people who were visiting the village for the day departed the village on mass, queuing up while they waited to board the boat home by a police check post which guarded the village (see pictures below). According to one of the villagers:

> "*The police are at the checkpoint outside our village 24 hours a day. We can't leave before 7am or after 5pm. Even if there is an emergency, late at night we cannot leave.*"[187]

[183] Amnesty International interview with E.D., September 2016.
[184] Amnesty International interview with D.D., September 2016.
[185] Amnesty International interview with G.E., September 2016.
[186] Amnesty International, interview with Mrauk-U Township Administrator, September 2016.
[187] Amnesty International interview with D.N., September 2016.

September 2016, ©Amnesty International

Checkpoints also reinforce the risk of arrest for those who attempt to travel outside their township, to seek education, medical care or work. Amina*, a 19-year-old Rohingya woman from central Rakhine State told Amnesty International that her husband was arrested in March 2016 for crossing into a neighbouring township without permission:

> "*He left the house at around 4am. Before he left, he told me he was going to take passengers outside the area. I was worried, as it's not allowed. I didn't hear anything from him that day. That evening, at around 9pm, a township police officer called and asked if my husband was with me. I told him no... The next morning at 8am he came to my house and told me my husband had been arrested… I heard he was moved [to Sittwe prison] after the court sentenced him to 18 months for 'crossing into the area illegally'. The two passengers he took were sentenced for the same thing. He was also given seven months for not having a driver's licence. He didn't have a lawyer during his trials because we could not afford one.*"[188]

When men are detained it can often have a particularly serious impact on their wives, other female relatives and families more generally, as in Myanmar society in general and Rohingya communities in particular, men are usually the primary breadwinners and families are reliant on them to generate an income. Amina told Amnesty International that since her husband was arrested, she struggled to earn enough money to provide food for her and her baby son.

Amnesty International also documented the arrest of a 15-year-old girl for attempting to travel outside of Kyauktaw township without permission in September 2016. According to her family, she had left the village at around 10pm in a car with seven others, all of them trying to reach Yangon, Myanmar's largest city, to look for work.

Her father told Amnesty International they found out about her arrest after township police officers contacted their village administrator. They were unable to travel to Kyauktaw town to visit her in police detention, or to attend her court hearings because as Rohingya they said they are unable to access the town. As a result, they did not know precisely what she had been charged with, or even whether she had access to a lawyer.[189]

← *A father holds a picture of his daughter, arrested several weeks earlier for trying to leave their township without permission. September 2016, ©Amnesty International.*

[188] Amnesty International interview with C.B., September 2016.
[189] Amnesty International interview with C.T., September 2016.

When Amnesty International representatives met with the Township Administrator that same month and asked about the case, he replied "I heard about the case… we have many such cases". He then called the Township magistrate, after which he stated "we don't have cases of child arrests – if it's a child caught we will return them to their parents."[190] The case exemplifies how arbitrary restrictions on movement can result in a violation of a wide range of rights, including, in this case, to the right of a child deprived of liberty to maintain contact with her family.[191] When Amnesty International contacted the family several weeks later, they still did not know what had happened to her, and the organization has since been unable to confirm whether she was sentenced or released.

Amnesty International also interviewed Salim*, one of 27 people including students and patients, who were arrested while trying to reach the IDP camps in Sittwe township for education and medical care in mid-2015. They were all arrested at a checkpoint and detained for three nights and ill-treated before being escorted back to their village by the police. He explained:

> *"We left our village in Rathedaung [township] by boat at around 10pm. A Rakhine villager was driving the boat, we each had to pay him 100,000 kyats (approx..* US$*73). When we disembarked and were waiting for a truck early the next morning, police came and arrested us. They asked where we were from and why we had travelled. We told them the village we were from, but they said 'no, you're not from here, you're trying to enter from Bangladesh.' They asked what documents we had. We didn't have any so they took us to the police station. When we arrived they made us take off our clothes. I was slow, so they slapped me around the face four or five times. Then they questioned us. There was a police officer, a military officer and an immigration officer."*[192]

They did not have access to lawyers at any point during their detention. According to Salim and a leader from his village, all were made to sign a piece of paper agreeing they would not attempt to travel "illegally" again.[193]

3.3 RESTRICTIONS ON MOVEMENT IN SITTWE TOWNSHIP

> **"We are not allowed to go outside of this area (the Aung Mingalar enclave)... How can we survive like this?"**
>
> An elderly Rohingya woman living in the Aung Mingalar Muslim enclave in Sittwe town.[194]

Restrictions on movement in Sittwe township do not only apply to Rohingya, they target all Muslims because they are Muslim. The Kaman Muslims are one of the officially recognized "national races," and are considered "full" citizens by birth by the authorities. In theory, they should have all the rights afforded to other citizens, including freedom of movement. However, in reality, they too are confined to villages and displacement camps because of their Muslim identity, and a combination of state and non-state imposed restrictions limiting their movement.

[190] Amnesty International interview with Township Administrator, September 2016.
[191] CRC, Article 37(c).
[192] Amnesty International telephone interview with E.E., October 2016.
[193] Amnesty International telephone interviews with E.E., and E.D. October 2016.
[194] Amnesty International interview with E.Q., March 2016.

3.3.1 CONFINEMENT IN INTERNAL DISPLACEMENT CAMPS

Around 140,000 people, Rakhine, Rohingya, Kaman and Maramagyi, were displaced as a result of the violent clashes between Buddhists and Muslims which swept Rakhine State in 2012. As noted by humanitarian organizations operating in Rakhine State: "*At the height of the crisis in 2012, the Government segregated the two communities in order to prevent further violence and to reduce tensions. Within Sittwe Township, a section of rural Sittwe on the outskirts of town was effectively cordoned off, with movement into and out of the area controlled by a series of military checkpoints.*"[195]

Five years later, 120,000 IDPs, mainly Rohingya, continue to live in 36 displacement camps or in camp-like settings in Rakhine State.[196] Of these, 94,000 are confined to a massive displacement camp area on the outskirts of Sittwe town.[197] While displaced Rakhine and Maramagyi communities have been free to leave their camps and have now largely been resettled in relocation sites, Muslim communities have not, a situation that has remained in effect since 2012. Currently the entire camp complex in Sittwe, which is a combination of displacement camps and villages, is surrounded by a barbed wire fence, a physical testament to the population's segregation from the rest of the world.

There are two entrances to the camp complex, and visitors must pass through checkpoints in order to enter. Official permission is required for international visitors, however Myanmar citizens are free to come and go.

↑ *A Rohingya man looks out from a barbed wire fence used as a barrier to restrict travel 25 November, 2012 on the outskirts of Sittwe, Myanmar. © Paula Bronstein/Getty Images*

Many displaced people in the camps rely on humanitarian organizations for food, shelter, healthcare and other essential services, and local Rakhine traders bring in food, materials and other commodities that are sold in camp markets. Muslims are not allowed to leave the camps without permission, and the few who can are usually accompanied by a police escort.[198]

Amnesty International believes that the confinement of Muslims to the displacement camps for over five years, without any known legal basis or legitimate justification, constitutes an arbitrary deprivation of their right to liberty, in violation of international human rights law and standards.[199] It deprives them of livelihoods and the opportunity to live in safety and in dignity in places and areas of their choosing.

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[195] Danish Refugee Council, European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, UN High Commissioner for Refugees, CCCM Cluster, Joint IDP Profiling Service, *Sittwe Camp Profiling report*, 30 June 2017, p. 12, reliefweb.int/sites/reliefweb.int/files/resources/sittwe_camp_profiling_report_lq.pdf

[196] United Nations and Partners, *Humanitarian Needs Overview 2017*, December 2016, p. 6, reliefweb.int/sites/reliefweb.int/files/resources/Ref_Doc_Humanitarian_Needs_Overview_HCT_2017.pdf

[197] OCHA, Myanmar: IDP Sites in Rakhine State, May 2017, reliefweb.int/sites/reliefweb.int/files/resources/MMR_0367_IDP_Site_Rakhine_A0_May_2017.pdf

[198] Amnesty International observations, November 2015 and March and September 2016, interviews with displaced Rohingya, humanitarian workers, November 2015 and March 2016.

[199] UDHR, Article 3. The Human Rights Committee has described "arbitrary deprivations of liberty" as a violation of peremptory norms of international law, which states may not resort to even in time of emergency; Human Rights Committee, *General comment no. 29: States of emergency (article 4)*, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

In its interim report published in March 2017, the Rakhine State Advisory Commission recommended that the government develop a comprehensive strategy towards closing all IDP camps in the State.[200] The government welcomed the report and committed itself to implementing its recommendations promptly, noting, however, that the implementation of some would be "contingent upon the situation on the ground".[201]

In May 2017, Kaman leaders were invited to a meeting with Rakhine State government officials and told that state authorities could not guarantee the safety of returning Kaman communities in Ramree township (in southern Rakhine State). Instead, the authorities offered displaced Kaman families cash sums and free travel if they would relocate to Yangon.[202]

Under international human rights standards, displaced individuals have the right to return to their homes, or resettle in another location voluntarily, in safety and with dignity. Special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration.[203] The government's failure to even attempt to facilitate the safe return of the Kaman community or to meaningfully consult members of the community seriously calls into question its commitment to such returns, and to reintegrating Muslims back into Rakhine State society.

[200] Rakhine State Advisory Commission, Interim Report, March 2016, pp. 12-13.
[201] Ministry of the Office of the State Counsellor, Press Release, 16 March 2017, www.moi.gov.mm/moi:eng/?q=announcement/18/03/2017/id-10249
[202] Amnesty International interview with Kaman leaders present at the meeting, June 2017; Kyaw Ye Lynn, 'Myanmar's Kaman Muslims face no option but relocation', Andalou News Agency, 28 April 2017, aa.com.tr/en/asia-pacific/myanmars-kaman-muslims-face-no-option-but-relocation/807343
[203] UN Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998, Principle 28.

3.3.2 CONFINEMENT IN VILLAGES

While most Muslims in Sittwe township live in the displacement camp area, there are a small number of Rohingya and Kaman living in villages on the outskirts of Sittwe town. Access to and from these villages requires travelling along a road where military and police are stationed, which residents explained is a way of controlling and monitoring their movements.

Amnesty International visited four of these villages, one of them on two separate occasions. Each time residents told Amnesty International that they were not permitted to travel to downtown Sittwe, in part because authorities told them verbally they were not allowed and in part because of fears that they would face violence and hostility from the Rakhine community. In Kaman villages, some residents said that they were able to travel into town because they look Rakhine, however, they expressed fears about doing so and said they limited their travel so as not to draw attention to themselves.[204]

Cut off from Sittwe town, most Muslim villagers rely on access to the displacement camps in order to obtain education, visit markets, trade goods, see friends and family and seek medical care. Access to the camps from the villages is controlled by both military and police checkpoints, and villagers reported having to pay an unofficial fee of around 2,000 kyats (US$2) to pass through the military checkpoint.

When Amnesty International visited several of these villages in September 2016, having first visited the area in March 2016, residents reported tightened movement restrictions which they said had been implemented several months earlier. They explained that a new "gate checkpoint", located where the dirt track to their village tract meets with the main, tarmacked road into Sittwe town and operated by the military, had been established which they were only permitted to pass through between 6am and 6pm. However, they reported that the opening hours sometimes varied and the gate often didn't open until later in the morning. Passing through the gate after it was closed required the village leaders to seek authorization from the local military commander.

3.3.3 THE AUNG MINGALAR MUSLIM ENCLAVE

The only Muslim population now living within Sittwe town is concentrated in the Aung Mingalar quarter in the heart of downtown. Prior to 2012, around 73,000 Muslims reportedly lived in the town, about half the total population, mixing freely with the neighbouring communities and conducting business.[205] Today, just over 4,000 remain, guarded by armed police, eight checkpoints and barbed wire blockades which separate them from the surrounding population. The rest have either moved to the displacement camps on the outskirts of Sittwe town or else are believed to have fled by boat to neighbouring countries.

The residents of Aung Mingalar, whom Amnesty International visited in March 2016, are not permitted to travel beyond the perimeter area, a situation which remains to this day. They explained to Amnesty International that if they did, they would be arrested by the security forces or face violence and hostility from the surrounding Rakhine community.

The only travel permitted outside of Aung Mingalar is to the displacement camp complex on the outskirts of town. Five times a week (Mondays, Tuesdays, Wednesdays, Thursdays and Saturdays), the government allows a car to take residents to the camp area, where they can go to the market, visit relatives and seek medical treatment at the camp clinics.[206] The cost is 1,000 kyats (US$0.70) per passenger. Community elders must compile a list of the names of all those travelling and submit it to the security officer, who photographs the residents before they leave, and check their names off on return.

As with all other areas in Rakhine State where Rohingya live, access for international visitors is restricted and police closely monitor who enters and leaves. Amnesty International representatives were followed and questioned by security force officials during a visit to Aung Mingalar.

[204] See box on community imposed movement restrictions.
[205] Thomson Reuters Foundation, 'Where are the Muslims in Sittwe?', 15 May 2013, news.trust.org//item/20130515092031-tgea2/
[206] Amnesty International correspondence, August 2017.

COMMUNITY-IMPOSED MOVEMENT RESTRICTIONS

While restrictions on movement are primarily enforced and maintained by the state, other factors also play a role in limiting the movement of Rohingya and other Muslims in both central Rakhine State and Sittwe township. Chief among them are inter-communal tensions.

Five years after waves of violence between Buddhist and Muslim communities swept Rakhine State, the situation remains volatile, and all communities fear fresh outbreaks of violence. For Muslim communities, fear of violence stems in large part from the Myanmar security force's failure to respond to threats and violence by extremist Rakhine groups. Many Muslim interviewees cited incidents, some recent, some dating back several years, when hardline Rakhine individuals and groups had attacked and injured Muslim villagers, and police had failed to prevent the attacks or else did not intervene to stop them or to hold those responsible to account. For their part, ethnic Rakhine villagers Amnesty International interviewed said they feared outbreaks of violence if Muslims came in to their area, and expressed concern that police would not take action, and often failed to take action to investigate Muslim villagers who committed petty crimes in the area.

The role of hardline individuals and groups within the Rakhine community in restricting Muslim movement was also clearly recognized by a Senior Rakhine State government official who explained: "Restrictions on movement are there because of the conflict… if they [the Rohingya] want to go to Sittwe [town] they need police security. They cannot leave their areas without permission and security because of the Rakhine residents."[207] While it is true that there are security concerns, more so since the ARSA attacks which have contributed to fear and mistrust among communities throughout the state, the reality is that effective state action would largely mitigate these concerns. What all communities, but most especially Rohingya and Muslim communities, are most at risk from is a state policy that has fostered rather than challenged discrimination.

An illustration of this was given to when Amnesty International spoke to a Kaman couple who had travelled to Sittwe town for business in December 2015, and who were temporarily detained by police after hardline Buddhist monks protested against their presence. The man, a 52-year-old Kaman with full citizenship explained:

> "*My wife and I went to Sittwe to do a job downtown. While we were there some monks arrived. They asked "are you Kaman?" When I replied yes they told us that we could not come there [to downtown] because we are Kaman. I explained that we have citizenship, both my wife and I, but they said it didn't matter, even if we are Kaman we still believe in Islam. They called the police who quickly arrived and took us to the police station. We were detained there for around an hour. The police asked if I was Kaman, and told me that we shouldn't come downtown. Fortunately I have a good relationship with the military commander who oversees our area, so I called him and he came and collected us.*"

Their experience further confirms the role of the state, in this case the police, in both restricting Muslim movement and in bowing to pressure from hardline groups.

By imposing arbitrary and discriminatory restrictions on freedom of movement under pressure from such groups, the police are failing in their obligation to exercise due diligence to protect individuals from abuses of their human rights by non-state actors.

This also indicates that even if state-imposed movement restrictions were removed, community-imposed movement restrictions would likely continue unless the authorities take effective action. Concerns about violence and hostility have created a climate of fear among all communities, and is exacerbated by state failures to protect the people of Rakhine State, investigate incidents of violence, and hold perpetrators to account. Policies of segregation, which have meant there has been little to no interaction between Muslim and Rakhine communities over the past five years, have further fueled these fears.

[207] Amnesty International interview, Senior Rakhine State government official, March 2016.

3.4 RESTRICTIONS ON MOVEMENT OUTSIDE OF RAKHINE STATE

In addition to formal restrictions limiting their movement within Rakhine State, Rohingya are also restricted in moving outside of the state. Only Rohingya who hold official identification documentation (in most cases this would be an NVC, though some still hold NRCs and are granted authorization to travel) can be granted permission to travel outside of Rakhine State, meaning in practice, only very few are able to do so legally. To do so, they must obtain official permission from the Rakhine State government. To apply they must submit to the Rakhine State Immigration Department: a copy of their household list; a letter of recommendation from their Village or Ward Administrator (or a Village Departure Certificate if in northern Rakhine State); a letter of recommendation from the township police station; permission to travel from their Township Immigration Office; and letters of recommendation from at least two people known to them. If granted, the authorization to travel outside of Rakhine State is valid for 45 days, after which they must return.[208]

This process is also outlined in the 1997 State Immigration and National Registration Department instruction mentioned in Section 3.1.1 above. Interviews with Rohingya leaders in Yangon and Sittwe, as well as with UN officials, confirm that it remains in effect. A Rohingya leader who was part of an interfaith delegation traveling outside of Myanmar in September 2016 told Amnesty International that all the Rohingya who travelled from Rakhine State were made to put "Bengali" on their Form 4 applications. "*We had problems at the airport too*," he said, "*they [the authorities] took photos of all of us. Twice they took our photo, one time it was immigration and one time it was military intelligence. It's a way to pressure us not to go*".[209]

Rohingya travelling outside of Rakhine State are also required to have at least two "guarantors" who would ensure that they will return to Rakhine State before their travel permission expires. They must also report on arrival to the immigration office of the township they are staying in and again on departure. Overstaying or travel to places not listed on the travel permission is punishable under Section 188 of the Penal Code and the Residents Registration Act.[210] Credible sources have reported that guarantors face penalties if the traveller does not return to Rakhine State, though the punishment for this is unclear.[211]

Amnesty International's research indicates that some Rohingya have been able to obtain permission to travel outside of Rakhine State on payment of bribes. In one case the organization documented in September 2016, the interviewee told researchers he paid 3,000,000 kyats (approx. US$2,170) to obtain the necessary documentation for three of his family members to travel to Yangon (1,000,000 kyats per person). He said he had paid the money to a broker, who used it to bribe immigration officials and arrange the necessary paperwork. He also had to pay money to officials at Sittwe's airport terminal to ensure his family could board the plane.[212]

According to Rohingya leaders and humanitarian officials, most of those granted permission to leave Rakhine State for Yangon do so on medical grounds, and they require an additional referral from the Rakhine State Health Director before they can be granted the permission.

In recent years, some Rohingya leaders have also been granted permission to leave the state in order to attend workshops and conferences on reconciliation and tolerance. In these instances they were required to pay for a police escort to the airport, which they said was between 20-50,000 kyats (approx. US$15-35).

[208] Amnesty International interviews, Sittwe and Yangon, September 2016 and May 2017.
[209] Amnesty International interview with F.X., September 2016.
[210] Section 188 of the Penal Code provides for up to one month in prison for a person who "causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed". Where an act of disobedience "causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray" it is punishable by up to six months' imprisonment. Under Section 6(3) any infringement of the Residents Registration Act is punishable by up two years' imprisonment.
[211] Amnesty International interviews, Sittwe and Yangon, September 2016 and May 2017.
[212] Amnesty International interview with E.O., March 2016.

INTERNATIONAL HUMAN RIGHTS LAW AND THE IMPACT OF MOVEMENT RESTRICTIONS

The right to freedom of movement is enshrined in the UDHR and provided in several other international human rights treaties, including in CRPD, to which Myanmar is a state party.[213]

Under international human rights law, freedom of movement can only be restricted 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.[214] Restrictions must also be proportional, that is, appropriate to achieve their protective function.[215]

Freedom of movement is not only important in its own right, it plays an essential role in the enjoyment of other human rights, including to education, livelihoods, and health care. The travel permission system in Rakhine State is clearly a violation of the right to freedom of movement. Not only does it fail to meet the established criteria for restrictions allowed under international human rights law, it is clearly discriminatory as it targets the Rohingya specifically on the basis of their ethnicity.

In specific circumstances, imposing severe restrictions on movement as part of a widespread or systematic attack against a civilian population, can amount to the crime against humanity of severe deprivation of physical liberty under the Rome Statute of the ICC.[216]

The Myanmar government has the right, even the duty, to take measures to protect the human rights of the population, including the right to life, and in time of public emergency these may include restrictions on the right to freedom of movement and other human rights. However such measures must be imposed on a temporary basis and in a non-discriminatory manner. Some of the initial emergency measures put in place in 2012, and again in October 2016, and August 2017 might have been justified on these grounds had they been applied equally, but they were instead applied in a discriminatory manner and targeted specific populations on the basis of their ethnicity, religion and citizenship status.

Further, the fact that these measures remain in place more than five years later suggest they are imposed not to maintain security, but as part of a deliberate policy designed to control and regulate the movements of Muslim populations in order to separate them from ethnic Rakhine and other communities living in Rakhine state.

Polices of racial segregation are absolutely prohibited under international human rights law, and states are required to prevent, prohibit and eradicate all practice of racial segregation and apartheid.[217] The UN Committee on the Elimination of all forms of Racial Discrimination has noted that policies of complete or partial segregation are not only created by government policies, but can also arise from the actions of private persons without any initiative or direct involvement from the state. At the same time it has affirmed the responsibility of states to work towards the eradication of any negative consequences that ensue from such practices.[218] The Myanmar authorities are therefore not only responsible for violations of the right to freedom of movement, their failure to intervene and prevent non-state actors from restricting the movement of Rohingya and other Muslims constitutes a failure in the state's responsibility to guarantee the rights of all people within its territory.

More than five years of segregation have adversely affected social cohesion in Rakhine State, as communities are divided and kept separate from one another. The situation needs swift and effective action, and lifting these restrictions is essential to ensuring respect for the human rights of all people living in Rakhine State. Lifting restrictions on movement should also be a prerequisite for international investment in and development of the state, otherwise such assistance, however well intentioned, will likely reinforce and further entrench segregation and lead to further inequality and loss of rights for Muslim communities.

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[213] UDHR, Article 13 ; ICCPR, Article 12 ; CRPD, Article 18. Myanmar ratified the CRPD on 7 December 2011.
[214] ICCPR, Article 12(3).
[215] Human Rights Committee, *General Comment No. 27 Freedom of movement (Article 12),* UN Doc CCPR/C/21/Rev.1/Add.9, 2 November 1999.
[216] Rome Statue of the International Criminal Court (ICC), adopted on 17 July 1998 (A/CONF.183/9), entered into force 1 July 2002 (as subsequently amended), Article 7(1)(e) "Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law." As explained in Chapter 6, this crime can also form part of the crime against humanity of apartheid.
[217] Committee on the Elimination of all forms of Racial Discrimination, *General Comment XIX on article 3 of the Convention*, 1995, para. 2.
[218] Committee on the Elimination of all forms of Racial Discrimination, *General Comment XIX on article 3 of the Convention*, paras 4 and 3.

4. VIOLATIONS OF ECONOMIC AND SOCIAL RIGHTS

> **"All people living in the Rakhine State have access to education and healthcare services without discrimination."**
>
> State Counsellor Aung San Suu Kyi, speaking during a televised national address on 19 September 2017.[219]

Movement restrictions and polices of segregation prevent Rohingya and other Muslims from accessing healthcare, education and livelihood opportunities, the latter of which has a negative impact on standards of living and food security. Discriminatory treatment at the hands of the authorities, or their failure to intervene when non-state actors prevent Muslims from exercising their rights, further compounds this situation.

At the time of research, Myanmar had signed but not ratified the ICESCR. Despite this, and according to the Vienna Convention on the Law of Treaties, states that have signed treaties must respect the object and purpose of these treaties, even if they have not ratified them. While there is no strict definition of what this would be, for an international human rights treaty like the ICESCR, it can be argued that ensuring that the minimum, essential levels of all covenant rights are fulfilled is something that falls within the object and purpose of the treaty. This would also include non-discrimination in access to goods, services and opportunities to realize one's economic, social and cultural rights; as well as ensuring that everyone has access to essential goods and services such as health care and education, and providing these goods and services where people cannot access them for themselves.

Now that Myanmar has ratified the ICESCR on 6 October 2017, which is due to come in to force on 6 January 2018 – the government will be legally bound to respect, protect and fulfil the economic, social and cultural rights of all people without discrimination.[220] As outlined below, when it comes to the Rohingya and other Muslim communities in Rakhine State, many of these rights are systematically violated. Failure to act to remove these discriminatory policies will place Myanmar in immediate breach of its obligations under the treaty. Moreover, where discriminatory laws and policies place severe restrictions on access to the fundamental necessities of survival and place the right to life at grave risk, such policies may amount to cruel, inhuman or degrading treatment,[221] and potentially a violation of customary international law.[222]

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[219] The speech is available in its entirety at www.youtube.com/watch?v=NJkg2_72uUo
[220] Depository Notification C.N.624.2017.TREATIES-IV.3, 6 October 2017, treaties.un.org/doc/Publication/CN/2017/CN.624.2017-Eng.pdf
[221] See *R. (Adam and Limbuela) v. Secretary of State for the Home Department* [2005] UKHL 66 In which the UK House of Lords held that a failure by the state to provide the necessary social support including housing and food exposed asylum seekers to a real risk of becoming destitute can constitute 'inhuman and degrading treatment'.
[222] See report of the UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment(10 April 2014) A/HRC/25/60 on the status of torture and cruel, inhuman and degrading treatment or punishment as customary international law.

4.1 VIOLATIONS OF THE RIGHT TO HEALTH

Access to healthcare across Rakhine State is generally very poor. According to the final report of the Advisory Commission on Rakhine State, there are only five health workers per 10,000 people in Rakhine State, which falls well below the national average of 16 per 10,000 people, and even farther below the minimum of 23 per 10,000 people recommended by the World Health Organization (WHO) to maintain a functional health system.[223]

Lack of infrastructure, as well as badly maintained roads and poorly equipped and staffed hospitals, means that all communities in the state face difficulties accessing the healthcare they need. However, Rohingya and other Muslims face additional barriers accessing healthcare, in particular emergency medical treatment and treatment for serious medical conditions. This is in large part due to the discriminatory restrictions on their movement described above, and policies of segregation.

In northern Rakhine State, travel permits and checkpoints delay Rohingyas' access to local hospitals, health centres and clinics, while in central Rakhine State, restrictions on movement mean that most Rohingya are unable to access their nearest hospitals. Muslims across the state must obtain prior approval to travel to the state hospital in Sittwe, where they have been kept in segregated wards since 2012. Fears about discriminatory and abusive treatment in hospital further prevent Muslims from accessing healthcare, while those who do are vulnerable to extortion and a range of other unofficial "fees" by police, hospital staff and other actors involved in the process.

4.1.1 IMPACT OF MOVEMENT RESTRICTIONS ON ACCESS TO HEALTH CARE

IN NORTHERN RAKHINE STATE

"Outside Maungdaw town it is difficult to come to the hospital. It's especially difficult if you have an emergency and you can't meet with the Village Administrator to get the [travel] approval letter. If there is an emergency at night then we cannot cross the checkpoints during the curfew hours. We have to go back to our homes and wait until morning."

A 28-year-old Rohingya man living in Maungdaw township.[224]

In northern Rakhine State, rural areas and villages lack public health facilities and services, while the hospitals in Buthidaung and Maungdaw towns lack skilled health professionals.[225] The presence of preventable diseases, such as polio, has also raised concerns about sub-national gaps in vaccination coverage.[226]

However, movement restrictions are the main obstacle for Rohingya in accessing health care. While they are allowed to access health centres, clinics and hospitals in their township, they are required to apply for travel permission to do so, which can create delays (See Chapter 3, Section 3.1). The curfew in place since 2012 also severely impairs access to medical treatment because they are not able to access medical treatment, including emergency treatment, at night.

Amnesty International interviewed the family of an elderly woman from a village in Buthidaung town who had suffered a stroke in March 2017. She was unable to seek immediate medical treatment because she did not have a Village Departure Certificate and the stroke occurred late in the evening when the curfew was due to come in to effect.

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[223] Advisory Commission on Rakhine State, Final Report, 24 August 2017, p. 42. World Health Organization (WHO), *A universal truth: No health without a workforce*, 2015, www.who.int/workforcealliance/knowledge/resources/GHWA-a_universal_truth_report.pdf
[224] Amnesty International interview with B.J., March 2016.
[225] CDNH, *Rakhine State Needs Assessment*, September 2015, p. 83.
[226] For example, in 2015, WHO reported that cases of vaccine-derived polio-virus had been confirmed in a Rakhine State township, which Amnesty International later confirmed to be Maungdaw township. WHO, *Circulating vaccine-derived poliovirus – Myanmar*, Disease outbreak news, 21 December 2015.

When she was able to seek medical treatment at Buthidaung hospital, doctors referred her to the better equipped hospital in Maungdaw town, however she was unable to travel because she did not have an NVC. Fortunately she was able to receive treatment from an army doctor and family members reported she had largely recovered.[227] Amnesty International has also received credible reports of deaths owing to lack of timely access to medical facilities.[228]

For many Rohingya, humanitarian agencies have been the primary healthcare providers for many years. However the work of these agencies is often hindered by restrictions on their movement since all international humanitarian staff require specific travel authorization to go to and travel within northern Rakhine State.[229]

Since 2012, it has been nearly impossible for Rohingya to reach the better equipped health care facilities of Sittwe General Hospital. In a handful of very serious medical emergencies, INGOs operating in northern Rakhine State are able to refer a patient to Sittwe General Hospital, however to do so the INGO must obtain authorization from the Township Medial Officer and Sittwe General Hospital and organize for the patient's pick-up by boat.

The emergency referral system is outlined in an organigram shared by a senior staff member at the Sittwe General Hospital, and differs depending on where in Rakhine State the patient lives and how they are to be transported (for a description of the process see box below on page 62).[230] Emergency referrals from northern Rakhine State are not available at night time and the referral process is heavily reliant on the length of time required to obtain the specific authorizations, which can take several hours.[231]

With limited access to Sittwe General Hospital, the only other option available to Rohingya needing emergency health care or treatment for serious conditions is to travel to Bangladesh. However this option is prohibitively expensive for most families, as it requires them to secure the necessary travel authorizations, including a special permit to travel to Bangladesh, in addition to transport, medical and other fees they incur. Rafique*, a former farmer in his 50s living in Buthidaung township explained that he was left with no option but to go to Bangladesh between July and October 2015 when he was suffering cirrhosis of the liver:

> *"I wanted to go to Sittwe hospital for medical treatment, but it's forbidden, the hospital staff told me I couldn't go to there for my own safety and said I needed to go to Bangladesh for treatment. It cost a lot of money. My brother has many paddy fields and oxen and he had to sell some of these to pay for the travel. He sold over 5 acres of paddy field and eight oxen. I was lucky… most people cannot afford this, so they just end up dying."*[232]

Abul Kadir*, a 36-year-old man also from Buthidaung township took his wife Asmidah* to Bangladesh when she contracted Hepatitis C in late 2015. He described the process and the costs in detail, which were consistent with those described by Rafique:

> "*We realised that they didn't have enough equipment or specialist treatment in Buthidaung hospital, and we couldn't go to Sittwe or Yangon, so we had to go by boat to Bangladesh. The first thing we had to do was get a Form 4 for permission to travel from Buthidaung to Maungdaw. The letter from our Village Administrator for permission was 500 kyats and the Form 4 was 1,000 kyats each. We paid this to the immigration office in Buthidaung.*
>
> *It cost 2,000 kyats each to get the car from Buthidaung to Maungdaw… we also had to pay at the checkpoint between Buthidaung and Maungdaw. We gave the guard 500k kyats... When we arrived in Maungdaw we had to get a passport from the Border Trade Affairs Office. It was 40,000 kyats for each passport... Then the boat from Maungdaw to Bangladesh was 6,000 kyats."*

In total Abul Kadir estimated he had spent around 85,000 kyats (US$60), almost three months' salary, on travel authorization forms to be able to travel to Bangladesh. Transport, accommodation and medical fees meant the costs were even higher. "*I have a good salary for where we are [but] I used all of our savings to travel to Bangladesh. Now we have no savings and I have to start all over again,"* he said.[233]

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[227] Amnesty International telephone interview, April 2017.
[228] Amnesty International interviews, Sittwe and Yangon, November 2015, March and September 2016, correspondence March 2017.
[229] Amnesty International interviews with humanitarian workers, November 2015, March and September 2016, May and September 2017.
[230] Emergency Medical Referral Pathway, dated 19 October 2015, on file with Amnesty International.
[231] Amnesty International interviews May 2017.
[232] Amnesty International interview with B.A., March 2016.
[233] Amnesty International interview with B.D. and B.E., March 2016.

THE EMERGENCY MEDICAL REFERRAL PROCESS IN RAKHINE STATE

The emergency medical referral process was established as a way to lessen the impact of movement restrictions on Rohingya's access to health following the 2012 violence. It lays out the specific permissions required for Rohingya and other Muslims to travel to and receive treatment at the Rakhine State hospital in Sittwe.

The emergency referral system is outlined in an organigram available at the Sittwe General Hospital. While it does not explicitly state that it applies only to Muslims, Amnesty International's interviews with humanitarian workers, UN officials and staff at Sittwe General Hospital confirms that this is the case. Non-Muslim residents of Rakhine State do not require authorization to travel to hospitals.

The authorization process differs slightly depending on whether the patient is in Sittwe Township or another Township, and there is also a specific process for emergency speedboat referral for patients living in remote townships where travel by waterway is quicker than by road. In most townships, INGOs are responsible for coordinating emergency referrals.

For patients in Sittwe to be referred to Sittwe General Hospital, they must first travel to the health clinic at Thet Kae Pyin village in the camp complex area. If staff there deem the situation serious enough, they contact the State Health Department, which in turn contacts the medical superintendent office at Sittwe General Hospital who will dispatch an ambulance.

In other Townships, patients must obtain permission from the Township Medical Officer who then must obtain permission from Sittwe General Hospital. While in theory patients can contact the Township Medial Officer directly to obtain permission, often it is done by a national or international NGO operating in the area. If authorization is obtained, the INGO or State Health Department will organize for the patient's pick-up.

The flowchart also outlines the process for emergency ambulance referrals at night, but this only applies in Sittwe Township – emergency referrals from non-Sittwe townships at night are not possible (the document states this is due to the unavailability of the medical speedboat at night).

IN CENTRAL RAKHINE STATE AND SITTWE TOWNSHIP

Access to healthcare across central Rakhine state and Sittwe township is poor for all communities, in particular those living in rural areas.[234] However, because Muslims in central Rakhine State and Sittwe township are effectively banned from town centres and ethnic Rakhine villages, it is extremely difficult, if not impossible, for them to reach the hospitals and health facilities in these areas. The UN's 2017 Humanitarian Response Plan for Myanmar notes that:"*[t]he townships of Kyauktaw, Mrauk-U and Minbya govern 96 Sub-Rural Health Centres, 20 Rural Health Centres, six Station Hospitals and three township Hospitals, and yet from all of these facilities, only one Station Hospital is open to Muslim patients.*"[235]

As in northern Rakhine State, Muslims with serious medical conditions or requiring emergency medical treatment must be referred to Sittwe General Hospital by NGOs, which must obtain prior permission from the relevant Township Medical Officer, and approval from Sittwe General Hospital.[236]

Amnesty International's research found that lack of access to health care was particularly severe in Kyauktaw township. There, Rohingya villagers are not allowed to go to the hospital in Kyauktaw town, something which was confirmed by the township authorities.[237] Instead, patients requiring hospital treatment are required to contact the Myanmar Health Assistants Association (MHAA – a national NGO operating across Myanmar) which is responsible for coordinating emergency referrals to Sittwe General Hospital. However, in one Rohingya village tract, none of the villagers Amnesty International spoke to had heard of the organization and did not know how they could access health clinics or hospitals, leaving them largely reliant on local pharmacists and traditional healers. When Amnesty International contacted staff at MHAA, they confirmed they had not visited the village tract in question, explaining that they did not have full coverage across the township.[238]

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[234] CDNH, *Rakhine State Needs Assessment*, September 2015, pp. 76-89.
[235] United Nations and Partners, *Humanitarian Response Plan 2017*, January-December 2017, December 2016, p. 10, reliefweb.int/sites/reliefweb.int/files/resources/2017_myanmar_hrp_final.002.pdf
[236] See box: The Emergency medical referral process in Rakhine State.
[237] Amnesty International interview, September 2016.
[238] Amnesty International interview September 2016.

The situation was slightly better for Rohingya living in Mrauk-U township, who are able to travel to Myaung Bway hospital in neighbouring Minbya township. However, if they require better or more advanced medical facilities, they must be referred to Sittwe General Hospital via the official "emergency medical referral" process, as described above.

Muslims living in villages in Sittwe township, in the Aung Mingalar Quarter or villages and temporary shelters in the displacement camps rely heavily on health services provided by INGOs and others operating in the IDP camps. If they require more serious care, the emergency referral process requires they first go to the Thet Kae Pyin clinic in the camp complex[239] to be assessed.

For Muslims living outside the IDP camps, this means access is more difficult because of checkpoints on the road which are closed at night. For Muslims living in the Aung Mingalar Quarter this means they must first go to the medical clinic in Thet Kae Pyin in the camp, even if they live closer to the hospital. Travel to the camp clinic requires them to pay for transport and police security, at a cost of around 15-30,000 kyats (approx. US$11-22).

The clinic in the displacement camp area on the outskirts of Sittwe town, Rakhine State, Myanmar, March 2016. ©Amnesty International.

4.1.2 SEGREGATED HOSPITAL WARDS

"Even when they send Rohingya to Sittwe Hospital, it's hard to say that the doctors and nurses there treat the Rohingya ethically. I once went there, it's like a prison hospital. The Muslims have no freedom of movement in the hospital. Doctors do not treat the Rohingya equally, though sometimes they don't treat the Rakhine well either. Sittwe Hospital has a specific Muslim ward. It's on the ground floor. It's been like that since 2012."

A humanitarian worker from Myanmar operating in Rakhine State.[240]

When Muslims are able to get to Sittwe General Hospital or Myaung Bway hospital they are kept on separate, segregated wards. Amnesty International's interviews confirm that these hospitals have only been segregated since after the 2012 violence, with health officials citing security concerns, including for their staff who had previously been threatened by hardliners for treating Muslim patients.[241]

When Amnesty International representatives visited the Muslim ward in Sittwe General Hospital in March 2016, it was guarded by a police officer who controlled entry in and out of the ward. No other wards had police officers guarding them. A senior member of staff told Amnesty International that there were 500 beds in the hospital, 24 of which were available for Muslim patients.[242]

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[239] See box: The Emergency medical referral process in Rakhine State.
[240] Amnesty International interview, March 2016.
[241] Amnesty International interview with senior hospital staff members, March 2016 and with humanitarian officials, March and September 2016. Samantha Michaels, 'Muslims Blocked From Hospitals in Western Burma', *The Irrawaddy*, 3 October 2013, www.irrawaddy.com/news/burma/muslims-blocked-hospitals-western-burma.html
[242] Amnesty International interview with senior hospital staff members, March 2016.

Amnesty International's interviews confirm that the small hospital in Myaung Bway, Minbya township also has segregated wards, with around half of the 60 beds allocated for Muslims.[243] Interviewees in Mrauk-U township explained that up until April 2016, Muslims could only go to Myaung Bway hospital with permission from their Village Administrator and if they paid for a police security escort. They were not permitted to sleep in the hospital at night and would instead stay in the homes of Muslim community members in the surrounding village.[244]

The situation appears to have eased somewhat, and Muslim villagers said they were now able to travel to the hospital without permission and are allowed to stay in the hospital overnight. However, some villagers reported still having to pay police for security (20,000 kyats, approx. US$15, per night for two police officers) which they said they paid at the Myaung Bway police station.[245]

When they arrive at Sittwe General Hospital, Muslim patients are further isolated and cut-off from the outside world as they are not allowed to take mobile telephones with them.[246] The reason for this is unclear, and when asked, state health officials could not give justification.[247] This leads to families often not knowing what is happening, or even what the diagnosis is for their hospitalized relative. This also can fuel fear and mistrust of state health professionals. The lack of Rohingya language interpretation at the hospital also creates gaps in information, meaning patients sometimes return home unsure of what was wrong with them or what treatment they received.

Many Rohingya and Muslims to whom Amnesty International spoke expressed concerns about receiving medical treatment at state hospitals, in particular Sittwe General Hospital, citing abusive and discriminatory treatment by hospital staff. Some interviewees described personal instances of physical and other abuse, while others referred to rumours they had heard about poor treatment, some of which dated back several years.[248] Similar concerns have been reported by other organizations.[249]

The result is that Muslim patients are often reluctant to go to the hospital, even when they have been advised to do so. This can have serious health consequences, and hospital staff and other health workers told Amnesty International delays seeking treatment had led to serious and sometimes fatal complications.[250] Amnesty International representatives saw the impacts of this first-hand in March 2016 when they visited a young Rohingya man in Sittwe General Hospital the day after helping him to the camp clinic in Thet Kae Pyin.

After examining him doctors told him he needed an emergency operation, however he refused treatment, citing rumours he had heard about Rohingya deaths in the hospital. Hospital staff explained that he would die if he did not have the operation, but he continued to refuse medical treatment. He died the next day.[251] While researching for this report, Amnesty International also interviewed five women living in IDP camps in Sittwe township who said they had delayed seeking treatment in hospital because of these fears, two of whom had subsequently lost their babies.[252]

4.1.3 EXTORTION AND UNOFFICIAL FEES

Muslims seeking medical treatment, in particular at Sittwe General Hospital, are vulnerable to extortion and other "fees". Interviewees told Amnesty International that Sittwe General Hospital does not allow Rohingya and Muslim patients to be accompanied by male friends or relatives. This was confirmed by humanitarian workers operating in Rakhine State. Instead, most patients have to hire a "patient carer", a woman, usually Kaman, who accompanies them to the hospital and looks after them while they are there. The cost is around 3,000 kyats (US$2) per day.

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[243] CDNH, *Rakhine State Needs Assessment*, September 2015, p. 88.
[244] These findings are supported by the CDNH, *Rakhine State Needs Assessment*, September 2015, p. 88.
[245] Amnesty International interview with D.H., September 2016.
[246] Amnesty International interview with humanitarian worker, May 2017.
[247] Amnesty International interview March 2016.
[248] Amnesty International interviews November 2015 and February 2016.
[249] OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc: A/HRC/32/18, 29 June 2016, para. 39; The Arakan Project, *Submission to the UN Universal Periodic Review, 23rd Session of the UPR Working Group*, November 2015, para. 32, www.upr-info.org/sites/default/files/document/myanmar/session_23_-_november_2015/ap_upr23_mmr_e_main.pdf; CDNH, *Rakhine State Needs Assessment*, September 2015, p. 85.
[250] Amnesty International interviews with hospital staff and humanitarian workers, March 2016.
[251] Amnesty International observations, March 2016.
[252] Amnesty International focus group discussion, November 2015.

Other "fees" also include paying porters to be carried up and down stairs, paying police or porters to purchase food from outside the hospital, and for the loan of mobile telephones to call family members and others, who are not permitted to visit patients in the hospital.

Noor Begum*, an elderly woman living in Aung Mingalar explained the fees she had to pay when her husband was hospitalized in late December 2015 and early January 2016.

> *"We had to hire a car and a police escort to go from Aung Mingalar to Thet Kae Pyin clinic [in the displacement camp area]. It was 15,000 kyats to go there and 15,000 to come back... When I was at the hospital I had to pay the police to go outside and buy food for me, since I couldn't leave the hospital ward. I had to pay 1,000 kyats, 500 for the rice and 500 for them to go and get it for me. Some police officers helped, others took the money and never brought anything back.*
>
> *I didn't complain. I couldn't, who would I tell? I didn't have a mobile phone, as they are not allowed at the hospital, so it was difficult to contact anyone outside. A police officer let me use his phone. I had to pay 1,000 kyats for a missed call to our family in Aung Mingalar, then they would call us back and we could speak. Every time I called it was 1,000 kyats. I think in total we spent 100,000 kyats (US$73) on travel and other fees when my husband got sick. My grandson lives in Yangon, and was able to send some money, but I still had to sell some cooking pots, clothes and chairs to raise the rest of the money."*[253]

THE RIGHT TO HEALTH IN INTERNATIONAL HUMAN RIGHTS LAW

Several international human rights treaties guarantee the right of all persons to the enjoyment of the highest attainable standard of health, free from discrimination.[254]

The Committee on Economic, Social and Cultural Rights notes that parties to the ICESCR have an immediate obligation to ensure the minimum, essential levels of the right to health. This includes the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; providing or otherwise ensuring access to essential, primary healthcare; and the equitable distribution of all health facilities, goods and services.[255]

The multiple restrictions on access to health care for Muslims communities in Rakhine State constitute a violation of their right to health, in particular the requirement that the right to health be realized on a non-discriminatory basis. In addition, segregation since 2012 in the few hospitals Muslims can access in central Rakhine State and Sittwe township is further evidence of a deliberate state policy of separation, which isolates, humiliates and marginalizes the Muslim community. It also exposes them to extortion and other abuses. Discriminatory and bureaucratic restrictions which prevent timely access to life-saving medical care could also, in some cases, constitute a violation of the right to life.

Sittwe General Hospital, Rakhine State, Myanmar, March 2016.
©Amnesty International

The Myanmar authorities are planning a major expansion and refurbishment of Sittwe General Hospital, to be partly funded by international donors.[256] The government is also finalizing a plan that would call for major international investment in Rakhine State's health sector. Upgrading and investing in medical facilities across Rakhine State will be essential to ensuring the right to the highest attainable standard of health.

[254] CRD, Article 24; CEDAW, Article 12; UDHR, Article 25.
[255] CESCR, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, (Contained in Document E/C.12/2000/4) para. 43: Core Obligations.
[256] Interim Report, Advisory Commission on Rakhine State, p. 10.

However, such projects risk reinforcing discrimination and entrenching policies of segregation, if they are not subject to strict assessments ensuring that they do not directly or indirectly disadvantage or discriminate against specific communities on the basis of their ethnicity, religion or other status. The international community must make it clear that it is not willing to fund or build segregated hospitals, or fund medical facilities and services that will only be available to members of a community on the basis of their race, religion, or any other status. The Myanmar government must commit to ensuring that improvements in health care benefit all communities, and prioritize health investments and interventions that will address the specific health needs of marginalized groups and communities.

4.2 VIOLATIONS OF THE RIGHT TO EDUCATION

> **"The authorities' strongest weapon is restricting education. If I am not able to study, finish my degree, what future is there? What future for my younger brothers who don't see the point in studying, for teachers who can't use and expand their education? There is no reward to do well. In taking away our education, they are taking away our future."**
>
> A Rohingya man living in northern Rakhine State, who was unable to continue his university studies after the 2012 violence.[257]

Access to education for all children and young adults living in Rakhine State is poor. The Advisory Commission on Rakhine State notes that "the adult illiteracy rate is approximately 50 percent higher than the national average",[258] while according to the 2015-16 Demographic and Health Survey Rakhine State has the lowest participation in early childhood education programs in the country.[259]

Discrimination and *de facto* policies of segregation mean that for Rohingya and Muslim children, obtaining education is even more difficult. Amnesty International's research found in central Rakhine State, Muslim children and youths are largely unable to access official government education, in particular middle and high schools. Rohingya have faced difficulties accessing higher education at the University in Sittwe for many years, owing in large part to restrictions on their freedom of movement which require them to apply for official permission to travel to Sittwe to attend classes.

Their lack of citizenship status also meant that in practice, they have been unable to study for some specific vocations (for example law and medicine).[260] However, the effective ban on Muslim travel to Sittwe town since 2012 has meant that members of the Rohingya and Kaman communities have not been able to physically access university level education in Rakhine State at all, undermining their future professional prospects, opportunities to earn a living and lift themselves and their families out of poverty.

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[257] Amnesty International interview with B.N., March 2016.
[258] Advisory Commission on Rakhine State, Final Report, p. 40.
[259] Ministry of Health and Sports, *Myanmar Demographic and Health Survey 2015-16*, March 2017, p. 286, https://dhsprogram.com/pubs/pdf/FR324/FR324.pdf
[260] The precise origin of the restrictions on Rohingya studying specific subjects at university is unclear. Interviews with UN officials and other experts indicate that the restrictions are not defined in law, but instead stem from official university application guidelines requiring enrolled students of certain subjects to be citizens as they would later be expected to join the civil service. Amnesty International interviews May and July 2017 and OHCHR, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar,* para. 41.

Amnesty International acknowledges that other factors also limit access to education in Rakhine State for all communities. These include poverty, distance to school, and lack of qualified teaching staff and other resources.[261] In Muslim communities, gender can also play an important role limiting access to education for adolescent girls.[262] It is therefore essential that the government at the state and union level take effective action to ensure all children can access quality education. However, these efforts must be undertaken with a strong commitment to the principle of non-discrimination.

4.2.1 LIMITED ACCESS TO GOVERNMENT SCHOOLS

"Muslims and Rakhine children used to go [to school] together but now they are in their own schools and we are in our own school. We separated them, it was not a government order. We separated them because we worry it could spark conflict."

A Rakhine Village Administrator in charge of a mixed Rakhine-Rohingya village tract in Mrauk-U township.[263]

↑ *Rohingya boy in northern Rakhine State, March 2016. ©Amnesty International*

In the Rohingya and Kaman villages Amnesty International visited in central Rakhine State and Sittwe township, villagers explained that their children had had severe difficulties receiving official government education since 2012.[264] This was partly because Muslim students in central Rakhine State are typically not allowed to attend mixed government schools with ethnic Rakhine children, but also because official government teachers have refused to come to schools in Muslim villages and village tracts, citing fears for their safety. The lack of Muslim access to mixed government schools is something that has been highlighted by the Centre for Diversity and National Harmony (CDNH), which in a 2015 study found that public schools include both Rakhine and Muslim students in only 3 of Rakhine State's 17 townships.[265]

[261] According to a 2013 survey by the Japan International Cooperation Agency (JICA) Rakhine State has the lowest net enrolment ratio in primary and middle schools of any state of region in the country (pp. 30-31), while rural Rakhine State is noted as having the highest student teacher ratio (p51); JICA, *Data Collection Survey on Education Sector in Myanmar Final Report,* February 2013, open_jicareport.jica.go.jp/pdf/12113635.pdf

[262] For example, a 2015 study found that in Muslim communities, teenage girls often stop going to school once they hit puberty, apparently to avoid contact with men, and because they were expected to stay home and help their families; REACH, *Joint Education Sector Needs Assessment in North Rakhine State, Myanmar,* November 2015, p. 26 and 43, www.reachresourcecentre.info/system/files/resource-documents/reach_report_rakhine_joint_education_needs_assessment_november_2015.pdf

[263] Amnesty International interview with G.D., September 2016.

[264] A 2015 survey by the CDNH found that while 92% of ethnic Rakhine respondents reported having access to a government school, only 63% of Muslims reported they did; CDNH, *Rakhine State Needs Assessment*, p. 95.

[265] The three townships are Buthidaung, Maungdaw and Thandwe; CDNH, *Rakhine State Needs Assessment*, p. 195.

The restrictions on Muslim students attending government schools appear to have started soon after the 2012 violence, as state authorities sought to prevent further outbreaks of violence by keeping the two communities apart. In the years since, this policy of separation has taken root. Currently the restrictions seem to be imposed primarily by school authorities and Rakhine communities and applies particularly to middle and high school education, as these school are usually attended by students from several different villages in a given area. Muslim villagers in Mrauk-U, Kyauktaw, Rathedaung and Sittwe townships all told Amnesty International that their children had not been able to attend mixed government schools since 2012, and that the township and state authorities had failed to provide access to alternative education. A 55-year-old Rohingya man living in a remote village in Mrauk-U township explained:

> *"Before the violence our children would go to middle school at the government school in the next village [a Rakhine village], and high school students would go to school to Myaung Bway [a small town in neighbouring Minbya]. Students don't go anymore though. Rakhine government teachers don't want them there so they can't go. There is no government teacher in this village, so we rely on Rohingya teachers from the community to teach the children."*[266]

Village leaders told Amnesty International that when they tried to negotiate with school authorities and police, they had been told their children cannot attend the mixed schools as it could lead to increased tensions and further violence. A village leader in Mrauk-U township explained:

> *"The police tell us not to go to the schools. When we used to have military checkpoints [after the 2012 violence], we were not allowed to send the children to the government schools, and the situation has stayed the same since then. Last year I went to Myaung Bway and asked if some of the students could go to the high school there. The school headmaster and township police officers told me they could not guarantee the students' security so the students couldn't go."*[267]

His experience was similar to that of a Kaman volunteer teacher living in Sittwe township, who told Amnesty International that community leaders had tried to negotiate access for Kaman students to secondary school with the state authorities, but were blocked by school staff. *"The State Education Department gave permission for [the Kaman students] to go to the government school with the Rakhines, but the headmaster does not allow it. He says it could lead to conflict."*[268]

A Township Administrator in central Rakhine State told Amnesty International in September 2016 that for education "*in [Muslim] IDP camps, the government provides money for teachers, but in the villages, the Muslims run the schools by themselves… they have their own schools, but government officials help administer exams*".[269] In meetings in September 2017, the Union Minister for Education told Amnesty International that all children in Myanmar have the right to education, regardless of their ethnicity, religion or other status, and made clear that his Ministry was committed to ensuring this right. However, he noted that in Rakhine State, it was difficult for children from all communities to access education because of the poor security situation, in particular following the 25 August 2017 attacks. When pressed about segregated education, the Minister said it would be difficult to change the situation until there was greater stability in the state.[270]

Amnesty International representatives visited a mixed Rakhine-Rohingya village tract in Mrauk-U township in September 2016 where Rohingya villagers explained their children had not been able to attend the government school across the road in the Rakhine village since 2012, something which was confirmed by the ethnic Rakhine Village Administrator.[271] One Rohingya community teacher explained:

> *"There is a government school at the entrance of the village, around 50 metres away from where we are now. It's guarded by the police. We asked the Township Education Officers if our children could go to the government school, but he said no. The headmaster of the school told us that Rakhine and Rohingya students cannot be in the same school anymore after the 2012 violence, so they don't go".*[272]

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[266] Amnesty International interview with D.N., September 2016.
[267] Amnesty International interview with D.D., September 2016.
[268] Amnesty International interview, C.M., September 2016.
[269] Amnesty International interview, September 2016.
[270] Amnesty International meeting, September 2017.
[271] Amnesty International interviews with C.W., C.X., C.Y. C.Z. and G.D., September 2016.
[272] Amnesty International interview with C.U., September 2016.

Amnesty International representatives saw armed police stationed outside the school, and spoke to two police officers who also confirmed that Muslim students do not go to the government school. They explained that they were stationed in the area because it was a mixed Rakhine-Rohingya village tract, and that they were there to maintain security, prevent conflict and ensure the communities lived peacefully together.[273]

Reports by UN agencies and interviews with humanitarian workers also support Amnesty International's findings that Muslim children in several Rakhine State townships are unable to attend schools with Rakhine children. A 2016 UNHCR report on community perceptions in Rakhine State found that "since the 2012 violence in Sittwe, Kaman children have had no access to school or higher education," while a May 2017 report by UNICEF noted that Rohingya children living in IDP camps were unable to access middle and high school education due to segregation between communities.[274]

A 2014 study by Save the Children International and UNICEF on knowledge, attitudes and practices in conflict-affected camps and communities also found that lack of financial resources was a major factor limiting both Rakhine and Muslim children's access to education however, it noted that "due to the restriction on movement, Muslim children are now forbidden from attending schools in neighbouring Rakhine communities."[275] According to a 2016 UN-led assessment in Mrauk-U District "inadequate access to education was identified by multiple informants as the most negative outcome of the movement restrictions faced by Muslim communities – both in terms of children accessing schools and of the quality of services for this group".[276] The assessment also found that while most villages in the District had a primary school, there were considerably fewer middle schools in Muslim villages and no high schools.[277]

Another major problem is the absence of government teachers in schools in Muslim villages. Villagers in northern and central Rakhine State told Amnesty International that government teachers had stopped coming since the 2012 violence, which was having a detrimental impact on their children's education.[278] Their statements are supported by research by international humanitarian agencies and organizations.

A 2015 Joint Education Sector needs Assessment conducted in Maungdaw, Buthidaung, Rathedaung, Sittwe, Pauktaw, Kyauktaw, Mrauk-U, Minbya and Myebon townships found poor attendance by teaching staff across all studied townships but noted especially that "*in Muslim and other minority language areas, basic education schools can be heavily dependent on (mainly male) community-paid teachers to supplement or replace missing government staff... In Muslim areas in Maungdaw and Buthidaung, government teachers reportedly attended schools so infrequently due to security concerns that a parallel education system staffed by volunteers was effectively operating within the shell of basic education school infrastructure.*"[279] The assessment also found that primary level government teacher-student ratios in the Rohingya majority townships were well above Ministry of Education targets of 30:1.[280]

As described above, some Muslim communities have responded to the lack of access to government schools by establishing their own schools where students are taught by the more educated members of the community.[281] In some Rohingya/Muslim areas Amnesty International visited, villagers said there was some support from government authorities, for example provision of textbooks and arrangements for students to take exams, however these were insufficient to meet the needs of the student population.[282] In other areas of central Rakhine State, the lack of educational opportunities has left students with no choice but to travel "illegally" to displacement camps in Sittwe township to attend the high school there, placing them at risk of arrest.[283]

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[273] Amnesty International interview with D.C., September 2016.
[274] UNHCR, *Study on Community Perceptions of Citizenship, Documentation and Rights in Rakhine State*, August 2016, p. 20, themimu.info/sites/themimu.info/files/assessment_file_attachments/Community_Perceptions_FINAL.PDF and UNICEF, *Lives on hold: Making sure no child is left behind in Myanmar*, May 2017, p. 5, www.unicef.org/publications/files/UNICEF_Lives_on_Hold_Myanmar.pdf
[275] Save the Children, UNICEF, *Child Protection, Knowledge, Attitudes, and Practices Study Rakhine State*, Myanmar, August 2014, p. 32.
[276] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016, p. 26.
[277] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016, pp. 26-7.
[278] Amnesty International interviews with C.M., C.S., C.U., C.X., C.V., September 2016.
[279] REACH, *Joint Education Sector Needs Assessment in North Rakhine State, Myanmar,* November 2015, p. 5.
[280] Across all townships surveyed, the ratio was generally well above Ministry of Education targets of 1:30, however was highest in Buthidaung (83:1) and Maungdaw (123:1). Other surveyed states, which have a majority ethnic Rakhine have lower ratios. For example, the third highest ratio (47.8:1) was in ethnic Rakhine majority Myebon township. Note that figures do not include volunteers or community-paid teachers; REACH, *Joint Education Sector Needs Assessment in North Rakhine State, Myanmar,* November 2015, p. 24.
[281] CDNH, *Rakhine State Needs Assessment*, p. 95. According to the survey, 17% of Muslims reported a reliance on community schools across the state, a figure which jumped to 91% in Kyauktaw township and 33% in Mrauk-U township. The survey also found that 9% of Muslim communities relied on schools run by international organizations or NGOs, while 6% reported relying on education from religious institutions.
[282] Amnesty International interviews with C.U., C.X., C.V., September 2016.
[283] Amnesty International interviews with humanitarian workers in Rakhine State, November 2015 and September 2016. See also the case of 27 people, including students, detained while travelling from Rathedaung township to Sittwe in 2015, Section 3.2.3

Teachers in the community-established schools are generally not trained, and some are unpaid volunteers.[284] This situation can cause problems, as a village leader living in Rathedaung township explained: "*The volunteers don't come to school regularly because they don't get financial support. Sometimes they come and sometimes they are absent so the education in the village is not going well at all.*"[285] In its final report the Advisory Commission on Rakhine State noted that as well as providing children with a low quality of education, lack of qualified teachers can have other harmful impacts, in particular because "it undermines efforts to ensure that Muslim children are educated in Myanmar language, a prerequisite for successful integration."[286]

Amnesty International spoke to three community-teachers in a village in Mrauk-U township. They stated that the state government provided some support in the form of text books and other materials, but they were often not enough for the number of students. One of the three also said that they suffered from a lack of official training: "*We are now teaching students but we are not officially appointed by the government. We have been teaching since 2012. We are only temporary teachers and we have not studied after high school. We were not given any trainings.*"[287]

Amnesty International is also concerned by reports that children who are not registered on their household lists face difficulty enrolling in schools. A 2016 UNHCR report notes that while unregistered Rohingya children can usually access primary education, assuming it is available and with the good will of the head teacher, enrolment in secondary and higher education is usually not possible because it requires such documentation.[288]

4.2.2 VIRTUALLY NO ACCESS TO HIGHER EDUCATION

"I don't know what to do with my life. There is nothing for me here, no opportunities and no future."

A 22-year-old Rohingya man who had applied study chemistry at Sittwe University in 2012. Because of the violence and subsequent restrictions on movement, he was unable to attend.[289]

Since 2012, Muslim students have not been permitted to access higher education in Rakhine State's only university in the state capital Sittwe. The origin of this ban and the authority responsible for initiating it are unclear. However, it appears to have been implemented soon after the 2012 violence, as part of an attempt to maintain security by keeping Muslims and Buddhists apart.

A 24-year-old Rohingya man living in Maungdaw township, who was studying at Sittwe University at the time of the 2012 violence, explained that he was never able to resume his degree:

> "*In 2012, the authorities stopped us from travelling for university. The Immigration Department here told me that I couldn't go, it wasn't allowed. They said we couldn't go because of the security situation. Since then I have not been able to finish my degree. We have no higher education like others… I have dreams, but I can't fulfil my dreams. I wanted to be a school teacher, but now I have no chance. There is no hope.*"[290]

Because they are unable to leave Rakhine State, Rohingya students are also not allowed to seek higher education opportunities in other parts of Myanmar. In northern Rakhine State in particular, interviewees lamented the lack of access to university for themselves and their children. In the hope that the situation may change, some Rohingya students have continued to apply to the university in Sittwe. However they are told by township authorities that they will not get permission to travel, even after they have been accepted on to a course.

A father of three children, including a 17-year-old, from Maungdaw township explained:

> *"When they finish high school, the students apply for university in Sittwe. While the university accepts them, the authorities do not allow them to go. They say it is for security reasons."*[291]

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[284] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016, p. 26
[285] Amnesty International telephone interview with E.D., October 2016.
[286] Advisory Commission on Rakhine State, Final Report, p. 40.
[287] Amnesty International interview with C.U., C.V., and C.W., September 2016
[288] UNHCR, *Study on Community Perceptions of Citizenship, Documentation and Rights in Rakhine State*, August 2016, p. 10, footnote 9.
[289] Amnesty International interview with B.U., March 2016.
[290] Amnesty International interview with B.H., March 2016.
[291] Amnesty International telephone interview with E.J., October 2016.

A 16-year-old girl who had sat a physics exam the day Amnesty International met her said:

> *"I want to study more. I want to be a doctor, but I can't because the authorities won't let us. Even if I study really hard they won't let me go."*[292]

In its interim report in March 2017, the Advisory Commission on Rakhine State recommended that the Myanmar government "reverse discriminatory policies that bar Muslim students from higher education,"[293] and in a positive move, since the start of the 2017 academic year the authorities have allowed a small number of Rohingya students to follow university correspondence courses.[294] According to Ministry of Education officials, 28 Muslim students have been able to benefit from the scheme.[295] However, prior to 2017, Amnesty International is not aware of any efforts to mitigate the impacts of restrictions access to higher education for Rohingya and other Muslim students. The Rakhine State Advisory Commission, while welcoming the possibility for distance learning, called on the Myanmar government to "find ways and means to also permit their physical presence at university in Rakhine State".[296]

THE RIGHT TO EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW

The right to education is crucial to the full development of the human being and restrictions on its full enjoyment can have long term devastating impact.

As a state party to the CRD and CEDAW, Myanmar is legally bound to respect, protect and fulfil the right to an education at all levels without discrimination, including on grounds of ethnicity, religion and citizenship status.[297] However, in practice, full enjoyment of this right is routinely denied to Rohingya and other Muslim children in Rakhine State owing to restrictions on their movement and the effective segregation of Muslim and Buddhist communities since 2012.

The Committee on Economic, Social and Cultural Rights has noted that, when it comes to the right to education, *"the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds (which includes racial discrimination)*" and "*the failure to take measures which address de facto educational discrimination"* are a violation to the right to education.[298]

The committee has further noted that *"If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified*".[299] Yet, the Myanmar authorities have not provided legitimate justifications beyond invoking "security reasons" for preventing Muslims children from attending school. It has also failed to provide any adequate alternative for these children to access education.

The impact of the lack of access to education can be far reaching and long-lasting. The Committee on the Rights of the Child has stated that discrimination "*whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities*".[300] Education is often the primary vehicle through which people from economically and socially marginalized communities can lift themselves out of poverty and obtain the means to participate fully in society.[301] In addition, without proper access to education, people are not properly equipped to know their rights, and are disadvantaged when engaging with state institutions.

Five years after the 2012 violence, the lives of Muslim children and young adolescents are on hold and continued policies of segregation and the government's failures to ensure alternative access to adequate education risk marginalizing the community still further. For some, the situation has led them to consider leaving Myanmar in search of education.

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[292] Amnesty International interview with B.I., March 2016.
[293] Advisory Commission on Rakhine State, Interim report, March 2017, p. 10
[294] Amnesty International meetings with Ministry of Education officials, September 2017. See also Advisory Commission on Rakhine State, Final report, August 2017, p. 40.
[295] Amnesty International meetings with Ministry of Education officials, September 2017.
[296] Advisory Commission on Rakhine State, Final Report, August 2017, p. 40.
[297] CRC, Articles 2 and 28; CEDAW, Articles 2 and 10.
[298] CESCR, General Comment 13: The Right to Education (Art. 13), UN Doc: E/C.12/1999/10, 8 December 1999, para 59.
[299] CESCR, General Comment 13, para. 45.
[300] Committee on the Rights of the Child, *General Comment 1: The Aims of Education (article 29)*, UN Doc: CRC/GC/2001/1, 17 April 2001, para. 10.
[301] CESCR, General Comment 13, para. 1.

A 17-year-old boy living in the Aung Mingalar enclave in Sittwe said, "*If I pass my exams I might be sent to another country by my parents… I would like to go to university… but we can't go to the university here in Sittwe. Most of the students who are studying [in Aung Mingalar] don't have many opportunities.... We want to work and have livelihood for our future… but now we don't know what that future is*".[302]

The lack of interaction between Rakhine and Muslim children will also have long term impacts for the stability of the state. Continued segregation of children fuels fears and mistrust and will significantly undermine efforts to reduce inter-communal tensions and promote social cohesion. Education has a vital role to play in the promotion and protection of human rights, and in Rakhine State, integrated education would be an important tool to help counter discrimination, hostility and segregation. The government must therefore take swift and effective action to ensure full access to education to all children in Rakhine State without discrimination.

Amnesty International agrees with the Rakhine State Advisory Commission's recommendation that the Union government and Rakhine State government ensure and publicly state that all communities have equal access to education, irrespective of religion, ethnicity, race, gender, or citizenship status. It further recommends that the government reverse discriminatory policies barring Muslim students from higher education.[303]

A man holds up his latest catch in Rakhine State, Myanmar, March 2016. Due to restrictions on their movement access to markets and town centers is restricted for Rohingya living in Rakhine State. ©Amnesty International

[302] Amnesty International interview with E.U., March 2016.
[303] Advisory Commission on Rakhine State, Interim reports and recommendations, March 2017, p. 10.

4.3 RESTRICTIONS ON ACCESS TO LIVELIHOODS AND FOOD

Rakhine State has one of the highest unemployment rates in Myanmar. According to the 2014 census, 10.4% of the enumerated population in Rakhine State (aged 15-64) were unemployed.[304] An estimated 80% of people living in the state are dependent on agriculture and off-farm activities to cover their basic needs, activities which are seasonal and lead to irregular income generation.[305]

As a result, people from all communities across the state rely heavily on casual and daily labour to earn a living. In many cases those who are able to, migrate to other parts of Myanmar or overseas for work.[306]

Amnesty International's research found that movement restrictions and policies of segregation prevent Rohingya and other Muslims from accessing places they rely on for their livelihoods such as land, coastal waters and rivers for fishing and markets. This in turn has a devastating impact on their ability to earn a living, engage in business and support themselves and their families.

These findings are supported by a 2016 Early Recovery Needs Assessment in Mrauk-U District, conducted by the Early Recovery Network (a coalition of UN agencies and international non-governmental organizations), which found that while the entire District has seen an economic decline: "*The changes in livelihood opportunities for former IDP villages and non IDP Muslim villages … most likely point to the adverse effects stemming from the restrictions on movement imposed on the Muslim population*."[307]

A 2015 needs assessment conducted by the CDNH also reported that in Rakhine State 70% of Muslims surveyed in eight out of ten townships reported that their income was poor, very poor, or that they had no income at all. While most communities reported a deterioration in their economic situation since 2012, the situation was particularly acute for Muslims and as a result, many are dependent on aid.[308] According to the UN's 2017 Humanitarian Response Plan, at the beginning of the year there were 402,000 people in need of humanitarian assistance in Rakhine State.[309] Of these 120,000 people, mainly Rohingya, live in displacement camps, 99,000 of whom had been receiving monthly food assistance since 2012.[310] Before the 9 October 2016, humanitarian agencies were providing food, cash and nutrition assistance for 160,000 people, most of them Rohingya, in northern Rakhine State.[311]

4.3.1 RESTRICTED ACCESS TO TOWN CENTERS AND MARKETS AND LOSS OF GOODS

"Before 2012 we ran businesses in Kyauktaw town but that's changed, today Kyauktaw [town] is completely off limits. This village heavily relied on Kyauktaw market, many people in our village worked there and owned shops in town."

A 37-year-old Rohingya man who used to run a shop in Kyauktaw town.[312]

The prohibition on travelling to town centres has had significant economic consequences on Rohingya and other Muslim communities. These prohibitions not only limit Rohingya and other Muslims' ability to engage in business, it has also contributed to the deterioration of economic links and dependencies between communities.

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[304] The Republic of the Union of Myanmar Department of Population, Ministry of Immigration and Population, *Rakhine State: Census Report Volume 3-K*, May 2015, p. 2, themimu.info/sites/themimu.info/files/documents/Census_Rakhine_Report_Eng_2015.pdf .Note that as Rohingya were not enumerated during the census, these figures are not representative of the total level of unemployment in Rakhine State, which is likely to be much higher.
[305] Action Contra Le Faim (ACF), *Final report, SMART Nutrition survey, Buthidaung and Maungdaw Townships,* September 2015-October 2015, p. 20.
[306] According to the 2015 census, there are 115,502 former conventional household members living abroad, the majority of them living in Thailand, Malaysia and China.
[307] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016, p. 2. The report found that livelihood challenges for Rakhine non-IDP villages are different, though also point to negative shifts in the economy, with those reliant on migration and remittances being much more commonplace.
[308] CDNH, *Rakhine State Needs Assessment*, September 2015.
[309] United Nations and Partners, *2017 Humanitarian Response Plan,* p. 11.
[310] WFP, *Myanmar October - November 2016 Operational Report*, November 2016, p. 1, www.wfp.org/sites/default/files/WFP%20Myanmar%20Operational%20Report__Oct2016.pdf
[311] United Nations and Partners, *2017 Humanitarian Response Plan*, p. 11.
[312] Amnesty International interview with A.A., February 2016.

A 2015 UNHCR report found that "the *violence in June and October 2012 not only destroyed market stalls, but also reduced people's spending power by an estimated 50%, effectively wiping out many livelihoods,"*[313] while a 2016 Early Recovery Assessment in Mrauk-U District reported that the lack of access to markets for Muslim communities had resulted in "*a localized depreciation of commercial activity that has stymied livelihood opportunities for both ethnic groups*."[314]

After the 2012 violence, most Muslims were not allowed to return to their shops in town centres to remove the merchandise that was left there. Those that did reported that their shops had been looted. A Rohingya man living in Kyauktaw township told Amnesty International: *"My son used to run a pharmacy in the market in Kyauktaw town. Altogether, the business was worth around 20 million kyats (approx.* US$*11,000). During the violence, everything was looted… we can't go back to it now. Since the conflict we have lost our shops and we cannot do business anymore."*[315]

The lack of access to town centres and markets hasn't just impacted business owners, but the wider community who were reliant on these markets to buy and sell produce. Without access to town centres and main markets their only option is to sell their produce locally.

A 26-year-old woman living in Kyauktaw township explained that before the violence, she would travel to Kyauktaw town every day to buy groceries at the market, which she would sell in her shop in her village. Because she can no longer access Kyauktaw town, she has had to close her shop, and now buys and sells eggs in nearby villages. The situation has reduced what was already a meagre income. She explained:

> "*Before [the 2012 violence] when I could travel to Kyauktaw town to buy and sell things, I made between 3,000 and 4,000 kyats per day. Now I only make 1,500 per day, and 500 kyats of that I spend on transport fees for the boat [between Muslim villages]… If I was still working in Kyauktaw [town] I would be able to afford to send my child to school.*"[316]

A 32-year-old Rohingya father of three, also living in Kyauktaw township, told Amnesty International that the restrictions on movement since 2012 meant he couldn't travel to Sittwe to buy stock for his shop. He explained:

> "*Before 2012 I was selling clothes in the village. I used to go to Sittwe and Mrauk-U [towns] too. In Sittwe I visited family and bought clothes and other items to sell here. I was making 10-20,000 kyats per day. Since the violence, I can't go to Sittwe to buy stock. I still have a shop, but now I only make 4-5,000 kyats per day. I have three kids and I'm having trouble looking after them. I haven't got income to look after them and pay for their healthcare, and since my wife died I need to juggle domestic work with my job.*"[317]

In northern Rakhine State, movement restrictions and curfews also disproportionately impact the livelihoods of Rohingya living in rural areas who need to travel to town centre and markets to trade and buy goods. Not only must they wait for the curfew to lift before they can begin their journey but they are also more likely to encounter checkpoints and are thus at heightened risk of extortion.[318]

Movement restrictions also disrupt the transport of goods, creating shortages and price fluctuations. A clear example of this could be seen in the aftermath of the 9 October 2016 attacks, when villages in southern Maungdaw township experienced a sudden shortage of food and other commodities. Amnesty International received several reports of sharp price increases.

One villager told the organization that the cost of a bag of rice had increased from 10,000 kyats to 20,000 kyats (approx. US$7.50-15) in the space of a few days.[319] A July 2017 food security assessment by the World Food Programme (WFP) reported a continual increase in the price of dried fish, vegetable oil and pulses from October 2016, owing to lower supplies and increased transportation costs, although noted that the price of staples and vegetables had decreased during that same period.[320]

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[313] UNHCR, *Protection Concerns and Risks Analysis*, November 2015, p. 17.
[314] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016, p. 18.
[315] Amnesty International interview with D.O. September 2016.
[316] Amnesty International interview with A.D., February 2016.
[317] Amnesty International interview with A.E., February 2016.
[318] See Chapter 3: Violations of the right to freedom of movement.
[319] Amnesty International interview October 2016.
[320] WFP, *Food security assessment in the northern part of Rakhine State*, Final Report, July 2017, p. 1, docs.wfp.org/api/documents/WFP-0000019264/download/?_ga=2.193844397.1274248860.1510069014-1309529638.1508234327

According to a community leader living in northern Rakhine State, since October 2016, licences for border trade with Bangladesh have been limited to NVC holders only.[321] As of early November 2017 Rohingya traders still in the area reported it was not possible to officially travel to Bangladesh for business, noting that non-Rohingya traders were also unable to travel.[322]

4.3.2 RESTRICTED ACCESS TO FIELDS, FORESTS, RIVERS, AND COASTAL WATERS

"My family and I relied on our fields for food and an income. Losing our fields has made it difficult for us to survive."

A 54-year-old farmer living in Mrauk-U township whose land was confiscated by the Myanmar military in June 2016.[323]

Movement restrictions have a serious impact on Muslims' ability to access fields, forests, rivers and coastal areas to farm, fish and generate an income.

In northern Rakhine State, Rohingya explained that their income is negatively impacted by the financial cost of obtaining travel permission and the likelihood of extortion by BGP. One Rohingya man living in Buthidaung township told Amnesty International that the BGP regularly extort Rohingya fisherfolk and those who try to collect firewood:

> "*Rohingya have to pay the BGP if we want to go fishing or collect wood in the forest. It's like a permission, but it's not official. If we pay, they let us go. The amount varies. Fishermen with small nets pay 15-20,000 per month, those with big nets will be asked for more, up to 100,000 kyats [per month]. You pay it at the BGP checkpoint near your village. It's the same for firewood, we give money to the Village Administrator who passes it on to the BGP. Usually it's around 1000 kyats for every 50 kilos of firewood collected.*"[324]

Rohingya farmers told Amnesty International that BGP officers had also advised them to stay away from the fields close to "NaTaLa" villages (see below). One of the farmers explained*: "There is a NaTaLa village near here. The authorities say that if we go there to grow paddy it might start the violence again. We are forbidden from going near the NaTaLa village or growing paddy in the fields near there."*[325] Most are also too afraid to tend to fields close to areas where police and military personnel are stationed, as they said it increased their likelihood of being arrested, extorted or otherwise abused.[326]

"NATALA" VILLAGES

Since the early 1990s, the Myanmar government has implemented a policy of establishing "model villages" in northern Rakhine State. The policy involves relocating ethnic Rakhine and other non-Rohingya people to newly built villages, where, in addition to a new home, they are given livestock and income generating items such as tractors. Most people who were relocated to NaTaLa villages are former prisoners or the urban poor.[327]

The project was run by the Ministry for Development of Border Areas and National Races, better known by its Myanmar acronym "NaTaLa". NaTaLa villages were often built on land confiscated from Rohingya using Rohingya villagers for forced labour.[328] Many Rohingya see the villages as an attempt to deprive them of land and dilute the ethnic makeup of northern Rakhine State.[329]

In the aftermath of the 25 August 2017 ARSA attacks and widespread destruction of (mainly Rohingya) homes and buildings by the security forces, the Myanmar authorities have announced that they will build new houses for "ethnic nationals", leading to fears that lands used by Rohingya who have now fled to Bangladesh will be confiscated for new NaTaLa. According to state media, there are currently 39 model villages in the three northern townships of Rakhine State – 28 in Maungdaw township, nine in Buthidaung township and two in Rathedaung township.[330]

[321] Amnesty International interview, May 2017.
[322] Amnesty International communication, November 2017.
[327] Internal UN Briefing Note on Model Villages in Northern Rakhine State, undated and on file with Amnesty International.
[328] Amnesty International, *The Rohingya minority: Fundamental rights denied*, pp. 22-24.
[329] Amnesty International, *The Rohingya minority: Fundamental rights denied*, pp. 22-24.

In ten Muslim villages Amnesty international visited in Mrauk-U and Kyauktaw townships, and the two villages in Rathedaung, farmers explained that they did not have regular access to their land, if at all. While most Muslims said they could work in the fields adjacent to their villages and fish in the waterways close by, they explained that they could not travel further afield to work unless it was to other Muslim villages, and even then job opportunities were in short supply. Rohingya farmers whose fields were close to ethnic Rakhine villages said they had not been able to cultivate them since 2012.

Land confiscation also plays a role in reducing access to livelihoods. This is true not just for the Rohingya but for all communities living in Rakhine State, and indeed Myanmar as a whole. The country has a long history of land confiscations, often at the hands of Myanmar's military, which the country had yet to address or to provide effective remedies for and safeguards against. [331] For Rohingya and Muslim communities in Rakhine, who already face severe restrictions on movement, confiscation of land further exacerbates the situation.

A 54-year-old farmer living in Mrauk-U township told Amnesty International how the military confiscated two acres of land from him in June 2016:

> *"I went to my fields to work one morning in June, I saw some soldiers setting up a post. I asked 'why are you putting up a post?' They said 'we don't know, you have to ask the commander.' I went back to the village, where I discovered that other land owners had also had their fields taken. We decided to go to see the military officer in charge. He told us 'We won't give you your land back, complain to whoever you want.' I complained to the Deputy Township Administrator, but nothing happened."*

He further explained how losing access to his land had had terrible consequences for his family:

> *"My family and I relied on our fields for food and an income. Losing our fields has made it difficult for us to survive. To compensate, we have to do general labour work, even some of my children have had to start going out to work..."* [332]

Another resident from the same village and who also had two acres of land confiscated in June 2016 explained that there can also be consequences for the wider community: "*I still have fields left, so we can survive, but I've had to employ fewer daily workers to help with working the fields. I feel bad for them, as I can't give them work, but what can I do?"*[333]

Communal tensions can further compound difficulties accessing livelihood opportunities for Rohingya. In one village Amnesty International representatives visited in Mrauk-U, residents said that some villagers had managed to find employment on a Rakhine neighbour's farm, only for their employer to be threatened and harassed by hardline nationalist individuals or groups in his village, until he decided to no longer hire Rohingya. Amnesty International is not aware that the incident was reported to the authorities.

The case indicates that restrictions on Rohingya can also negatively impact ethnic Rakhine, something which was also noted by the Advisory Commission on Rakhine State in its final report, which stated: "some Rakhine employers have come under intense pressure from Rakhine nationalists to avoid hiring Muslims, thus disrupting the labour market and depriving the community of employment opportunities.[334]

Land is likely to be a major issue as discussions progress on possible refugee returns. According to state government documents seen by Reuters, the authorities plan to settle most returning refugees to new areas rather than back to their places of origin.[335]

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[326] See Section 3.1.3 Checkpoints, extortion and physical violence by security forces.
[327] Internal UN Briefing Note on Model Villages in Northern Rakhine State, undated and on file with Amnesty International.
[328] Amnesty International, *The Rohingya minority: Fundamental rights denied*, pp. 22-24.
[329] Amnesty International, *The Rohingya minority: Fundamental rights denied*, pp. 22-24.
[330] *Global New Light of Myanmar*, 'Rebuilding houses in Maungtaw', 15 October 2017, www.globalnewlightofmyanmar.com/rebuilding-houses-maungtaw/
[331] In Rakhine State see for example International Commission of Jurists (ICJ), *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights*, February 2017, Chapter 4: Human rights concerns with the Kyauk Phyu SEZ, pp. 47-73. Elsewhere, Amnesty International has documented land confiscations and forced evictions in the context the Letpadaung copper mine in Sagaing Region, *Open for Business? Corporate crime and abuse at Myanmar copper mine* (Index: ASA 16/0003/2015), 10 February 2015, pp. 15-41; Karen Human Rights Group (KHRG), *Losing Ground: Land conflicts and collective action in eastern Myanmar*, March 2013.
[332] Amnesty International interview with C.Z., September 2016. Amnesty International did not examine the issue of child labour, or its impact on education, while researching this report. However, the organization notes that UNICEF describes child labour as "one of the most prominent child protection issues in Myanmar", www.unicef.org/myanmar/protection_24173.html
[333] Amnesty International interview with C.X., September 2016.
[334] Final Report, Advisory Commission on Rakhine State, p. 20.
[335] Gwen Robinson, 'Tensions over Rohingya return highlight donor dilemmas', *Nikkei Asian Review*, 27 October 2017, asia.nikkei.com/Spotlight/Rohingya-crisis/Tensions-over-Rohingya-return-highlight-donor-dilemmas?n_cid=NARAN1507

A senior Rakhine State government official from the GAD subsequently confirmed that refugees would not be able to return to their original lands and would have no claim on their previous homes. Instead, he said the Ministry of Homes Affairs planned to rezone and reclassify large parts of northern Rakhine State.[336]

In addition, and what appears to be a mass confiscation of Rohingya crops, the government announced that it would begin harvesting ripe paddy crops in 20 village tracts in Maungdaw township in November.[337] The Rakhine State Chief Minister confirmed that the government would sell the crops, and that money from the sales would be transferred to the state budget and used for state development.[338] It is not clear whether Rohingya and other communities who have lost property and income will receive any compensation.

4.3.3 FOOD INSECURITY AND MALNUTRITION

"It is very challenging at the moment because we don't have enough to eat. We would be better in jail or prison because at least then we would have food regularly. It is like we live in a prison anyway..."

A 25-year-old Rohingya man living in Rathedaung township.[339]

All communities in Rakhine State suffer from poor levels of food security. According to the 2015-16 countrywide Demographic and Health Survey, implemented by Myanmar's Ministry of Health and Sports, "the nutritional status of children in Rakhine State is the worst in the country, with 38% of children stunted (18% severely stunted), 14% wasted, and 34% underweight."[340]

However, restrictions on movement and lack of access to livelihood opportunities have had a critical detrimental impact on food security for Rohingya and other Muslim communities. The situation has only deteriorated since the August 2017 attacks, as the Myanmar authorities have tightened movement restrictions in northern Rakhine State and severely restricted access for humanitarian agencies to the state, and in particular to northern Rakhine State.[341]

A 2015 report by Action Contre la Faim (ACF) which operates in northern Rakhine State found that "*food and nutrition insecurity in [northern Rakhine State] basically results from open discrimination and a lack of governmental policies in the fields of agriculture, health and education*." It goes on to identify among the key determinants of food insecurity and malnutrition in the region "*limited/no access to land and inputs, low market access, indebtedness and insufficient incomes.*"[342]

A 2017 food security assessment by the WFP, conducted in the aftermath of the October attacks, also concluded that restrictions on freedom of movement played a major role in limiting access to food, noting that "*full, unhindered access to viable livelihoods, markets and health care is the key pre-condition for durable, long term solutions to improve access to sufficient food.*"[343]

Food insecurity has had serious negative impacts on communities' nutrition and health. Perhaps the clearest indicator of the severity of the situation can be seen in Maungdaw and Buthidaung townships, where UN agencies report extremely high levels of malnutrition among children. In these areas levels of severe acute malnutrition in children between six months and five years are above emergency thresholds established by the WHO.[344]

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[336] Simon Lewis, Thu Thu Aung, Kyaw Soe Oo, 'Exclusive - Returning Rohingya may lose land, crops under Myanmar plans', *Reuters*, 22 October 2017, uk.reuters.com/article/uk-myanmar-rohingya-repatriation-exclusi/exclusive-returning-rohingya-may-lose-land-crops-under-myanmar-plans-idUKKBN1CR0A9

[337] *Global New Light of Myanmar*, 'Harvesting combines arrive in Rakhine State', 25 October 2017, www.globalnewlightofmyanmar.com/harvesting-combines-arrive-rakhine-state/

[338] Ministry of Information, 'Sales from Maungtaw paddy kept as national budget', 12 November 2017, www.moi.gov.mm/moi:eng/?q=news/12/11/2017/id-11975

[339] Amnesty International interview with E.D. October 2016.

[340] Myanmar Demographic and Health Survey 2015-16, p. 164. Data for the survey was collected between 7 December 2015 and 7 July 2016. The sampling frame is based on 76,990 "primary sampling units", which are identified as both census enumeration areas and wards or village tracts in areas which were not enumerated during the census, mainly in Rakhine State. Data is not disaggregated by ethnicity or religion.

[341] Amnesty International, *"My world is finished": Rohingya targeted by crimes against humanity in Myanmar*, 18 October 2017.

[342] ACF, *Final report, SMART Nutrition survey, Buthidaung and Maungdaw townships, September 2015-October 2015*, p. 20 and 23.

[343] WFP, *Food security Assessment in the northern part of Rakhine State, Final Report*, July 2017, reliefweb.int/sites/reliefweb.int/files/resources/WFP-0000019264.pdf

[344] Global acute malnutrition (GAM) and severe acute malnutrition are characterized by a very low weight for height, visible severe wasting or the presence of nutritional oedema (swelling caused by lack of nutritional intake). According to the 2017 Myanmar Humanitarian Response Plan, the prevalence of global acute malnutrition (GAM) among children 6-59 months in Buthidaung and Maungdaw townships stands at 15.1% and 19.0% respectively (the WHO emergency threshold is 15%), while the prevalence of severe acute malnutrition (SAM) is 2.0% and 3.9% respectively (the WHO emergency threshold is 2%), United Nations and Partners, *Humanitarian Response Plan 2016, January-December 2016*, December 2015, p. 19.

The situation deteriorated further after the October 2016 ARSA attacks. An assessment by WFP conducted between March and April 2017 in the affected areas found that "*none of the children from 6 to 23 months met the minimum adequate diet, only 2.5% reached minimum dietary diversity and 8.5% met the minimum meal frequency*."

The assessment reported an increase in the number of children requiring treatment for malnutrition and estimated that a staggering 80,500 children under the age of five would require treatment for malnutrition in the following 12 months.[345]

While there is no comparable data from other parts of Myanmar, it is perhaps telling that the Myanmar authorities reacted strongly to the WFP assessment and demanded it be removed from their website soon after publication, citing flaws with WFP's research methodology.[346] A senior humanitarian official told Amnesty International in September 2017 "*after the food security assessment story they [the Myanmar authorities] were livid. They see it as something that Yanghee Lee (the Special Rapporteur on the situation on human rights in Myanmar) and the Fact Finding Mission can use*."[347]

It should be noted that as early as November 2012, UNICEF stated that it was "*very concerned about the extent and severity of child malnutrition, which has been exacerbated by the ongoing conflict,*" noting that "*child nutrition levels were not good [even] prior to the outbreak of the Rakhine conflict in June*."[348] Such warnings have been repeated consistently since.

Food security and the risk of malnutrition is not only limited to children, the survey also found that women suffered disproportionately with female-headed households, or those with only female household members, being most at risk of severe food insecurity."[349] In addition, "*about two thirds of the households [surveyed] could not meet an adequate diet and 28% of them had a poor food intake the week prior to the survey*. […] *During thirty days prior to the survey, about one third of the households faced extreme experiences of food insecurity, such as no food of any kind in the household (28 %), went to bed hungry (34 %), or went for the whole day and night without eating (28 %).*"[350]

Many people are reliant on humanitarian assistance to meet their basic needs. According to the UN more than 160,000 people living in northern Rakhine State were heavily reliant on humanitarian services, including food nutritional support and cash assistance prior October 2016.[351] This situation deteriorated in the aftermath of the 9 October 2016 ARSA attacks as the Myanmar authorities first suspended and then severely restricted humanitarian access to northern Rakhine State.[352]

The situation had a devastating, and disproportionate, impact on the Rohingya. Between October and December 2016, the UN, foreign governments, international organizations, consistently warned about the consequences for the already impoverished community. ECHO warned that it was "critical that these life-saving activities be allowed to resume in order to avoid the death of thousands of children with severe acute malnutrition,"[353] while the UN Population Fund (UNFPA) warned of "grave consequences" for women and girls in Maungdaw and Buthidaung, in particular an estimated 7,600 pregnant women who had no access to basic primary health services for at least two months following the 9 October attacks.[354] Despite these appeals it took several months for the Myanmar authorities to allow the resumption of humanitarian access to resume. By July 2017, WFP estimated that 225,800 people living in northern Rakhine State were in need of humanitarian assistance.[355]

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[345] WFP, *Food security Assessment in the northern part of Rakhine State, Final Report*, July 2017.
[346] Amnesty International interview Ministry of Social Welfare, Relief and Resettlement, September 2017.
[347] Amnesty International interview with senior humanitarian official, September 2017.
[348] UNICED, 'UNICEF scales-up response, calls for stronger combat against child malnutrition in Rakhine State', 23 November 2012, www.unicef.org/myanmar/reallives_20067.html
[349] WFP, *Food security Assessment in the northern part of Rakhine State, Final Report,* July 2017.
[350] WFP, *Food security Assessment in the northern part of Rakhine State, Final Report*, July 2017.
[351] United Nations and Partners, *2017 Humanitarian Response Plan*, p 11.
[352] Amnesty International, "*We are at breaking point": Rohingya persecuted in Myanmar, neglected in Bangladesh*, pp. 31-24.
[353] DG-ECHO, *Myanmar/Bangladesh - Violence in northern Rakhine*, ECHO Daily Flash of 17 November 2016, reliefweb.int/report/myanmar/myanmarbangladesh-violence-northern-rakhine-state-dg-echo-partners-media-echo-daily
[354] UNFPA, *Safeguarding women and girls affected by the crisis in Myanmar's Rakhine State*, 29 November 2016, 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, reliefweb.int/report/myanmar/wfp-myanmar-country-brief-october- 2016
[355] WFP, *Food security Assessment in the northern part of Rakhine State, Final Report*, July 2017.

Despite this warning, humanitarian workers reported increasingly restricted access to northern Rakhine State in the weeks leading up to the 25 August ARSA attacks, and all access was suspended immediately after.[356] To date, the UN and international humanitarian organizations have been largely unable to access northern Rakhine State to assess needs of the population still living there.[357]

Amnesty International has concluded that this denial of aid contributed to the commission of the crimes against humanity of persecution and "other inhumane acts… intentionally causing great suffering, or serious injury to body or to mental or physical health."[358]

While data for levels of food insecurity in villages in central Rakhine State is difficult to access, in particular data disaggregated by ethnicity and religion, humanitarian reports and assessments raise similar concerns about lack of food security. A 2016 Early Recovery Assessment led by UNDP in Mrauk-U District warned that all communities suffered from food insecurity, noting that while ethnic Rakhine villagers resorted to borrowing money, Muslim villagers were much more likely to reduce their food intake to cope with lack of food.[359]

Humanitarian workers operating in Rakhine State raised concerns about negative coping mechanisms communities adopt in the face of increasing food insecurity. One humanitarian worker was particularly worried about the situation of women and girls, and said that their organization had recorded cases of survival sex and early marriage, in addition to incidents of human trafficking.[360]

INTERNATIONAL HUMAN RIGHTS LAW AND THE RIGHT TO FOOD

International human rights law and standards recognize the right of everyone to an adequate standard of living for themselves and their families. This includes adequate food, clothing and housing, and the continuous improvement of conditions.[361]

The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement. The UN Committee on Economic, Social and Cultural Rights has affirmed "the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights" and that states must recognize that they may need to take immediate and urgent steps to ensure "*the fundamental right to freedom from hunger and malnutrition*."[362] In this regard the State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

According to the UN Committee on Economic, Social and Cultural Rights, violations of the right to food can include "denial of access to food to particular individuals or groups, whether the discrimination is based on legislation or is proactive" and "the prevention of access to humanitarian food aid in… emergency situations. In Rakhine State, the severe restrictions on movement and access to livelihoods, coupled with the alarmingly high levels of malnutrition in northern Rakhine State, clearly gave rise to an "emergency situation" even before the scorched-earth military campaigns in 2016 and 2017. The fact that Rohingya communities in Rakhine State have for years been reliant on aid – including food aid – provides further confirmation of this. Instead of taking action to facilitate access to food, the Myanmar authorities have taken measures which instead have restricted it, most notably by suspending humanitarian access, including food aid, to northern Rakhine State during military operations in 2016 and 2017.

The UN Committee on Economic, Social and Cultural Rights is clear that states may not take any action which would prevent existing access to adequate food.[363] Further, the committee has also clearly stated that "Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly."[364]

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[356] Amnesty International interviews with senior humanitarian official, Yangon, September 2017.
[357] In early September2017 the Myanmar authorities announced that the humanitarian response in northern Rakhine State would be led by the Myanmar Red Cross Society, supported by the International Committee of the Red Cross. In October, the head of the International Federation of Red Cross and Red Crescent Societies called for access for other humanitarian actors saying that the whole humanitarian response "cannot be shifted to the shoulders of the Red Cross alone". *The Guardian*, 'World failing Myanmar's Rohingya Muslims, top Red Cross official says', 26 October 2017, www.theguardian.com/world/2017/oct/26/world-failing-myanmars-rohingya-muslims-top-red-cross-official-says
[358] Amnesty International, *My world is finished": Rohingya targeted by crimes against humanity in Myanmar*, pp. 39-40.
[359] Early Recovery Network, *Early Recovery Multi-Sector Assessment of Mrauk-U District*, March 2016, p. 18.
[360] Amnesty International interview, September 2016.
[361] ICESCR, Article 11.
[362] CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, Contained in Document E/C.12/1999/5, para. 1.
[363] CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), para. 15.
[364] CESCR, General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), para. 15.

5. SOCIAL AND POLITICAL EXCLUSION

Discrimination and segregation of Muslim communities has both cemented and led to the exclusion of Muslims in Rakhine State from the public sphere, which has prevented them from exercising other rights, in particular their rights to freedom of religion or belief and to participate in public life. Since 2012, Rohingya's exclusion from the rest of Myanmar's society has also been exacerbated by a number of restrictive measures taken by the authorities as well as a growing anti-Muslim nationalist movement. In the aftermath of the August 2017 ARSA attacks and the military's subsequent ethnic cleansing campaign, Rohingya sources in both northern and central Rakhine State have reported increased difficulty engaging with non-Rohingya communities, in particular to trade goods.[365]

There are also reports that non-Rohingya residents have been pressured by hardline individuals and nationalist groups to cut off all contact with Rohingya communities. In September, an ethnic Rakhine woman was beaten, had her hair cut and was paraded through her village in Mrauk-U with a sign that read "traitor" hung around her neck after she was 'caught' selling food to Rohingya villagers.[366] Positively, local authorities took action and arrested those responsible.[367] However, such incidents underscore the need for a coherent government strategy at all levels aimed at deescalating the situation, reassuring all communities, and taking firm action against threats and acts of violence.

↑ Sittwe's once imposing main mosque has fallen into a state of disrepair and decay. Shuttered since 2012, police guards and barbed wire fences prevent anyone from entering, March 2016. ©Amnesty International.

[365] Amnesty International interviews September 2017. Kyaw Soe Oo, 'Segregation fans fears of fresh 'cleansing' in Myanmar's Rakhine', *Reuters*, 9 October 2017, uk.reuters.com/article/uk-myanmar-rohingya-segregation/segregation-fans-fears-of-fresh-cleansing-in-myanmars-rakhine-idUKKBN1CE106

[366] Wunna Kwanyo, 'Arakanese woman publicly humiliated for being a 'traitor'', *DVB,* 18 September 2017, www.dvb.no/news/arakanese-woman-publicly-humiliated-traitor/77435

[367] *DVB*, 'Publicly humiliated 'national traitor' Daw Soe Chay awaits justice', 2 October 2017, www.dvb.no/news/publicly-humiliated-national-traitor-daw-soe-chay-awaits-justice/77701

5.1 VIOLATIONS OF THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

> **"Many of the mosques and madrasas have been closed since 2012. It makes it difficult for us to pray together and to teach the children. The religious teachers and imams are jobless. Children learn the Qur'an in their homes, and some teachers go from house to house but it's hard because of the restriction on movement.**
>
> A religious leader living in northern Rakhine State.[368]

Non-Buddhist religious minorities in Myanmar have long faced arbitrary and sweeping restrictions on their ability to practice their faith.[369] However, Rohingya and other Muslims living in Rakhine State have been subjected to specific restrictions on their freedom to practice or otherwise manifest their religion. Since 2012, these restrictions have intensified in Maungdaw and Buthidaung townships, and expanded to other parts of Rakhine State.

In northern Rakhine State, 'curfew' orders imposed by local authorities effectively bar Rohingya from praying together, and they risk arrest, or more often extortion, if they are caught disobeying the rule. Some Rohingya told Amnesty International that they meet to pray together in secret. In addition, some interviewees complained that population and movement checks, ostensibly aimed at maintaining security, denigrate Muslim faiths.[370] In some areas of central Rakhine State, local authorities banned the use of loudspeakers claiming that the call to prayer could incite violence and across Rakhine States authorities have closed mosques and imposed restrictions on mosque repairs.

Violations of the right to freedom of religion or belief in Rakhine State take place in a wider context of rising anti-Muslim sentiment in Myanmar, often propagated by hardline Buddhist nationalist groups. In recent years, such groups have in several instances prevented Muslim communities from praying and observing other religious practices, including by forcing the closure of mosques or preventing Eid celebrations.[371] While the NLD-led government has shown more willingness to address the situation than its predecessor, it has so far failed to publicly condemn advocacy of hatred or commit to protecting and upholding the right to freedom of religion of all religious communities in the country.

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[368] Amnesty International interview with A.V., March 2016.
[369] U.S. Commission on International Religious Freedom, *Hidden Plight: Christian minorities in Burma*, December 2016; HRW, "*We Are Like Forgotten People": The Chin People of Burma: Unsafe in Burma, Unprotected in India*, January 2009, pp. 48-52; and *Crackdown on Burmese Muslims*, July 18, 2002.
[370] Rohingya told Amnesty International that women are made to take their headscarves off at security checkpoints, while men and women are made to take off their headscarves and caps during annual population checks. Amnesty International interviews with B.L, March 2016 and with E.J., October 2016.
[371] Kyaw Phyo Tha & Lawi Weng, 'Breaking: Nationalist Mob Closes Two Islamic Schools in Rangoon', *The Irrawaddy*, 28 April 2017, www.irrawaddy.com/news/burma/breaking-nationalist-mob-closes-two-islamic-schools-rangoon.html; *Channel News Asia*, 'Buddhist hardliners stop Myanmar Muslim ceremony', 8 January 2017, www.channelnewsasia.com/news/asiapacific/buddhist-hardliners-stop-myanmar-muslim-ceremony-7546738; *The Guardian*, ''No Muslims allowed': how nationalism is rising in Aung San Suu Kyi's Myanmar', 23 May 2016, www.theguardian.com/world/2016/may/23/no-muslims-allowed-how-nationalism-is-rising-in-aung-san-suu-kyis-myanmar

5.1.1 RESTRICTIONS ON WORSHIP AND OTHER FORMS OF RELIGIOUS PRACTICE

IN NORTHERN RAKHINE STATE

The curfew order which has been in place in Maungdaw and Buthidaung townships continuously since 2012 (see Section 3.1.2 Continuous 'curfews'), effectively prevents Muslims from worshipping together, as it prohibits more than four people from gathering in public. Amnesty International has on file a March 2016 instruction issued by the BGP to Village Administrators in Buthidaung township confirming that restrictions on gatherings apply specifically to Muslim religious practice. It states explicitly that "gathering of five or more than five people is not permitted in public mosques and schools."[372] Amnesty International visits to Buddhist and Christian places of worship, and interviews with Hindus living in northern Rakhine State confirm that in practice the restriction on assembly is only enforced against the Muslim population.

Those who breach the provisions of the 'curfew' risk arrest or more often extortion at the hands of local authorities and police. Amnesty International documented two cases of extortion related to the implementation of the curfew order by the authorities. In one incident, a Ward Administrator and township police officer threatened to arrest a group of between 10-15 Rohingya after observing them emerging from a house where they had been praying together in Buthidaung town. Police called a local leader and told him "*let them know, we will arrest them if they don't pay the fine*." The worshipers subsequently paid 70,000 kyats (US$50) to the Ward Administrator, who reportedly gave it to a senior township police officer.[373] In another instance, sources told Amnesty International that two Rohingya leaders paid a bribe to township authorities after a group of men were filmed observing Friday prayers together during Ramadan in June 2016. Township officials told the men they had evidence proving a breach of Section 144 (the provision in the Criminal Procedure Code under which 'curfews' are imposed).[374]

While the curfew remains in place across the two townships, it is more strictly enforced in Maungdaw and Buthidaung towns than in surrounding rural areas, where some local authorities turn a blind eye to religious gatherings. Rohingya in several villages showed Amnesty International makeshift mosques and madrasas, explaining that they were able to pray in secret because they were in remote areas.

In addition to restrictions on gathering, there are also restrictions on religious teaching in mosques and madrasas. Amnesty International obtained a copy of a January 2013 local order issued by the Maungdaw Township General Administration Directorate which requires teachers and "persons with responsibility at mosques and religious buildings" to provide a signed undertaking that they will not teach without prior permission.[375] Religious leaders have confirmed that the instruction is in effect in Buthidaung township.[376] While the order does not state any penalties for non-compliance, in practice it has resulted in the closure many mosques and madrasas in northern Rakhine State.

Amnesty International obtained a copy of an August 2017 order by a Township Head of Administration in northern Rakhine State entitled "Lists to be submitted of buffaloes, cows, goats and sheep which will be sacrificed at the Festival of Bakra Eid [*Eid Al-Adha*]" issued to all Ward and Village Tract Heads of Administration instructing them to submit a list of the animals to be sacrificed during festival.[377] The list was to be submitted "without fail" by 26 August, although the order does not contain details of the penalty for non-compliance. Given the events in northern Rakhine State following the August attacks, and the massive displacement of the population there, Amnesty International has been unable to establish whether there were any repercussions for those who failed to comply. The organization is not aware of other religious communities being required to submit similar information for major festivals, and it is unclear what purpose such collection of data could achieve, except to further control and oppress the Rohingya population.

While the restrictions on freedom of religion in northern Rakhine State are either directed at or disproportionately impact Muslims, other religious minorities also face difficulties practicing their faith. For example, a Christian pastor told Amnesty International that while Christians could worship freely together on Sundays, they had to apply for permission to celebrate Christmas and other holidays, something he said the Buddhist community did not have to do to celebrate major Buddhist events.[378]

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[372] Curfew renewal announcement order, 28 March 2015, and unofficial translation on file with Amnesty International.
[373] Amnesty International interview with A.W., March 2016.
[374] Amnesty International telephone interview with A.V., July 2016.
[375] Local order and unofficial translation on file with Amnesty International.
[376] Amnesty International communication, October 2016.
[377] Local order and unofficial translation on file with Amnesty International.
[378] Amnesty International interview with A.Y., March 2016.

IN CENTRAL RAKHINE STATE AND SITTWE TOWNSHIP

One of the clearest signs of the expulsion of Rohingya and other Muslims from Sittwe is the closure of the town's mosques. Today, most mosques are abandoned and in a state of gradual decay, blocked off to the public by barbed wire fences and guarded by police.

Outside of major towns, in rural areas and in the IDP camps, there is a greater level of freedom to worship, though this varies from area to area, and is often subject to arbitrary restrictions and interference by local authorities. In most Muslim villages Amnesty International visited, Muslim communities explained they had been instructed by township authorities not to use loudspeakers for the call to prayer since 2012, saying it could inflame communal tensions and spark violence.

In one village in Mrauk-U township, villagers reported that police had told them they needed official permission to use an amplifier. One of the village leaders explained:

> "*The Myaung Bway police told us we needed a license for the loudspeaker. They told us we would be arrested and charged if we used the loudspeaker without a license… In the next village to mine, they used the loudspeaker without permission and were fined 20,000 kyats for doing it.*"

In an interview with Amnesty International, the Mrauk-U Township Administrator confirmed that using loudspeakers required permission from the Township General Administration, explaining that both communities were required to obtain approval.[379] However, another villager leader highlighted: "*The authorities say we need a license [for the loudspeaker], but the only way to get one would be to go to Mrauk-U town to the government office to apply, but we can't do that because we are not allowed.*"[380]

5.1.2 MOSQUE DEMOLITION AND RESTRICTIONS ON REPAIRS

↑*Rohingya boys stand outside the decaying mosque and madrasa in their village in northern Rakhine State, March 2016. ©Amnesty International*

[379] Amnesty International interview, September 2016.
[380] Amnesty International interview with D.D., September 2016.

Across Rakhine State, and indeed Myanmar as a whole, Muslim and other non-Buddhist communities face restrictions repairing and rebuilding mosques and other religious buildings, and continue to report authorities delaying or denying requests for permission to construct religious buildings.[381] The situation is made more difficult by the opacity of the legal framework and official regulations relating to the construction, repair and renovation of religious buildings in Myanmar.

While it is reasonable for authorities to regulate the building and renovation of houses of worship and other religious buildings, a September 2015 instruction issued by township administration authorities in northern Rakhine State makes clear that restrictions on rebuilding and renovating in the township are targeted against Muslim religious buildings. The instruction, entitled "Notification that mosques and religious buildings destroyed as a result of natural disaster are to be rebuilt only with a permit" and further states that "the repair, alteration and new construction of mosques or religious buildings is absolutely (absolutely) not to be carried out without a permit, and if on inspection this is found to have happened, action will be taken under the laws in force."[382]

In some areas Amnesty International visited in Rakhine State, Muslim communities make small repairs to mosques in secret, hoping that township authorities do not notice. In some cases, when authorities do notice, they turn a blind eye, however in others they demand bribes and threaten villagers with arrest. A mosque trustee in one village Amnesty International visited explained that when his Township Administrator learned about unofficial repairs to the village mosque, he demanded a payment of 100,000 kyats (US$72) or else said he would force the community to take down the building.[383]

Mosques and madrasas built or repaired without official permission risk being demolished by the authorities. Amnesty International visited one village in Kyauktaw township where Muslim residents had clubbed together to rebuild a madrasa destroyed in 2012. They explained that they paid a bribe of 100,000 kyats (US$72) to the township authorities in December 2015, and began building the structure in January 2016.

When the building was close to completion, local Rakhine residents saw it and complained to the Village Administrator, who then issued a letter informing the community that they would have to demolish the building before 23 March 2016. According to the letter, which was seen by Amnesty International, failure to comply with the order would result in the arrest of six of the mosque trustees. Unable to appeal against the decision, in part because they had paid the bribe and in part because they felt there was no institution they could turn to, they were left with no other choice than to tear it down.[384]

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION IN INTERNATIONAL HUMAN RIGHTS LAW

The UDHR guarantees to everyone the right to "freedom of thought, conscience and religion." This includes the right "either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."[385] The restrictions on Muslims' right to manifest their religion or belief through prayer and other forms of religious practice in Rakhine State are unjustified and clearly discriminatory, as they do not apply to other religious communities in the State.

As noted, in international law religion is an explicit ground for differentiated treatment that constitutes discrimination.[386] Under international human rights law, states have an obligation to respect and protect the rights of all individuals without distinction to freedom of thought, conscience and religion, including the right to practice one's religion openly and without interference.[387] The right to freedom of thought, conscience and religion must be fully respected and protected even in time of public emergency.[388]

The UN Special Rapporteur on the right to freedom of opinion and belief has stated that places of worship are an essential element of the manifestation of the right to freedom of religion, and that restrictions on places of worship violate the right "*not only of a single individual, but the rights of individuals forming the community that is attached to the place in question.*"[389]

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[381] Burma Human Rights Network (BHRN), *The Persecution of Muslims in Burma*, 5 September 2017, pp. 24-28, www.bhrn.org.uk/en/press-release/23-burma-human-rights-network-publishes-research-revealing-state-led-persecution-of-burma%E2%80%99s-muslim-minority.html; United States Department of State, *International Religious Freedom Report for 2015*, p6, www.state.gov/documents/organization/256305.pdf; HRW, *Crackdown on Burmese Muslims*, July 2002, p. 4, pantheon.hrw.org/legacy/backgrounder/asia/burmese_muslims.pdf

[382] Local order, September 2015, and unofficial translation on file with Amnesty International.

[383] Amnesty International interview with C.F., September 2016. Township location withheld for security reasons.

[384] Amnesty International interview with D.Q. and D.R., September 2016.

[385] UDHR, Article 18.

[386] Charter of the United Nations, Articles 1(3), 55(c) and 56, UDHR, Article 2, ICCPR, ICESCR, Article 2(1), CRC, Article 2(1).

[387] UDHR, Article 9; ICCPR, Article 18.

[388] ICCPR, Article 4(1-2).

[389] Report submitted by Asma Jahangir, Special Rapporteur on freedom of religion or belief, UN Doc: E/CN.4/2005/61, 20 December 2004, paras 50-51.

5.2 VIOLATIONS OF THE RIGHT TO PARTICIPATE IN PUBLIC LIFE

> **"Now, we have no voice in the state parliament or involvement in the Union level Parliament. Rohingya civil society in the country is pretty much non-existent. We don't have freedom to come together and mobilize. The situation is becoming quite desperate."**
>
> A Rohingya activist.[390]

Since the 2012 violence, Rohingyas' ability to participate in public life have been severely restricted. Restrictions of movement and policies of segregation make it almost impossible for them to gather, mobilize and advocate collectively for their rights. The Advisory Commission on Rakhine State has noted that "there are no Muslim [civil society organizations] in Rakhine, and applications for registration have been rejected by the government even when the applicant organization has been headed by Muslim citizens."[391]

At the same time, the previous government took active measures to further disenfranchise the Rohingya, notably by denying them the right to vote and stand for office in the 2015 general elections, despite their having been able to do so in the previous general elections in 1990 and 2010, and in by-elections in April 2012.

In the run up to the 2015 general election, the authorities undertook a series of measures clearly designed to ensure that "white card holders", the majority of whom are Rohingya, would not be allowed to vote. This started with the revocation of all white cards by then-President Thein Sein in March 2015, following pressure from hardline groups concerned that Rohingya would be able to vote in a proposed Constitutional referendum.[392] This was followed soon after by a Constitutional Tribunal ruling in May 2015 that it was unconstitutional for "white card" holders to be given voting rights.[393] The result was the political disenfranchisement of hundreds of thousands of Rohingya and other former white card holders.

This political disenfranchisement was further cemented when all Rohingya candidates applying to contest the 2015 general election were disqualified either on the basis of their citizenship status or the status of their parents.[394] According to election monitors and other sources, election commissions at all levels rejected candidates solely on the basis of their physical appearance, names or religion, thus discriminating on racial and religious grounds.[395] As a result, Rohingya were effectively excluded from the 2015 election as most of them were unable to either vote or run as candidates.

Illustrative of the deeply discriminatory nature of these measures was the rejection of the candidate Shwe Maung, while he was already serving as the Member of Parliament (MP) for Buthidaung township. He told Amnesty International that his initial application was rejected by the Buthidaung Township Election Commission in August 2015 on the basis that his parents were not citizens.

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[390] Amnesty International interview, September 2016.
[391] Final Report, Advisory Commission on Rakhine State, August 2017, p. 47.
[392] Presidential Order No. 19/2015. Under the order, issued on 11 February 2015, all white cards would be revoked as of 31 March 2015, and holders had until 31 May 2015 to surrender them.
[393] Sandaar Lwin, 'Tribunal rules white-card voting rights unconstitutional', *The Myanmar Times,* 12 May 2015, www.mmtimes.com/index.php/national-news/14399-tribunal-rules-white-card-voting-rights-unconstitutional.html
[394] Carter Center, *Carter Center Issues Statement on Candidate Scrutiny Process and Campaign Environment in Myanmar*, 25 September 2015, www.cartercenter.org/news/pr/myanmar-092515-pre-election.html .Nationwide, there were a total of 60 disqualifications on citizenship grounds, 23 of them of candidates applying to contest seats in Rakhine State. Article 8(e)) of Myanmar's 2010 Election Law and Article 120 of the 2008 Constitution state that parliamentary candidates must be a citizen, and both of their parents must also be citizens.
[395] Amnesty International interview with election monitors, August 2015.

He appealed to the District Election Commission, and days later attended a hearing with documents which he said proved that both he and his parents were full citizens. He was never able to present the documents, and the appeal was rejected in just a few minutes.[396]

Another illustration of the discriminatory nature of the exclusion of the Rohingya from the 2015 elections was reported by Kaman community members who told Amnesty International that, in the absence of identity cards, they were issued with tokens allowing them to vote in the election. One villager notes: "When the Union Election Commission staff came here they did not ask for the ID to add people on the [electoral] list because they know it is a Kaman village."[397]

Both the UDHR and the ICCPR state that every citizen has the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives.[398] Denying or depriving Rohingya of citizenship through arbitrary and discriminatory laws and policies, as described in earlier chapters, even though it did not initially result in disenfranchisement, was used in the 2015 elections to deprive them of the right to vote and run for election simply because they were Rohingya. Authorities made no attempt to ensure that Rohingya in possession of old identity documents could vote.

The political disenfranchisement of the Rohingya has served to further their social and political isolation from Myanmar society. Without representation, severely restricted in movement and with limited access to education or other means of improving their situation and the situation of those around them, Rohingya in Rakhine State are heavily reliant on others to speak out for them. Those who do speak out, however, do it at great personal risk.

THE RISK OF REPRISAL FOR SPEAKING OUT

"If you would like to kill me then you can use the information [I just shared with you] with my name…"

Rohingya man living in northern Rakhine State, who told Amnesty International about the arbitrary arrest and extortion of his son-in-law in 2016.[399]

As previously explained, the Myanmar authorities severely restrict international access to Rohingya villages, displacement camps and the two northern townships of Maungdaw and Buthidaung, making it extremely difficult to get first-hand information about the situation there. Many organizations and agencies rely on Rohingya networks in order to obtain, check and verify information, however these activists do it at great personal risk.

Masood*, a Rohingya man living in northern Rakhine State told Amnesty International about how he was arrested in August 2016, tortured and extorted by BGP who accused him of sharing "false" information with members of the international community, in particular Rohingya blogging websites. He described what happened when the BGP came to his house to arrest him:

> "*It was 1am. I was at home sleeping. Around 8 people, most of them BGP, came to my house and broke the door. They accused me of spreading false news online, and told me that I had defamed them.*
>
> *They pushed me to the floor and one of them sat on my back while two others held my feet. Another one of them kicked me in the face. I was bleeding from my mouth. They tied my hands behind my back and then took me outside to the truck… I got in and they took us to the nearby BGP camp.*
>
> *The next day at around 11am they took me to a separate room to be interrogated. There was a stick, ropes and stocks in there. First they asked for money, they demanded 5 million kyats (approx. US$3,600). They said 'if you can pay, then you can go'. I told them I didn't have the money, and then they started beating me. My hands were tied behind my back and they punched me in the face. I started bleeding again. Then they took off my trousers and used a stick to beat my thighs. I fell to the floor from the pain, but they didn't stop, they just kept beating me... After around 30 minutes, they stopped beating me and put me in stocks. The stocks are made of wood and there are five holes so at most, five men can be held, one leg in each hole…*

[396] Amnesty International interview, August 2015.
[397] Amnesty International interview with C.N., September 2016.
[398] UDHR, Article 21(1); ICCPR, Article 25.
[399] Amnesty International telephone interview with E.M., October 2016.

I was interrogated and beaten once a day every day I was there. Usually there were two BGP who would interrogate and beat us. Each time they would beat me they would ask 'can you afford to pay the money yet? We won't let you go until you do'. I was held there for two weeks before a community elder came and paid 2.2 million (US$1,600). Only then did the BGP release me. I never complained to anyone about the treatment because the authorities will never take any action for the Muslims."

Amnesty International also documented the arrest of two Rohingya men during "clearance operations" in November 2016, who were accused of defaming the military after sharing information online about alleged human rights violations.[400]

Authorities in northern Rakhine State, in particular the BGP, don't simply use the threat of arrest and physical violence to extort money from Rohingya, they also use is as a means to instill fear among the wider community. A humanitarian official working in northern Rakhine State in March 2016 told Amnesty International, "*The fear is everywhere here. It's clearly a way to control the minorities.*"[401] Fear of reprisals prevents people from speaking out about abuses. As a result, many choose not to report abuses. The father of a man killed by the BGP told Amnesty International "*There is no rule of law here. It is a lawless land... There is no hope."*

[400] Amnesty International, *"We are at breaking point: Rohingya persecuted in Myanmar, neglected in Bangladesh*, p. 21.
[401] Amnesty International interview with humanitarian worker, March 2016.

6. A SYSTEM, AND CRIME, OF APARTHEID

> **"The Government has actively supported this drive towards segregation."**
>
> Final Report of the Advisory Commission on Rakhine State.[402]

Amnesty International has examined the question of whether the conduct of officials who have committed the human rights violations in Rakhine State described in this report has amounted to crimes under international law. The organization's conclusion is that, at least since the violence in 2012, Myanmar officials have committed the crime against humanity of apartheid against the Rohingya. Amnesty International and others, including OHCHR and Human Rights Watch, have since 2012 also documented other extreme manifestation of the crime against humanity.[403]

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.[404] Such a serious conclusion therefore warrants a detailed explanation, which is provided in this chapter.

6.1 CRIMES AGAINST HUMANITY

The Rome Statute of the ICC defines crimes against humanity in Article 7(1): "For the purpose of this Statute, '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 …".[405] 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."[406] Paragraph 1 of this Article lists 11 acts, or types of acts, which constitute such crimes. Some may often be discrete "physical" acts such as torture, murder and rape, while others are more complex, such as persecution and apartheid.

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[402] Final Report, Advisory Commission on Rakhine State, p. 50.
[403] As previously reported by Amnesty International and others, some of the conduct also amounts to the crimes against humanity of murder, persecution, deportation or forcible transfer of population; torture; rape and other forms of sexual violence of comparable gravity; enforced disappearance of persons; and other inhumane acts. Amnesty International, *"My world is finished": Rohingya targeted by crimes against humanity in Myanmar and "We are at breaking point": Rohingya persecuted in Myanmar, neglected in Bangladesh*; OHCHR, *Flash Report: Report of OHCHR mission to Bangladesh, Interviews with Rohingyas fleeing from Myanmar since 9 October 2016*, 3 February 2017, www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf ; HRW, *Crimes against Humanity by Burmese Security Forces Against the Rohingya Muslim Population in Northern Rakhine State since August 25, 2017*, 25 September 2017.
[404] The Preamble of the Rome Statute contains the following: "Mindful that during this [the 20th] century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity."
[405] Article 7(1) Rome Statue of the ICC (Rome Statute), adopted on 17 July 1998 (A/CONF.183/9), entered into force 1 July 2002 (as subsequently amended). For the text see for instance the Court's website, www.icc-cpi.int
[406] Rome Statute, Article 7(2)(a).

The definition of crimes against humanity in the Rome Statute reflects to a large extent rules of customary international law.[407] These customary international law crimes are *jus cogens* in nature – peremptory norms from which no deviation is permitted. Universal jurisdiction attaches to these crimes and, as such,[408] any state may, under customary international law, undertake one of the following actions 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:

- Bring such persons before its own courts;
- Extradite such persons to any state party willing to do so; or
- Surrender such persons to an international criminal court with jurisdiction to try persons for these crimes.[409]

THE CRIME AGAINST HUMANITY OF APARTHEID

The term "apartheid" (literally "separateness" or "being apart" in Afrikaans) was used to define a political system imposed by South Africa's nationalist leaders between 1945 and 1994 and characterized by laws and policies which explicitly enforced racial segregation and domination.[410] International statements condemning the system and similar practices in southern Africa during this period adopted the term. As a result, apartheid is expressly prohibited in international law.[411] Three international treaties[412] prohibit or explicitly criminalize apartheid, making it clear that the international community intended not only to condemn and criminalize apartheid as practised in southern Africa but wherever it might be replicated[413]:

- Article 3 of the International CERD[414] provides that "States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction."
- The International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention),[415] defines apartheid as a crime against humanity and obliges states parties to prosecute persons accused of the crime.
- Article 7(1)(j) of the Rome Statute defines apartheid as a crime against humanity[416] which renders it within the jurisdiction of the ICC.

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[407] Rules of customary international law are international legal rules derived from consistent state practice and consistent consideration by states that these rules are binding on them (*opinio juris*), and bind all states, including Myanmar, irrespective of whether or not they have joined relevant international treaties. The Rome Statute Article 7 definition of "crime against humanity" has been accepted by the more than 120 States Parties to the Rome Statute and is the basis of domestic criminalization of crimes against humanity in many States. This definition was adopted essentially verbatim by the International Law Commission in draft Article 3 of its "Text of the draft articles on crimes against humanity provisionally adopted by the Commission in 2015". Report of the International Law Commission, Sixty-seventh session (4 May–5 June and 6 July–7 August 2015), UN Doc. A/70/10, 24 August 2015, pp. 44-5 which considers the status of crimes against humanity under international law and explains why the ILC considers the Rome Statute definition as reflecting customary international law.

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

[409] Amnesty International, Universal Jurisdiction: The duty of states to enact and enforce legislation.

[410] Such laws include, for instance (and among many others) the Population Registration Act (1950), which classified citizens into racial "population groups"; and the Reservation of Separate Amenities Act (1953) which allowed racial segregation of public amenities such as premises, vehicles and services..

[411] "Practices of apartheid" are also listed as grave breaches of international humanitarian law and war crimes. See in particular, Article 85(4)(c) of Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, adopted 8 June 1977, entered into force 7 December 1978; The International Committee of the Red Cross (Jean-Marie Henckaerts and Louise Doswald-Beck, eds.), Customary International Humanitarian Law (Cambridge: Cambridge University Press, 2005), Rule 156: Definition of War Crimes.

[412] This in addition to its prohibition and criminalization as a war crime, which will not be covered in this analysis. Apartheid has also been criminalized under the following: United Nations Transitional Administration in East Timor Regulation 2000/15, UNTAET/REG/2000/15 (6 June 2000), Section 5.1(j); the Statute of the Extraordinary African Chambers Within the Courts of Senegal Created to Prosecute International Crimes Committed in Chad Between 7 June 1982 and 1 December 1990 Article 6(e); Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Annex: Statute of the African Court of Justice and Human and Peoples' Rights), adopted 27 June 2014.

[413] In addition, "inhuman acts resulting from the policy of apartheid" are listed as a crime against humanity in Article I(b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted by General Assembly, resolution 2391 (XXIII) of 26 November 1968, entered into force 11 November 1970.

[414] International Convention on the Elimination of All Forms of Racial Discrimination, adopted by UN General Assembly resolution 2106 (XX) of 21 December 1965, entered into force 4 January 1969.

[415] The International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by UN General Assembly resolution 3068 (XXVIII) of 30 November 1973, entered into force 18 July 1976. See the discussion below.

[416] The nature of the crime is elaborated in Article 7(2)(h).

As of August 2017, an overwhelming majority of states – 184 – have ratified international treaties which explicitly prohibit apartheid.[417] A large majority of states – 162 – have ratified international treaties which specifically recognize and criminalize apartheid as a crime against humanity.[418]

To date, no individual has been convicted of committing the crime against humanity of apartheid. The Committee on the Elimination of Racial Discrimination has concluded that states have violated Article 3 of ICERD,[419] but has not explicitly used the term "apartheid" in reaching these conclusions.

Myanmar is not a state party to any of the three international treaties prohibiting or criminalizing apartheid. However, the prohibition of apartheid forms part of customary international law.[420] Moreover, this prohibition is considered a peremptory norm of international law (also known as *jus cogens*), that is, a non-derogable norm, meaning no state may withdraw from its obligation to respect it under any circumstances.[421] Myanmar is thus legally obliged to prevent, prohibit and punish acts constituting the crime of apartheid.

For its part, the UN Security Council has the power to refer situations where there is reasonable evidence of the commission of the crime against humanity of apartheid (as defined in the Rome Statute), to the ICC irrespective of whether the state in question is a state party to the Rome Statute.[422]

6.2 CONDUCT CONSTITUTING THE CRIME OF APARTHEID IN RAKHINE STATE

To understand the crimes committed against the Rohingya in Rakhine States as crimes of apartheid is to foreground the daily reality of Rohingya in Myanmar: as persons systematically subject to domination and oppression.

Below is a discussion of the key elements of the crime against humanity of apartheid as provided in the Apartheid Convention and the Rome Statue, and their applicability to conduct by Myanmar officials towards the civilian Rohingya population in Rakhine State.

6.2.1 'INHUMAN' OR 'INHUMANE' ACTS LISTED IN EITHER ARTICLE II OF THE APARTHEID CONVENTION OR ARTICLE 7 OF THE ICC STATUTE WERE COMMITTED

Article II of the Apartheid Convention defines "inhuman acts" against members of a racial group which, in the circumstances outlined in the Convention, constitute crimes of apartheid. It criminalizes the denial of the right to life and liberty, murder, infliction of serious mental harm including through torture and other ill-treatment, arbitrary arrest and the deliberate imposition of living conditions calculated to destroy the racial group. Article II also criminalizes:

> *"…any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by*

[417] Including 178 states parties to ICERD and six states parties to the Rome Statute who have not ratified ICERD.
[418] Including (i) 109 states parties to the Apartheid Convention; and (ii) 53 states parties to the Rome Statute who have not ratified the Apartheid Convention. The relatively low number of states parties to the Apartheid Convention is related to political disputes between the "west" and the Soviet bloc when the Convention was drafted and adopted in the early 1970s.
[419] Concluding Observations by Committee on the Elimination of Racial Discrimination (CERD) on India, UN Doc. CERD/C/IND/CO/19 (2007), para. 13; Antigua and Barbuda, UN Doc. A/62/18 (2007), para. 45; Israel, UN Doc A/67/18 (2012), para. 28(11); Israeli policies in the Occupied Palestinian Territories, UN Doc A/67/18 (2012), paras. 28(24), 28(27); Italy, UN Doc A/67/18 (2012), para. 29(19); Russian Federation, UN Doc. CERD/C/RUS/CO/20-22 (2013), para. 17; USA, UN Doc. CERD/C/USA/CO/7-9 (2014), paras 13, 14.
[420] This conclusion is based on a number of factors, including the wide ratification of treaties prohibiting apartheid (see above); the condemnation and calls for eradication of apartheid practices in many UN Resolutions, for instance apartheid was deemed a crime against humanity by the UN General Assembly in resolution 2202 A (XXI) of 16 December 1966 and by the Security Council (endorsing the above resolution) in resolution 556 of 23 October 1984. It should also be remembered that apartheid is indisputably a form of racial discrimination which itself is prohibited under customary international law. For similar academic opinions on the status of apartheid in international law see for instance Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (Oxford: Oxford University Press 2009), p. 70; Carola Lingaas, *The Crime against Humanity of Apartheid in a Post-Apartheid World*, *Oslo Law Review* 86 (2015), pp. 103-7.
[421] International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001, vol. II, Part Two
[422] Rome Statute, Article 13(b). So far, the Security Council has referred two situations, that of Darfur, Sudan, and that of Libya to the ICC. UN Security Council resolution 1593 of 31 March 2005, and UN Security Council Resolution 1970 of 26 February 2011 respectively.

denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;"

Unlike the Apartheid Convention, Article 7(2)(h) of the Rome Statute, which defines the crime against humanity of apartheid, does not detail acts that would constitute this crime. Instead, it provides that this crime,

> *"… means inhumane acts of a character similar to those referred to in paragraph 1,[423] committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime."*

In defining crimes under the Rome Statute, its drafters consistently sought to reflect and reproduce the definitions of existing crimes under existing international treaties rather than create new ones,[424] and there is no indication that their intention was different in the case of the crime of apartheid. There is no doubt that the drafters of the Rome Statute were aware of the Apartheid Convention, even "copying and pasting" some of its language.[425] Moreover, the provision in the Rome Statute that "inhumane acts"[426] constituting apartheid must be "of a character similar to those referred to in paragraph 1" rather than limited to precisely such acts indicates some flexibility beyond the strict confines of paragraph 1.[427]

When determining which "other inhumane acts" are of such similarity to the prohibited acts under Article 7(1) of the Rome Statute so as to constitute the crime of Apartheid it is clearly logical that these acts should include those that constitute the crime of apartheid under Article II of the Apartheid Convention,[428] a position supported by several legal scholars.[429]

With this understanding, below Amnesty International examines the "inhumane acts" committed against the Rohingya which have led to the conclusion that the crime of apartheid (as defined in both the Apartheid Convention and the Rome Statute) has been, and continues to be, committed in Rakhine State.

SPECIFIC INHUMAN OR INHUMANE ACTS

Severe deprivation of physical liberty in violation of fundamental rules of international law

Apartheid Convention, Article II(c); Rome Statute, Article 7(1)(e) in conjunction with Article 7(1)(j)

Article 7(1)(e) of the Rome Statute criminalizes "[I]mprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" as a crime against humanity. The fact that the crime is not restricted to "imprisonment" clearly indicates that a wider range of acts falls under this crime. In the words of legal scholar Mark Klamberg, "[T]ogether the two concepts [that is, imprisonment and severe deprivation of liberty in violation of fundamental rules of international law] cover a broad range of arbitrary deprivations of liberty."[430]

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[423] This paragraph lists types of acts which constitute crimes against humanity.
[424] For instance the definition of the crime of genocide (Article 8) reproduces, mostly word to word, the definition of the Crime under the Convention on the Prevention and Punishment of the Crime of Genocide (adopted by UN General Assembly resolution 260 A (III) of 9 December 1948, entered into force 12 January 1951) and the same is true of the list of war crimes (Article 8), which by and large reproduces "grave breaches" under the four 1949 Geneva Conventions and their two Additional Protocols.
[425] The phrase "domination by one racial group over any other racial group or groups" in Article 7(2)(h) of the Rome Statute was copied from Article II(c) of the Apartheid Convention.
[426] The Apartheid Convention uses the term "inhuman" and the Rome Statute use the term "inhumane", however there is no reason to view the two as distinct in any way.
[427] Mark Klamberg (ed.), *Commentary on the Law of the International Criminal Court* (Brussels: Torkel Opsahl 2017), p. 59, www.cmn-kh.org/clicc
[428] In other words, "inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" [Article 1(7)(k)] which in the specific circumstances constitute the crime against humanity of apartheid [Article 7(1)(j)].
[429] Gerhard Werle and Florian Jessberger, *Principles of International Criminal Law,* Third Edition (Oxford, Oxford University Press, 2014), p. 384; Christopher K. Hall and Larissa van den Herik, Article 7 Crimes against humanity – the crime of apartheid, in Otto. Triffterer and Kai Ambos (eds.), *The Rome Statute of the ICC: A Commentary* (Munich: Nomos, 2016), p. 284; Carola Lingaas, *The Crime against Humanity of Apartheid in a Post-Apartheid World,* 3 *Oslo Law Review* 86 (2015), pp. 96-7.
[430] Mark Klamberg (ed.), *Commentary on the Law of the International Criminal Court* (Brussels: Torkel Opsahl 2017), p. 59; Christopher K. Hall, *Article 7: Crimes against humanity, (e) 'Imprisonment or other severe deprivation of physical liberty,* in Otto Triffterer (ed.), *Commentary on the Rome Statute of the ICC: Observers' Notes, Article by Article*, 2nd ed., (Munich: Nomos, 2008), pp. 200–5, p. 202.

Similarly, the Apartheid Convention criminalizes both "arbitrary arrest and illegal imprisonment of the members of a racial group"[431] and more broadly "denying to members of a racial group or groups… the right to freedom of movement."[432]

One of the foundational elements of the discrimination and persecution of the Rohingya is the denial of their right to a nationality, notably as a result of the 1982 Citizenship Law and its implementation. This has in turn enabled, facilitated and exacerbated a system of severe restrictions on the Rohingya's freedom of movement which have expanded in scope and severity since the violence of 2012.

As described in detail in this report, the authorities in Rakhine State, using regulations, curfews, checkpoints, violence and fear, have systematically imposed severe restrictions on the movement of Rohingya, resulting in them being confined to specific regions, villages and displacement camps, depending where in the state they live.[433] Travel between townships and outside of Rakhine State is only allowed through a restrictive, cumbersome and costly permit system.

These restrictions are clearly discriminatory, being deliberately applied, as a matter of official policy, to Rohingya specifically (in policy documents, "Bengali races" and "foreigners"), and to all Rohingya in Rakhine State, though Amnesty International notes that some unofficial restrictions on movement also affect other Muslim communities.

The restrictions on Rohingya amount to a violation, on discriminatory grounds, of the right to freedom of movement and, because of the magnitude and effects of the restrictions on movement, constitute a 'serious deprivation of physical liberty'. In addition the severity of the deprivation of freedom of movement has led to the deprivation of a raft of other rights, including to the highest attainable standard of health, an adequate standard of living, including adequate food, and to education, similarly enshrined in fundamental rules of international law,[434] underlining the wide reach of this crime in Rakhine State.

Amnesty International has therefore concluded that discriminatory state policies, regulations and conduct by officials in Rakhine State has involved the crime against humanity of, or similar to, severe deprivation of physical liberty in violation of fundamental rules of international law as provided in the Rome Statute, as well as denying to members of a racial group the right to freedom of movement as prohibited in the Apartheid Convention, constituting the crime of apartheid under both.

Inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health: Denial of basic human rights

Apartheid Convention, Article II(c); Rome Statute, Article 7(1)(j) (as read with Article 7(1)(k))

The emblematic act criminalized by the Apartheid Convention is found in Article II(c): Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work[435]… the right to education,[436] the right to leave and to return to their country,[437] the right to a nationality,[438] the right to freedom of movement and residence,[439] the right to freedom of opinion and expression,[440] and the right to freedom of peaceful assembly and association.[441][442]

[431] Apartheid Convention, Article II(a)(iii).
[432] Apartheid Convention, Article II(c).
[433] See Chapter 3: Violations of the right to freedom of movement.
[434] Similarly *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, ICJ Reports 2004 at 136, Opinion of 9 July 2004, paras 130-4, 136-7.
[435] See Section 4.3 Restrictions on access to livelihoods and food.
[436] See Section 4.2 Violations of the right to education.
[437] See Section 2.3.2 Deletion from household lists.
[438] See Chapter 2: Ongoing denial of the right to a nationality and Section 1.2: The denial of a legal status.
[439] See Chapter 3: Violations of the right to freedom of movement and Section 2.3.2 Deletion from household lists.
[440] On failure to allow for self-identification, see Section 2.2: A problematic citizenship "verification" process; and Chapter 5: Social and political exclusion.
[441] See Section 3.1.2 'Continuous' curfew; and Chapter 5: Social and political exclusions.
[442] Apartheid Convention, Article II(c).

In addition, the Rome Statute provides that crimes against humanity (including apartheid) may involve "[O]ther inhumane acts of a similar character [to those provided elsewhere in Article 7(1)] intentionally causing great suffering, or serious injury to body or to mental or physical health."[443] This provision, which was included in the Statutes of previous international tribunals,[444] is designed to ensure that acts not explicitly criminalized in Article 7(1) but similar to them in "nature and gravity"[445] are not excluded.[446]

Several scholars have opined that the for the purposes of acts constituting the crime of apartheid, acts listed in Article II(c) of the Apartheid Convention may fall under Article 7(1)(k) of the Rome Statute, in conjunction with its Article 7(1)(j).

In this context, scholars Herik and Hall have explained why despite their seemingly "soft" appearance, acts detailed in Article II(c) may be criminalized, in the context of apartheid, as crimes against humanity:

Although some may contend that some of the other acts listed in Article II, such as the denial of the right to work or to education, although of course, very serious deprivations, are not of the same nature as the acts listed in Article 7, para.1, this contention overlooks the devastating impact on the lives of those denied these rights recognized by the Universal Declaration of Human Rights and guaranteed by the International Covenant on Economic, Social and Cultural Rights, and on society deprived of the full potential of its members.[447]

This observation is certainly borne out in the case of official conduct in Rakhine State. As detailed in this report, a wide range of discriminatory and exclusionary laws, policies and practices are imposed by the state against the civilian Rohingya population, and have clear – and foreseeable – consequences for the enjoyment of other rights and amount to the infliction of great suffering and serious injury. In particular, state-imposed restrictions on movement, in addition to being human rights violations in and of themselves, have clearly negatively affected a range of economic, social and cultural rights. It should be noted that in almost every instance, the persecution faced by the Rohingya in Rakhine States tracks the acts of persecution enumerated in Article II(c) of the Apartheid Convention. While some of the violations are the direct result of official conduct, others are more "downstream" consequences, including as a result of state inaction.

Restrictions on movement create obstacles for Rohingya in accessing healthcare, in particular life-saving and other emergency medical treatment. The segregation of communities, which in large part has been created and exacerbated by movement restrictions, has limited the number of medical facilities Rohingya can access. Even when Rohingya manage to access health facilities they face discriminatory attitudes and segregation. For example two of the very few hospitals which Rohingya are able to access in Rakhine have separate Muslim wards.

Restrictions on movement have also been identified as a major constraint for communities to access food in the predominantly Rohingya townships in northern Rakhine State where levels of malnutrition, especially among children, were at critical levels prior to the recent exodus.[448]

That lack of access to healthcare (in particular life-saving emergency medical treatment) and malnutrition, not least among children, causes "great suffering, or serious injury to body or to mental or physical health" needs no elaboration. The Myanmar authorities have exacerbated this suffering through severe restrictions on humanitarian aid and assistance.[449]

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[443] Rome Statute, Article 7(2)(k). While the analysis here will focus on the Rome Statute, the Apartheid Convention's criminalization, in Article II(c), of "denying to members of a racial group… basic human rights" roughly covers the specific violations and crimes addressed in this section, bearing in mind that causing malnutrition involves violating "basic" human rights such as to an adequate standard of living, including food, and to life, in particular of children.

[444] However, the ICC Pre-Trial Chamber distinguished the Rome Statute's provision for "other inhumane acts" from that of previous tribunals by stating that unlike them, Article 7(2)(k) is not a "catchall provision" but rather "contains certain limitations, as regards to the action constituting an inhumane act and the consequence required as a result of that action." *Prosecutor v Katanga and Ngudjolo*, ICC-01/04-01/07-717m ICC Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, para. 450.

[445] ICC, Elements of Crimes, UN Doc. PCNICC/2000/1/Add.2 (2000), Article 7(1)(k)(2), footnote 30.

[446] Mark Klamberg (ed.), *Commentary on the Law of the International Criminal Court* (Brussels: Torkel Opsahl 2017), p. 60.

[447] Christopher K. Hall and Larissa van den Herik, *Article 7 Crimes against humanity – the crime of apartheid*, in Otto. Triffterer and Kai Ambos (eds.), *The Rome Statute of the ICC: A Commentary* (Munich: Nomos, 2016), pp. 283-4.

[448] WFP, *Food security assessment in the northern part of Rakhine State, Final Report*, July 2017, p. 1,

[449] See Section 4.3.3 Food insecurity and malnutrition.

Movement restrictions also undermine the enjoyment of other rights which are enshrined in "fundamental rules of international law." In the last five years, many children have been unable to access education, which may have lifelong consequences for their ability to support themselves and their families. The restrictions on access to education come on top of the already severely limited opportunities through which Rohingya can generate an income. The combined impact of such restrictions places the Rohingya at risk of ongoing and deepening poverty and deprivation, and has robbed them of their dignity.

It is impossible for the Myanmar authorities to claim, in view of their deliberate maintenance of the regime that has significantly contributed to, if not caused, this ongoing human rights and humanitarian crisis, that the deprivation of rights of Rohingya women, men and children over at least the last five years has been unintentional.[450]

Amnesty International has therefore concluded that, at least as regards the denial of human rights of the Rohingya population through years of deliberate discriminatory and exclusionary policies, official conduct in Rakhine State has involved the crime against humanity of, or similar to, "other inhumane acts" within the meaning of the Rome Statute and denial of basic human rights under the Apartheid Convention, constituting the crime of apartheid under both.

OTHER PROHIBITED ACTS WERE COMMITTED FOR THE PURPOSE OF ESTABLISHEDING AND MAINTAINING DOMINATION

Criminal conduct by officials towards the Rohingya in Rakhine State documented by Amnesty International within this report and elsewhere has also involved other prohibited violent acts, which contribute towards or take place within a widespread as well as systematic attack, and which in the context of the institutionalized regime of systematic oppression and domination of the Rohingya also constitute the crime of apartheid.

The Apartheid Convention,[451] and the provisions for crimes against humanity in the Rome Statute (in greater detail) both criminalize a range of directly violent acts. This report itself documents several acts of violence by officials in Rakhine State in the past five years, including unlawful killings, torture and other ill-treatment.[452] In addition, Amnesty International has documented the commission of multiple violent acts by security force officials during so-called "clearance operations" conducted in the northern parts of Rakhine State in the last year (see Section 6.2.5 below).

Amnesty International had confirmed the commission of the crime against humanity – and this the existence of an ongoing, widespread and systematic attack on the Rohingya civilian population prior to the 25 August 2017 ARSA attacks and subsequent military crackdown. Given the analysis in this report, and the apparent intention of the perpetrators (see below), the organization has concluded that these acts also constitute the crime against humanity of apartheid.

6.2.2 INHUMAN' OR 'INHUMANE' ACTS WERE COMMITTED AGAINST MEMBERS OF A RACIAL GROUP

The term "racial group" (or groups) which depicts the victims under both the Apartheid Convention and the Rome Statute has been discussed and interpreted by international criminal tribunals and other bodies in the context of other crimes under international law.[453]

Their jurisprudence has not been altogether consistent. Initially there were attempts to define racial groups in a way that's largely "objective," for instance as "based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors."[454] However, international courts later acknowledged that membership of a racial group is largely "a subjective rather than objective concept."[455]

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[450] As noted, Article 7(2)(j) requires that "other inhumane acts" constituting crimes against humanity under it involve "intentionally causing great suffering." See the analysis of the "mental element" above.
[451] In particular Article II(a).
[452] Section 3.1.3 Checkpoints, extortion and physical violence by security forces; and Box: The risk of reprisal for speaking out.
[453] See for instance the discussion in Carola Lingaas, *Imagined Identities: Defining the Racial Group in the Crime of Genocide*, 10(1) *Genocide Studies and Prevention: An International Journal*, 79 (2016).
[454] *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, ICTR Judgement of 2 September 1998, para. 514. It should be noted that "often identified with" introduces an element of subjectivity.
[455] *Prosecutor v Georges Anderson Nderubumwe Rutaganda*, ICTR-96-3-T, ICTR Trial Chamber Judgement of 26 May 2003, para. 56; *Prosecutor v Jelisić*, IT-95-10-A, ICTY Appeals Chamber Judgment of 14 December 1999, para. 70.

As a result, international courts have increasingly (though not always consistently) referred to such groups in terms of perceptions, at times by victims but more often by perpetrators, since obviously it is the latter that determine who is to be victimized, and on a case-by-case basis.[456]

Regarding the Rohingya, the term they use to self-identify, "Rohingya", is rejected by the Myanmar authorities, who vigorously oppose the use of this term and instead have used in official documents, as described in this research, "Bengali races" "Bengalis," "foreigners" or "Muslims living in Rakhine State." Less officially, the derogatory term "*kalar*" has also been used.

However, there is no discrepancy between the perception of the Rohingya and that of the authorities as to which people these different terms cover.[457] Thus the official and non-official terms clearly, and at times explicitly, reflect a perception of the Rohingya as a distinct racial group, and Amnesty International therefore concludes that the Rohingya constitute a "racial group" within the meaning of the Apartheid Convention and the Rome Statute.

Amnesty International notes that the religion that Rohingya overwhelmingly follow, Islam, is also prominent in the perception of them as a distinct group, compounding the grounds for discrimination and segregation. In Myanmar, ethnicity and religion are often conflated, and this has played a role in the discrimination suffered by other Muslim communities in Rakhine State, many of whom have experienced similar human rights violations to those perpetrated on the Rohingya.

However, as regards a system of institutionalized discrimination, segregation and oppression, it is clear that it is the Rohingya's ethnic/ racial identity which is the primary grounds for the abuses they suffer, notably because of the denial of their right to a nationality on ethnic/ racial grounds and because formal restrictions on their movement are imposed based on their ethnic (racial) identity and citizenship status.

6.2.3 THE ACTS WERE COMMITTED IN THE CONTEXT OF AN INSTITUTIONALIZED REGIME OF SYSTEMATIC OPPRESSION AND DOMINATION

Apartheid Convention, Articles I(1), II(c); Rome Statute, Article 7(1)(j)

In the case of apartheid, the attack must be systematic (unlike other crimes against humanity which may be "only" widespread), a term used in the definition of the crime in both treaties. The Rome Statute requires the existence of "an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime."[458]

While the Apartheid Convention does not use the term "institutionalized regime," a similar requirement can be gleaned from its definition of apartheid. Among other things, the Convention describes the crime of apartheid as including "similar policies and practices of racial segregation and discrimination as practised in southern Africa",[459] which indisputably involved institutionalized racial oppression. The definition also specifically includes "legislative measures",[460] clearly an "institutionalized" measure, among the "inhuman acts" constituting offences of apartheid.[461]

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[456] *Prosecutor v Bagilishema*, ICTR-95-1A-T, ICTR Trial Chamber Judgment of 7 June 7, 2001, para. 65; *Prosecutor v Nahimana et al.*, ICTR-99-52-A, ICTR Appeals Chamber Judgment of 28 November 2007, para. 496; *Prosecutor v Brđanin*, IT-99-36-T, ICTY Trial Chamber Judgment of 1 September 2004, para. 683. In *Ntaganda*, the ICC Pre-Trial Chamber used terms such as "policy to attack civilians perceived to be non-Hema." and "those perceived to be *non-originaires*" rather than "objective" descriptions of victim groups. *Prosecutor v Bosco Ntaganda*, ICC-01/04-02/06, ICC Pre-Trial Chamber II, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, 9 June 2014, paras. 19-21. However, in the *Bashir* case the Pre-Trial Chamber appeared to adopt a more "objective" approach, although it stated that it need not go into the objective-subjective debate. *Prosecutor v Al-Bashir*, ICC-02/05-01/09, ICC Pre-Trial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Al-Bashir, 4 March 2009, paras 136-7 and footnote 52. See also the Partly Dissenting Opinion of Judge Anita Ušacka in the latter case, paras 24-6.

[457] This was not the case, for instance, in German legislation under the Nazis, which defined persons as Jews (leading to their discrimination, exclusion and later extermination) chiefly on the basis of family lineage, and irrespective of whether or not they considered themselves Jewish. First Supplementary Decree of Reich Citizenship Law, 14 November 1935; German documents cited in Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, Nuernberg, October 1946-april 1949, pp. 159-160, 222-225.

[458] Rome Statute, Article II(c).

[459] Apartheid Convention, chapeau of Article II.

[460] Apartheid Convention, Article II(c).

[461] Apartheid Convention, Article I(1).

Amnesty International's research shows the existence of an institutionalized regime of systematic oppression and domination of the Rohingya in Rakhine State. As described in this report, this regime has been created and maintained through written laws, regulations and local orders, as well as through policies and practices that may not have been written down but have been consistently enforced by state officials.

Some of the laws and regulations deny Rohingya rights by simply leaving them out, notably the 1982 Citizenship Law, which denies Rohingya the right to full citizenship because they are not included among the officially recognized "national races".[462] Several other official documents regulating the lives of the Rohingya and maintaining their segregation and discrimination do not mention any particular group at all, but clearly apply only to them. For instance only Rohingya applying for a birth certificate for their children must submit a form to police and to the "Organization for Prevention of Illegal Foreigners Entry into the Western Region."[463]

Similarly Section 1(b) of an announcement issued in 2016 by the Head of the Buthidaung Township Administration, by and large maintaining the curfew and other arbitrary restrictions in the township after the state of emergency has been repealed, states that "[G]athering of five or more than five people is not permitted in public mosques and schools", clearly applying to the (Muslim) Rohingya only without mentioning them in name. [464]

Other documents seen by Amnesty International, in particular local orders setting out discriminatory policies towards the Rohingya, the most recent of which is dated April 2016, do explicitly use terms such as "Bengalis" to denote Rohingya.[465]

The laws, regulations, policies and practices which have created and maintained this institutionalized regime have been both issued and applied in practice by institutions, from the Myanmar State legislative authorities and government, through local administration on all levels to the army, police, in particular BGP, and officials of a variety of institutions such as those tasked with the administration of the education and healthcare systems.[466]

To interpret the term "systematic" in the definition of crimes against humanity, the ICC,[467] following international criminal tribunals, has used terms such as "non-accidental repetition,"[468] "following a regular pattern"[469] and "continuous commission of crimes."[470] The fact that official conduct towards the Rohingya, far from being "a random occurrence,"[471] has for at least five years been continuous, repetitious and followed a regular pattern, as shown in this report, further attests to the systematic, institutionalized nature of this conduct.

The Apartheid Convention and Rome Statute also require that the crime of apartheid involve the "domination by one racial group of persons over any other racial group of persons".[472] As shown in this report, the official view both of the central Myanmar authorities and of the authorities of Rakhine State, as well as widely-held attitudes among the population in Rakhine State and beyond, sharply distinguish and distance the Rohingya from groups with which they identify or consider legitimate, including legally, as "national races" under the 1982 Citizenship Law. This reflects a clear "racial" perception of "us and them".

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[462] See Section 1.1 The denial of a legal status.
[463] Form for "Application to include a newborn child in the household members list"; See Section 2.3.1. Failure to register newborn babies on household lists.
[464] Announcement for the attention of all citizens, Head of [redacted] Township Administration, 28 March 2016, on file with Amnesty International.
[465] Rakhine State Immigration and National Registration Department order, Instructions Relating to Traveling of Foreigners, Persons Who Are Doubted as Foreigners and Bengali Races Residing in Rakhine State, June 1997; Border Areas Immigration Inspection Administration Department, "Local orders and procedures relating to control of Bengali population," 2 November 2008; Office of the Chief of the No. 1 Border Guard Police Administration, "Report on the awareness, observation and implementation of matters concerning the marriage of Bengalis," 28 April 2016.
[466] See Sections 4.1 Violations of the right to health and 4.2 Violations of the right to education.
[467] Corrigendum of the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC Pre-Trial Chamber II, No. ICC-01/09-19-Corr, 31 March 2010 para. 96; *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07, ICC Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, para. 397.
[468] Quoting, among others, *Prosecutor v Blaskic*, Case No. IT-95-14-A, ICTY Appeals Judgment of 29 July 2004, para. 101; *Prosecutor v Kunarac*, Case No. IT-96-23&23-1, ICTY Trial Judgment of 22 February 2001, para. 580 and Appeals Judgment of 12 June 2002, para. 94; *Prosecutor v Akayesu*, Case No. IT-96-4-T, Judgment of 2 September 1998, para. 580.
[469] *Prosecutor v Akayesu*, Case No. ICTR-96-4-T, ICTR Judgement of 2 September 1998, para. 580. It should be noted though that the Court refers to this as the "conventional definition" of a racial group rather than expressly endorses it.
[470] Quoting, among others, *Prosecutor v Kayishema*, Case No. ICTR-95-1-T, ICTR Judgment of 21 May 1999, para. 123; *Prosecutor v Kordic and Cerkez*, Case No. IT-95-14/2-T, ICTY Judgment of 26 February 2001, para. 17.
[471] See above, footnote 420.
[472] This phrase is used in both the Apartheid Convention, Article II, *chapeau*, and the Rome Statute, Article 7(2)(h).

6.2.4 THE ACTS WERE COMMITTED FOR THE PURPOSE OF ESTABLISHING AND MAINTAINING DOMINATION

Apartheid Convention, Article II; Rome Statute, Article 7(1)(e) in conjunction with Article 7(2)(h)

The consistent, repetitious and prolonged application of discriminatory and exclusionary laws, policies and practices against the Rohingya in Rakhine State is also relevant to the "mental element" (*mens rea*) of the crime of apartheid, that is, the perpetrator's knowledge of the attack[473] committing the acts "with the intention of maintaining that [racial domination] regime,"[474] "for the purpose of establishing and maintaining domination…",[475] in a "calculated" manner,[476] and more generally committing acts "with intent and knowledge."[477]

Irrespective of the original motivations of or justifications for the laws, regulations, policies and practices that have established the discriminatory and exclusionary regime described in this report, it would have been impossible for officials in Rakhine State and in Myanmar generally to maintain it consistently and deliberately over a period of at least five years since 2012 without being fully aware of the atrocious consequences for the life of the civilian Rohingya population.

This is particularly so given the innumerable reports issued documenting the discrimination and oppression faced by the Rohingya which, at the very least, put the Myanmar regime on notice. Maintaining this regime despite such inescapable awareness would fulfil the legal requirement of intent in the Rome Statute, at least in the sense of each perpetrator "mean[ing] to cause that consequence or is aware that it will occur in the ordinary course of events."[478]

While the "mental element" is necessary for finding any individual guilty of any specific crime of apartheid, or crimes against humanity more generally, it will not be discussed further here, as Amnesty International has reached a general conclusion on the perpetration of the crime against humanity of apartheid rather than seeking to establish individual criminal responsibility. Establishing such responsibility would be the task of domestic or international courts, which in doing so must strictly apply international standard of fairness.

6.2.5 THE ACTS FORMED PART OF A WIDESPREAD OR SYSTEMATIC ATTACK

As noted, crimes against humanity require the existence of a "widespread or systematic" attack on a civilian population. The term "systematic" in the context of crimes against humanity has been explained by international tribunals as signifying:

> *"… the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence."*[479]

In the case of apartheid, the attack *must* be systematic. As analysed above, when considering the requirement that the prohibited acts be committed in the context of an institutionalized regime of systematic oppression and domination, the attack against the Rohingya has, at least since 2012, been systematic.

The attack has also been widespread, as evidenced by the findings of this report, which documented the existence of official policies of discrimination and segregation across the entire Rakhine State, and in particular in areas where the Rohingya form the majority of the population. It should be explained that, as

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[473] Rome Statute, Article 7(1), *chapeau*.
[474] Rome Statute, Article 7(2)(h).
[475] Apartheid Convention, Article II, *chapeau*.
[476] Apartheid Convention, Article II(c).
[477] Rome Statute, Article 30 setting out the "mental element" of crimes under the Statute generally.
[478] Rome Statute, Article 3(2)(b).
[479] *Prosecutor v Kunarac et al*, Case No. IT-96-23 and IT-96-23/1, ICTY Trial Chamber II, Judgment of 22 February 2001, para. 429. This statement was quoted approvingly on several occasions, including by the Appeals Chamber in the same case and the ICC Pre-Trial Chamber, see *Prosecutor v Katanga and Ngudjolo*, ICC-01/04-01/07-717, ICC Pre-Trial Chamber I, Decision on the Confirmation of Charges, 30 September 2008, para. 394; *Prosecutor v Gbagbo*, ICC-02/11-01/11-656-Red, ICC Pre-Trial Chamber I, Decision on the Confirmation of Charges, 12 June 2014, para. 223.

clarified by the ICC Pre-Trial Chamber, "only the attack, and not the alleged individual acts are required to be 'widespread' or 'systematic'."[480]

Further evidence of the attack, and its widespread and systematic nature, has been provided in two Amnesty International reports published in December 2016 and in October 2017, which documented the Myanmar security force's violent response to the deadly attacks on security posts in northern Rakhine State.[481]

Both reports found that the Myanmar security forces have deliberately targeted Rohingya civilian populations, and that women, men, children, whole families and entire villages have been attacked and abused. Amnesty International has concluded the commission of multiple crimes against humanity during these attacks, specifically, the organization has documented the following crimes:

- 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 Rohingya;
- 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;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Amnesty International has concluded that these crimes – committed by Myanmar security forces on the Rohingya civilian population in northern Rakhine State in the wake of a fatal assault on security posts in October 2016 and August 2017, were additional instances of the crime of apartheid.

[480] Corrigendum of the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC Pre-Trial Chamber II, No. ICC-01/09-19-Corr, 31 March 2010 para. 94. The Court cited, *inter alia*, *Prosecutor v Kordic and Cerkez*, Case No. IT-95-14/2-A, ICTY Appeal Judgement of 17 December 2004, para. 94; *Prosecutor v Deronjic*, Case No. IT-02-61-A, ICTY Judgement on Sentencing Appeal of 20 July 2005, para. 109.

[481] Amnesty International, *"My world is finished": Rohingya targeted in crimes against humanity in Myanmar*, 18 October 2017; and "*We are at breaking point": Persecuted in Myanmar, neglected in Bangladesh* (Index: ASA 16/5362/2016), 19 December 2016.

7. CONCLUSION AND RECOMMENDATIONS

> **"Reintegration, not segregation is the best path to long-term stability and development in Rakhine State."**
>
> Final Report, Advisory commission on Rakhine State, August 2017.[482]

The horrific human rights violations that have been perpetrated against the Rohingya since August 2017 take place against a backdrop of decades of state-sponsored discrimination and persecution which has targeted the Rohingya population as a whole on the basis of their ethnicity and religious beliefs. As detailed in this report, discrimination against Rohingya in Rakhine State is multi-faceted and multi-systemic. An intersecting collection of discriminatory laws, regulations, policies and practices form a central part of a state machinery of oppression.

This report demonstrates that the system that now exists in Myanmar goes beyond discrimination and other human rights violations and meets the definition of the crime against humanity of apartheid under international law.

Under the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the ICC, apartheid is defined as a crime against humanity covering as a range of acts, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and with the intention of maintaining that regime. Specific acts committed in this context and criminalized as apartheid range from openly violent ones such as murder, rape and torture to legislative, administrative and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and deny them basic human rights and freedoms.

The crimes against humanity committed by Myanmar security forces on the Rohingya civilian population in October 2016 and August 2017 – crimes of murder, torture, rape, forcible displacement or transfer of population, persecution, enforced disappearance, and other inhuman acts – were additional manifestations of the crime against humanity of apartheid.

One of the foundational elements of the discrimination and persecution of the Rohingya is the denial of their right to a nationality – notably as a result of the 1982 Citizenship Law and its implementation, allied with the government's denial of their identity as an ethnic minority within Myanmar, and the persistent reference to them as "foreigners" or "Bengalis". This has in turn enabled and facilitated a system of severe restrictions on the Rohingya's freedom of movement which have expanded in scope and severity since the violence of 2012.

[482] Final Report, Advisory Commission on Rakhine State, p. 10.

A clear example is the extreme movement restrictions imposed by Rakhine State officials and expanded since 2012, which constitutes the crime of "severe deprivation of physical liberty" as defined in the Rome Statute. As described in detail in this report, the authorities in Rakhine State, using regulations, curfews, checkpoints, violence and fear, have confined the Rohingya to specific regions, villages and displacement camps, depending where in the state they live. Travel between townships and outside of Rakhine State is only allowed through a restrictive, cumbersome and costly permit system. These restrictions are clearly discriminatory, being deliberately applied, as a matter of official policy, to Rohingya, and to all Rohingya in Rakhine State.

The severe movement restrictions imposed on the Rohingya also give rise to a range of other grave human rights violations, which also constitute manifestations of the crime against humanity of apartheid. They have created and maintained a system of segregation. They also restrict – in a systematic manner – the Rohingya's access to health care, education and livelihood opportunities, all vital to people's ability to participate in the social, cultural and economic life of the country. The consequence has been grinding poverty and under-development, and an ever-narrowing range of opportunities for the Rohingya to survive and thrive as a community.

Through a combination of movement restrictions, policies of segregation and restriction on humanitarian aid, access to health care, education and livelihood opportunities, as well as to adequate food has also been restricted in a systematic manner. This amounts to the deliberate creation of conditions to prevent the full development of the Rohingya. The impact of movement restrictions on the basic human rights and freedoms of the Rohingya was foreseeable, and even if it had not been, the evidence of impact and the continuation of the policies makes clear their deliberate nature.

While the freedom of movement restrictions are the central element of the State policy of discrimination and segregation of the Rohingya, Myanmar has also put in place a range of other discriminatory laws, policies and practices that target the Rohingya as a distinct group. These include restrictions on the rights to thought conscience and religion, peaceful assembly, and the right to participate in public life. One consequence is that it is virtually impossible for Rohingya in Rakhine State to gather, mobilize and advocate collectively for their rights.

In northern Rakhine State, a ban on gatherings of more than four people in one place selectively targets Rohingya and essentially prevents them from worshiping together. Where they do worship, if is often in secret and with the risk of arrest or other forms of extortion.

In the run-up to the 2015 general election, the authorities revoked all "white cards," and soon after, the Constitutional Tribunal declared that it was unconstitutional for "white card" holders to be given voting rights. This exclusion from the voting process was further cemented when all Rohingya candidates applying to contest the 2015 general election were disqualified either on the basis of their citizenship status or the status of their parents. The result was the total disenfranchisement of hundreds of thousands of Rohingya and other former white card holders

While the Myanmar authorities often frame the situation as one of inter-communal tension, the reality is that the state itself plays a central role in the systemic discrimination and segregation of Rohingya and Muslim communities in Rakhine State. Almost every part of the state, at the township, district, state and even Myanmar-wide levels, is involved in the discrimination and segregation of the Rohingya community and Muslims in Rakhine State. The emergence of the Rohingya armed group has added a further security dimension to the situation in Rakhine State, but the military's response has been unlawful and completely out of proportion, and they appear to have used the threat of "terrorist" attacks to deliberately target the Rohingya population and inflict new suffering on them.

This report documents grave human rights violations and crimes against the Rohingya; it also underscores the wider context of discrimination affecting Muslims and other minority groups in Myanmar. In particular, many of the discriminatory policies described in this report affect all Muslim communities in Rakhine State, and this discrimination is both systemic and long-standing and must be urgently addressed. What singles out the situation of the Rohingya is the severe and multi-faceted manner in which they have been targeted, and the fact that this is clearly linked to their status as a distinct racial group, and therefore amounts to apartheid, a crime against humanity under international law. The apartheid system includes denial of their Rohingya identity as an ethnic minority within Myanmar, while simultaneously employing the denial of their identity and right to a nationality to target them for a complex range of dehumanizing restrictions.

The enduring role of the military in Myanmar's political and social life adds a further complexity to the situation in Rakhine State. Ultimately, many of the ministries and departments responsible for violations identified in this report or for failure to prevent abuses, are not under the control of the civilian administration but the military authorities. The GAD, the police, the BGP, and the Army itself, all fall under the control of the army's Commander-in-Chief, not the civilian government, which under the Constitution has no powers over it. The reality is that without the support or at least acquiescence of the military, the situation for the Rohingya is unlikely to improve.

To date, there appears to be little political will to acknowledge this pressing situation, let alone resolve it. The civilian government – and the international community – cannot expect to address the latest crisis in Rakhine State without tackling its root causes. While the emergence of the Rohingya armed group has added an additional security dimension to the situation in Rakhine State, the security force response has been completely out of proportion, and they appear to have used the threat of "terrorist" attacks to deliberately target the Rohingya population and inflict new suffering on them.

The NLD-led government has repeatedly stated it sees prioritizing investment and development of Rakhine State as a key solution, such development must not be planned without efforts to address the structural discrimination Rohingya face in Myanmar, and in Rakhine State in particular. Development must be for the benefit of all communities without distinction – otherwise it will entrench and amplify existing inequalities, thereby exacerbating conflict and perpetuating human rights violations and abuses.

Dismantling this system of apartheid is essential for the return of the hundreds of thousands of Rohingya who have fled death, destruction and poverty in Myanmar, but is equally pressing for the hundreds of thousands who continue to live in Rakhine State and who remain subject to this appalling regime.

RECOMMENDATIONS

If Aung San Suu Kyi and her government are serious about addressing the situation in Rakhine State, they must acknowledge the severity of the abuses and take immediate and effective action to tackle – and end – segregation and discrimination in the state. Below Amnesty International makes wide-ranging recommendations to the Myanmar authorities and other relevant stakeholders to dismantle the system of apartheid and end the human rights crisis in Rakhine.

RECOMMENDATIONS TO THE MYANMAR AUTHORITIES

- Urgently adopt a comprehensive action plan on combating discrimination and segregation, with the active consultation and cooperation of the Rakhine State government, relevant Union Ministries, representatives of Rakhine, Rohingya, Kaman and other communities living in Rakhine State, civil society, the United Nations and other relevant stakeholders. The plan should include a defined timeline and specific targets, identify necessary financial, human and technical resources, and designate bodies responsible for its implementation and monitoring, and a mechanism of regular public reporting on progress. Specific efforts should be made to consult women and address the gendered impacts of discrimination and segregation;
- Ensure that respect of human rights for all is at the centre of all governmental initiatives on Rakhine State and as a matter of priority dismantle the system of apartheid currently in place against the Rohingya, and the deeply entrenched discrimination against Muslim communities more generally in Rakhine State. This includes ensuring that any development and investment projects are for the benefit of the whole population without distinction rather than further entrench discrimination and segregation;
- Implement without delay the recommendations of the Advisory Commission on Rakhine State aimed at improving the human rights situation and ending discrimination;
- Undertake a review of all laws, regulations, policies and practices which discriminate on racial, ethnic or religious grounds, and repeal or amend them in order to bring them into line with international human rights law and standards, and in particular Myanmar's obligations to ensure equality under the UN Charter, under customary international law and as a state party to CEDAW and the CRC. Particular attention should be paid to local regulations issued in northern Rakhine State, and which discriminate against Rohingya and other Muslims either explicitly or through their implementation or impact;

- Accede without delay or reservation to key international human rights treaties and their additional protocols, including to the International Covenant on Civil and Political Rights, the UN Convention on the Elimination of all forms of Racial Discrimination, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Implement their provisions in law, policy and practice; and
- Ratify the Rome Statute of the ICC and incorporate its provisions into domestic law.

THE RIGHT TO A NATIONALITY

- Amend or repeal the 1982 Citizenship Law in order to bring Myanmar's citizenship laws into line with international human rights law and standards and ensure that the law and the determination of citizenship is implemented in a non-discriminatory manner, including by:
    - Granting nationality with full citizenship rights, without discrimination of any kind, to persons born on Myanmar's territory who would otherwise be stateless, in particular children;
    - Granting nationality to persons not born in Myanmar's territory but able to establish a genuine and effective link to the country;
    - Ensuring that no decision to deny citizenship is based on the person's ethnicity or religion or results in statelessness, and that any decision to deny citizenship is based on sound grounds and follows fair procedures, that written reasons for such a decision are given, and communicated in a language the applicant for citizenship understands;
    - Guaranteeing to persons denied citizenship the right to appeal against such a decision, and that the appeal be heard by an independent and impartial review body; and
    - Including specific safeguards to ensure that no individual is arbitrarily deprived of his/her citizenship;
- Pending the repeal or amendment of the Citizenship Law, take immediate steps to restore citizenship rights to holders of formerly valid identity cards, and their children, ensuring they are not required to undergo any further citizenship determination process;
- Remove all indicators of ethnicity and religion from national identification cards and from any supplementary or supporting documentation required to apply for or to renew such cards;
- Halt the discriminatory citizenship "verification process", and ensure that any future efforts or procedures to determine the citizenship status of any person in Myanmar is conducted in a manner which complies with international human rights law and standards, and in particular is non-discriminatory and does not render the individual in question stateless;
- Respect, protect and fulfil the right of Rohingya refugees in Bangladesh and other states to return to Myanmar and ensure that any determination of the citizenship status of Rohingya refugees is implemented in accordance with human rights law and standards, in particular in a non-discriminatory manner and that the burden of proof does not fall on the refugees.
- As a state party to the CRC, comply with Myanmar's obligation to ensure universal birth registration, including by registering at birth all children born in Myanmar without discrimination of any kind and taking effective steps to register children over the age of five and young adults whose births were never officially registered. Failure to register at birth children who are now adults should also be redressed. The authorities should also end the separate and discriminatory system for registering children in northern Rakhine State which only applies to Rohingya;
- End the practice of deleting individuals not residing in their homes from household lists, and ensure all persons previously deleted from household lists are able to return to Myanmar and be reinstated on their household list without fear of arrest, deportation or other reprisals; and
- Ensure that all administrative procedures recording and updating population data, including through the maintaining of household lists, comply with international human rights law and standards, in particular the principle of non-discrimination and the right to privacy. Ensure that population checks are conducted in a non-discriminatory manner, are strictly necessary, use the least intrusive method possible, and that any reports of violence, coercion or extortion during any such checks are thoroughly investigated and that those responsible are brought to justice. End the separate and discriminatory system for monitoring and checking Rohingya populations in northern Rakhine State.

To support the above, Amnesty International recommends that the Myanmar authorities:

- Ensure access to effective legal recourse and other forms of reparation for people who have been wrongfully denied citizenship, refused birth registration or had their identity documents denied or withdrawn on an arbitrary or discriminatory basis;
- Cooperate fully with UNHCR to enable the organization to fulfil its mandate towards stateless people, including by giving due consideration to technical advice on how to adopt a robust methodology for counting the stateless and on adequate measures to eradicate all statelessness, whether *de jure* or *de facto*; and
- Explain laws, policies and actions regarding determination of citizenship to local communities and in all relevant languages, to avoid misunderstandings and to build trust among all residents in Rakhine State, and the population of Myanmar as a whole.

THE RIGHT TO FREEDOM OF MOVEMENT

- Ensure everyone in Rakhine State enjoys their right to freedom of movement without discrimination of any kind, and ensure that any restrictions on movement are only imposed if they are absolutely necessary to respond to a specific security threat or for other compelling reasons and are non-discriminatory and proportionate in terms of their impact and their duration, and do not target whole communities;
- Immediately lift all formal and informal curfew orders preventing people from leaving their homes and villages at night in place in Rakhine state, including those in place in northern Rakhine State since 2012 and issued under Section 144 of the Code of Criminal Procedure unless they are an inevitable, necessary, proportionate and non-discriminatory means of meeting a legitimate security objective;
- End the regime of travel permits, including by revoking all laws, policies and local orders establishing and enforcing the travel permission regime currently in place and directed at the Rohingya population;
- Lift all other formal or informal restrictions on movement and clearly and publicly state that anyone who illegally restricts the freedom of movement of others, whether by violence, the threat of violence or other means will be prosecuted and held to account in proceedings which meet international standards of fairness;
- Maintain only checkpoints that are necessary to ensure security and public order. Where checkpoints are necessary, ensure that state officials do not stop individuals on a discriminatory basis, in particular their religion or ethnicity, and that they are staffed by both male and female officials who are properly trained and do not extort bribes, harass, arbitrarily detain or use violence;
- Allow internally displaced persons and all those residing within displacement camp areas to move around freely and without restriction. Where security is required, ensure that it is provided free of charge;
- Set up clear and transparent procedures, based on law, for instituting, lifting and challenging restrictions on movement;
- Undertake community outreach programmes informing all communities about the lifting of restrictions on movement, provisions for security and where and how can they report incidents of informally imposed restrictions, threats or harassment; and
- Enhance safety and security in public spaces, in particular schools and hospitals, in order to ensure freedom of movement for all communities and reduce communal fears and tensions.

THE RIGHT TO HEALTH

- Provide health treatment equally irrespective of ethnicity, religion, gender or citizenship, including through equal and unhindered access to health facilities, equal cost as well as equality in the treatment of patients;
- Immediately remove all restrictive bureaucratic requirements for medical referrals of Muslims patients;
- Ensure the state bears the full cost of security for all patients, including Muslims, to travel to hospital when required;

- Ensure that all patients in Rakhine State hospitals who need to, have access to interpreters, both male and female;
- Ensure that all patients are allowed visits from family members without discrimination, and in particular, ensure that Muslim children admitted to hospital can be accompanied by a parent or guardian;
- Ensure that any policies on allowing or denying patients from taking their mobile telephones into medical wards are based purely on medical and medical-related considerations and applied without discrimination;
- Establish a mechanism through which patients and their families are able to lodge complaints about discrimination, ill-treatment or corruption in medical facilities;
- Establish a state-wide monitoring mechanism to ensure that health programmes and services are implemented free from discrimination; and
- Desegregate hospital wards and ensure equal access to all facilities within hospitals and other medical facilities.

THE RIGHT TO EDUCATION

- Provide all children, regardless of ethnicity, religion, gender, citizenship or other status access to public schools. If there is specific security threat, ensure that students are provided with access to adequate alternative education while the threat is ongoing, and can access their schools again as soon as the threat is lifted;
- Clarify and detail the obligation of schools, their founders and those who run them – both public and private – to treat all pupils and parents equally, and not to discriminate on any grounds, including on the basis of ethnicity and religion. Instruct all school authorities, public and private, about their explicit responsibility to desegregate education;
- Ensure that teachers assigned to Rohingya and other Muslim villages resume their work, including by providing adequate security when necessary.
- Ensure access to university or other higher education in Rakhine State or elsewhere in the country free from discrimination of any kind. If there is specific security threat, ensure that students are provided with access to adequate alternative education;
- Ensure that the obligation to treat pupils and parents equally and in particular without racial or religious prejudice is included in the professional standards and training courses for teachers and introduce nation-wide training programmes on multicultural and human rights education; and
- Include education on non-discrimination, equal treatment and other human rights in the national school curriculum.

THE RIGHT TO AN ADEQUATE STANDARD OF LIVING AND TO ADEQUATE FOOD

- Ensure all communities have equal access to town centres, markets, areas for farming, fishing and other forms or trade and employment;
- Facilitate movement of Rohingya in Rakhine State to other parts of Myanmar and overseas in order for them to equally access livelihood opportunities;
- Facilitate the safe, voluntary and dignified return of displaced individuals and 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, including women, in the planning and management of their return or resettlement and reintegration. Ensure the right of all displaced persons not to be subjected to forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- Allow national and international humanitarian organizations to undertake needs assessments in villages across Rakhine State with a view to identifying areas and populations vulnerable to food insecurity; and for such organizations to provide food assistance to the poorest and most vulnerable populations on the basis of nutritional needs, while putting in place longer-term plans to end food insecurity permanently;
- Revoke all policies and regulations which require Rohingya to apply for specific permission to undertake certain forms of work, for example fishing; and

- Encourage and financially support programmes promoting engagement between communities through businesses, work and local markets.

THE RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

- Publicly assert and explain the right of all people living in Myanmar to exercise their right to freedom of conscience, thought and religion without discrimination and without interference;
- Allow all religious communities the freedom to manifest their religion peacefully through worship, observance, practice and teaching, both publicly and privately, and in particular:
    - Revoke Section 144 orders in place in northern Rakhine State which place arbitrary and discriminatory restrictions on the rights to freedom of assembly and worship; and
    - Remove all arbitrary and discriminatory restrictions on repairs to religious buildings, and clarify in writing the procedure for building new places of worship and upgrading or repairing existing ones. Establish a clear timeframe through which applications to build or repair religious buildings are considered and ensure decisions are communicated in writing. Ensure all decisions are subject to review by an independent and impartial body.

THE RIGHT TO PARTICIPATE IN PUBLIC LIFE

- Ensure the right of all people to participate in public life, including by voting and standing for election, free from discrimination on any grounds. In particular, take effective steps to increase the representation and participation of ethnic and religious minorities in decision making processes;
- Ensure that people employed in identical or similar roles within the state administration are treated equally, in particular irrespective of race, ethnicity or religion, and have the same powers, remuneration and terms of work, and opportunities for promotion; and
- Create a safe and enabling environment in which human rights defenders and civil society advocating for the respect of human rights for all, including the Rohingya and Muslims generally, can carry out their work without fear of reprisals, threats and harassment.

ACCOUNTABILITY

- Immediately order members of all state security forces to end and refrain from all future conduct that violates international law;
- Order prompt, impartial, independent and effective investigations into all allegations of crimes against humanity and other serious human rights violations by members of the security forces. Where there is sufficient, admissible evidence, bring those reasonably suspected of individual criminal responsibility, including command responsibility, to trial in proceedings which meet international standards of fairness without recourse to the death penalty.
- Provide victims of human rights violations, crimes against humanity as well as abuses by non-state actors – and their families – with reparations;
- Suspend from active duty any military or police personnel suspected of ordering or committing violations of international law pending the completion of investigations;
- Establish internal disciplinary mechanisms within the police force and the army to sanction officers who fail to respect and protect the rights of all communities living in Rakhine State, extort bribes from civilians and require unofficial fees for services and harass or intimidate individuals making a complaint about human rights violations and misconduct by members of the security forces. This should include enacting policies to ensure that discrimination, other human rights violations and corruption are made grounds for suspending officials from office. Such disciplinary measures must complement rather than replace criminal investigations into human rights violations and crimes against humanity, as well as prosecutions and punishments of such crimes, all of which should be carried out by civilian bodies;
- Establish a nationwide independent and civilian external accountability mechanism empowered to investigate allegations of crimes under international law, other serious human rights violations and other crimes or misconduct by the police, army and any other officials, and with a mandate to recommend cases for prosecution. Such a mechanism should be granted sufficient resources to undertake its work across the country;

- Develop clear guidelines requiring law enforcement officials to report abuses, and ensure that officers at all levels of the chain of command know about these guidelines and are held responsible for enforcing them, with penalties imposed, following fair proceedings, for failing to report, or covering up, security forces violations or misconduct;
- Hold accountable any private individual preventing, or attempting to otherwise restrict the enjoyment of rights of others; and
- Ensure full and effective reparation for all those who suffered harm, directly or indirectly, during the 2012 violence, the 2016 violence, the 2017 violence and in their aftermath.

SECURITY SECTOR REFORM:

- Publicly provide assurances to all communities in Rakhine State that their security and other human rights will be guaranteed and condemn all forms of intercommunal violence in Myanmar;
- Amend the 2008 Constitution to bring the Myanmar Army and Myanmar Police Force under the oversight of civilian courts;
- Clarify in law the separation of powers between the police and the military and the command and control systems for joint operations. The law should also clarify that the military may carry out police functions only in extraordinary circumstances, and when doing so soldiers may have no more powers than police officers and be subject to the same laws and regulations, as well as civilian judicial oversight. Make clear under what legal and operational procedures military are permitted to perform police functions and use police powers;
- Establish a nationwide vetting mechanism to ensure that current and former officials implicated in human rights violations are not kept or placed in leadership positions;
- Conduct comprehensive human rights trainings to police staff of all ranks, to ensure that the principles of non-discrimination and respect for human rights are instilled throughout the force and its chain of command. Ensure all law enforcement officials are trained on effective crowd control and community-policing in line with international standards on the use of force;
- Conduct specific gender-sensitivity training for police officials, and ensure the recruitment and deployment of female police officers across Myanmar and in particular in all parts of Rakhine State;
- Undertake efforts to strengthen recruitment and career development policies to make the police more diverse, representative and accountable to the community they serve, and offer language training to law enforcement officers stationed in linguistic minority areas. All police officers should be able to perform their duties in a non-discriminatory working environment; in particular, continue efforts to recruit into the police women and members of ethnic and religious minorities, not least in positions of command. Ensure that just and favourable working conditions to police personnel, including adequate remuneration as provided for in international standards; and
- Strengthen commitments to tackle corruption that leads to human rights violations, including by reforming the Anti-Corruption Commission, ensuring it is independent and has resources to undertake investigations across the country.

ADVOCACY OF HATRED AND INCITEMENT TO VIOLENCE AND DISCRIMINATION

- Publicly and unequivocally condemn any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
- Take immediate disciplinary action against all state officials who make statements or engage in actions that incite racial or religious discrimination, hostility and violence;
- Take measures to prevent, stop and where necessary punish advocacy of racial or religious discrimination, hostility and violence, including where it is propagated by religious leaders, in accordance with international human rights law;
- Conduct awareness-raising campaigns at the national, state and local levels on principles of non-discrimination and religious tolerance, including education programs disseminated through government media and schools, and stronger policies and responses to incitement to violence targeting ethnic and religious minorities. This should include education on when expression crosses the line into incitement to discrimination and violence; and

- Support and promote programmes conducted by civil society and interfaith actors to counter racial and religious prejudice and discrimination and build a more tolerant and inclusive society. Ensure such actors can carry out their peaceful work, free from harassment, discrimination, and the threat of arrest and prosecution.

CO-OPERATION WITH UN AND OTHER INTERNATIONAL AND NATIONAL STAKEHOLDERS AND AGENCIES

- Provide immediate, unfettered humanitarian access to all areas of Rakhine State, in particular to Maungdaw and Buthidaung townships, allowing UN, international and national humanitarian organizations to assess and monitor the needs of displaced persons and others in need and to deliver assistance to them;
- Streamline and standardize the process by which humanitarian and development workers obtain authorization to operate in Rakhine State, and ensure, in particular, that a substantive response is provided within a reasonable period, taking into consideration that many groups are supporting particularly vulnerable populations;
- Allow human rights monitors, independent observers and national and international media workers full and sustained access to all parts of Rakhine State, and in particular, to Maungdaw and Buthidaung townships;
- Ensure that the UN Special Rapporteur on the situation of human rights in Myanmar has full, unimpeded and sustained access to all parts of the country, and is able to meet with officials as well as any other individuals or groups she chooses without either her or people she meets being subjected to intimidation or harassment. Engage with her to establish joint benchmarks for assessing progress on human rights, as requested by the HRC.
- Extend a standing invitation to all other UN Special Procedures and facilitate any requested visits in an expeditious manner, ensuring full access to all parts of the country.
- Cooperate fully with the HRC's Fact-Finding Mission and ensure it has full, unimpeded and sustained access to the country, and in particular is able to visit sites of recent human rights violations and meet with witnesses, victims, officials and any other persons it wishes to;
- Facilitate the establishment of an OHCHR at the earliest opportunity, with a full protection and promotion mandate and access throughout the country; and
- Ensure that human rights defenders and peaceful activists are allowed to carry out their work free from harassment, discrimination, and the threat of criminalization.

RECOMMENDATIONS TO THE UNITED NATIONS

TO THE UN SECRETARY GENERAL AND THE UN COUNTRY TEAM IN MYANMAR:

- Ensure human rights are given sufficient prominence and resources across all UN operations relating to Myanmar, and develop a comprehensive plan for operationalizing the Human Rights Up Front initiative. This should include detailed timelines for implementation, clearly identified indicators of success and an early warning mechanism designed to prevent and respond to serious human rights violations;
- Strengthen human rights training for UN staff at all levels operating in Myanmar to ensure awareness of their wider responsibility to uphold the UN Charter and overall UN mandates;
- Call on the Myanmar government, both publicly and privately, to agree to the establishment of an OHCHR office with a full protection and promotion mandate and access throughout the country at the earliest opportunity; and
- Support civil society activists and organizations working to counter discrimination and religious intolerance, including by providing technical advice and support.

TO THE UN SECURITY COUNCIL:

- Impose a comprehensive arms embargo on Myanmar. The embargo should cover the direct and indirect supply, sale or transfer, including transit and trans-shipment of all weapons, munitions, and other military and security equipment, including the provision of training and other military and security assistance; and impose targeted financial sanctions against senior officials responsible for serious violations; and

- Explore avenues to bring perpetrators of crimes under international law to justice, in particular if Myanmar itself fails to investigate and prosecute those responsible for crimes against humanity and other human rights violations perpetrated in Rakhine State.

TO THE UN FACT-FINDING MISSION ON MYANMAR:

- Assess whether the denial of nationality, restrictions on movement, access to healthcare, education, livelihoods, freedom of assembly, association and religion, and participation in public life and the denial of right to self-identify constitute crimes under international law, in particular the crime against humanity of apartheid; and
- In line with its mandate and with a view to ensuring full accountability for perpetrators and justice for victims of human rights violations and abuses in Myanmar, include in its final report recommendations for an appropriate accountability mechanism for alleged perpetrators of crimes under international human rights law.

TO THE UN HUMAN RIGHTS COUNCIL:

- Provide sufficient resources, including financial, technical and human, to enable the Fact-Finding Mission team to thoroughly and efficiently investigate human rights violations and abuses in Myanmar, in particular in Rakhine State; and
- Maintain a country-specific resolution on the human rights situation in Myanmar and renew the mandate of the Special Rapporteur on the situation of human rights in Myanmar. Ensure the Special Rapporteur has adequate resources to undertake her mandate and call on the Government of Myanmar to provide full cooperation in the discharge of her mandate.

RECOMMENDATIONS TO NATIONAL AND INTERNATIONAL HUMANITARIAN, DEVELOPMENT, AND HUMAN RIGHTS ORGANISATIONS IN MYANMAR

- Increase advocacy, both public and private, with the Myanmar government to end discrimination and segregation in law, policy and practices in Rakhine State, including through advocacy with organization and programme donors;
- Conduct rigorous and ongoing assessments of all projects and assistance in Rakhine State to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation; and
- Continue and strengthen efforts to counter discrimination, advocacy of hatred and religious and other forms of intolerance, including by strengthening national and international networks working on these issues.

RECOMMENDATIONS TO THE INTERNATIONAL COMMUNITY AND IN PARTICULAR DONORS TO MYANMAR

- Use all political and diplomatic tools to ensure Myanmar authorities implement the recommendations outlined here, and ensure that human rights are central to all bilateral and multilateral engagements with the Myanmar authorities;
- Ensure that any international aid, development projects or financial assistance in Rakhine State are explicitly and specifically conditioned on non-discrimination, non-segregation and equality. Conduct rigorous and ongoing assessments of all projects and assistance to ensure they are implemented in a way that does not entrench, support or perpetuate discrimination and segregation;
- Prioritize financial and other support to civil society and interfaith actors working to counter racial and religious discrimination and build a more tolerant and inclusive society;
- Ensure that any ongoing or planned police or security assistance to Myanmar is human rights compliant, and in particular, ensure that assistance is not provided to units accused of crimes under international law and other serious violations of human rights. All training of units accused of such violations should be reviewed and all Myanmar security force personnel recommended for training should be vetted further. No training should be provided to units accused of serious human rights violations until robust accountability mechanisms are in place and human rights violators are investigated and brought to justice;

- Immediately suspend the direct and indirect supply, sale or transfer, including transit and trans-shipment to Myanmar of all weapons, munitions, and other military and security equipment, including the provision of training and other military and security assistance; and
- Exercise universal jurisdiction in investigating any person under their jurisdiction who may reasonably be suspected of committing crimes against humanity or other crimes under international law who may be within their jurisdiction. Ensuring that all proceedings meet international standards of fairness and do not involve seeking or imposing the death penalty.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

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“CAGED WITHOUT A ROOF”

APARTHEID IN MYANMAR’S RAKHINE STATE

The horrific human rights violations that have been perpetrated against the Rohingya since August 2017 take place against a backdrop of decades of state-sponsored discrimination and persecution. Today, almost every aspect of their lives in Rakhine State is severely restricted, and their human rights – including to freedom of movement, to a nationality, to adequate healthcare, education, work, food, freedom of thought, conscience and religion, and to participate in public life – have been routinely violated.

What Amnesty International has uncovered in Rakhine State is an institutionalized system of segregation and discrimination of Muslim communities. In the case of the Rohingya this is so severe and extensive that it amounts to a widespread and systemic attack on a civilian population, which is clearly linked to their ethnic (or racial) identity, and therefore legally constitutes apartheid, a crime against humanity under international law.

The situation must not be allowed to continue. It is not just unacceptable and unlawful, it is unconscionable. The government, and the international community, cannot expect to address the plight without tackling its root causes. Failure to do so will only further entrench discrimination, perpetuate human suffering and risks exacerbating conflict.

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