

**APPLICATION OF THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE**

**THE GAMBIA
v.
MYANMAR**

MEMORIAL OF THE GAMBIA

**VOLUME XI
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Expert Report of Professor Michael A. Newton (October 2020)

INTERNATIONAL COURT OF JUSTICE

Expert Report of Professor Michael A. Newton

October 2020

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I. INTRODUCTION

1. In this Report, after describing my professional background and experience, along with particularized expertise in the fields of counterinsurgency and terrorism, I identify the well-established characteristics, or indicia, of authentic counterinsurgency operations. I then present my views on whether the “clearance operations” conducted by Myanmar’s armed forces in Rakhine State from 2016 to 2018 can be described as bona fide counterinsurgency operations.

2. My knowledge of counterinsurgency derives from my professional military experience as both a legal advisor and former combat arms officer, as supplemented by subsequent academic research and pedagogy. My knowledge of terrorism derives from real world operational experience, extensive research, and sustained teaching and publication in the field. My knowledge of the “clearance operations” is based on my examination of the extensive reports issued by the UN Fact Finding Mission, and the Verbatim Records of proceedings in this case. I also reviewed the following materials, *inter alia*: the series of reports compiled by the Special Rapporteurs on the situation of human rights in Myanmar;¹ two reports prepared by the Simon-Skjodt Center for the Prevention of Genocide at the U.S. Holocaust Memorial Museum; and reports by Fortify Rights and the Public International Law and Policy Group.

II. PROFESSIONAL BACKGROUND AND EXPERIENCE

3. I am Professor of the Practice of Law at Vanderbilt University Law School, Nashville, Tennessee, as well as Professor of the Practice of Political Science. At Vanderbilt, I teach courses on terrorism, international criminal law, human rights, law of armed conflict, and diplomacy. I graduated from the United States Military Academy at West Point, New York in 1984 with a Bachelor of Science degree and a designated International Relations area of concentration. Prior to my current service at Vanderbilt, I taught International Law in the Law Department of the United States Military Academy at West Point and the U.S. Army Legal Center and School, Charlottesville, Virginia, from which I earned my first advanced LL.M.

¹ See United Nations Office of the High Commissioner for Human Rights, Myanmar, *available at* <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/MMIndex.aspx>.

degree in 1996. I obtained my law degree from the University of Virginia Law School in 1990, as well as a second LL.M. degree in 2001. For more than 25 years, my academic focus has been on international humanitarian law, international human rights law, the legal regime related to terrorism, transitional justice mechanisms, and the larger field of atrocity law. I have specialized, in particular, on the application of international law, including international criminal law, to armed conflict, both international and domestic.

4. I served in the United States Army from 1984 until my retirement in 2005. I held the rank of Lieutenant Colonel at the time of my retirement from active duty.

5. During my active duty military service, I was deployed on multiple multinational operations and supported numerous combined training exercises. I have provided legal advice to commanders and policymakers at all levels of operations, including senior political officials. I also provided expert advice to the Afghanistan Rule of Law Field Force under NATO authority, and have lectured in NATO courses. From 1999 to 2002, I served in the U.S. Department of State as the Senior Advisor to the United States Ambassador-at-Large for War Crimes, advising on transitional justice policy in numerous contexts. In that capacity, I helped negotiate the Elements of Crimes for the International Criminal Court. In particular, I helped gain consensus agreement on the text of the constituent details for proving the range of genocide offenses, crimes against humanity, and war crimes specified in the Rome Statute. I served as the U.S. representative on the U.N. Planning Mission that established the Special Court for Sierra Leone and later as a member of the academic consortium supporting the work of the Special Court.

6. I have provided expert advice upon request from governments and non-governmental organizations on counter-terrorism and the application of international criminal law. In particular, I was the International Advisor to the Judges of the Iraqi High Tribunal and provided extensive advice on the Anfal genocide case, among others. I have participated at the Appeals Chamber of the International Criminal Court in the *Bemba*, *Bashir*, and *Ntaganda* cases, and I am on the Counsel List for that Court. I was the co-leader for Working Group I [Investigation and Prosecution of Terrorist Acts] convened by the Government of the Netherlands during which approximately thirty leading international experts reached consensus on the Leiden Policy

Recommendations on Counter-terrorism and International Law.² In 2017, I was selected for the expert roster of Justice Rapid Response.³ I also served as one of the expert advisors to the Genocide Prevention Task Force⁴ under the auspices of the United States Holocaust Memorial Museum, American Academy of Diplomacy, and United States Institute of Peace. I am an elected member of the International Institute for Humanitarian Law, San Remo, Italy.

7. I have published more than 90 articles, books, and case comments. Most recently, I was the editor of *The United States Department of Defense Law of War Manual: Commentary and Critique* (Cambridge University Press, 2019). I conceived and co-authored *Proportionality in International Law* (Oxford University Press, 2014). I have also authored, *inter alia*, “The Interoperability of the Laws of Armed Conflict,” in *The Legal Pluriverse Surrounding Multinational Military Operations* (Robin Geiß and Heike Krieger, eds., Oxford University Press, 2020) and “Charging War Crimes: Policy & Prognosis,” in *The Law and Practice of the International Criminal Court* (Carsten Stahn ed., Oxford University Press, 2015). I was the Senior Editor of the *Terrorism International Case Law Reporter* published by Oxford University Press throughout the life of that series.

III. THE CHARACTERISTICS OR INDICIA OF AUTHENTIC COUNTERINSURGENCY OPERATIONS

8. Authentic counterinsurgency (COIN) seeks to counter the presence of insurgents within a given population. COIN operations thus have only one purpose: to end an insurgency. To accomplish this purpose, COIN requires comprehensive efforts to reassert the sovereign authority of the state, with the overall objective of establishing stable and secure peace that

² Larissa van den Herik, Nico Schrijver, eds., *Counter-Terrorism Strategies in a Fragmented International Legal Order: Meeting the Challenges* (Cambridge University Press, July 2013), available at <https://www.cambridge.org/core/books/counterterrorism-strategies-in-a-fragmented-international-legal-order/E3AD32A32411F93EEF06143F0451DFEC>.

³ Justice Rapid Response is a global facility providing rapidly deployable experts specialized in international criminal and human rights investigations. See Justice Rapid Response, available at <https://www.justicerapidresponse.org/who-we-are/about-us/>.

⁴ United States Institute of Peace, Genocide Prevention Task Force, *Preventing Genocide: A Blueprint for U.S. Policymakers* (2008), available at <https://www.usip.org/genocide-prevention-task-force/view-report>.

protects the civilian population. The conception of an enemy/adversary must therefore be strictly constrained by reference to the subset of the overall population who are armed insurgents. This means that, by definition, COIN applies state power against the insurgency rather than the entire civilian population. This tenet of counterinsurgency is the logical corollary to the mandate drawn from the law of armed conflict that prohibits all “[a]cts or threats of violence the primary purpose of which is to spread terror among the civilian population.”⁵ Regardless of the scope or nature of particular armed conflicts, the civilian population *per se* cannot constitute a lawful military target of COIN. The overarching objective of disaggregating the enemy from innocent civilians necessarily constrains such operations. Indiscriminate attacks directed at entire segments of a civilian population are thus entirely incompatible with COIN, and warrant the inference that the objective is not to defeat an insurgency, but to punish or destroy the civilian population.

9. Insurgency is a complex and context-dependent phenomenon. The details of particular COIN operations vary depending upon the idiosyncrasies of the affected population, the terrain, and the characteristics of the State seeking to reassert its sovereignty. The essence of COIN operations remains constant, however, because the fundamental goal must be to defeat the insurgents by instituting state authority in a manner that enhances its legitimacy and effectiveness. The security of the local population is a vital predicate to successful COIN. The essence of COIN is “therefore ultimately a political struggle that includes a wide range of activities in partnership” with local leadership.⁶ The U.K. Manual, *inter alia*, specifies that the “political purpose and effective governance must have primacy and be seen to be working to

⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 609, *available at* <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolII.aspx>, art. 13(2); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS 3, *available at* <https://ihl-databases.icrc.org/ihl/INTRO/470>, art. 51(2).

⁶ NATO Standard, *Allied Joint Doctrine for Counter-Insurgency (COIN)*, Edition A Version 1, Allied Joint Publication-3.4.4 (July 2016), *available at* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625810/doctrine_nato_coin_ajp_3_4_4.pdf, para. 0130.

better the lives of the people.”⁷ COIN is thus not about the unconstrained application of governmental authority or overuse of military firepower. Rather, it seeks to establish the changed societal and security conditions needed to sustain a lasting political settlement of grievances.

10. Military manuals around the world stress the interconnectedness of means and methods that are integral aspects of purposeful COIN operations.⁸ The Canadian Manual, for example, notes that authentic COIN requires “military, paramilitary, political, economic, psychological and civic actions taken to defeat an insurgency.”⁹ Coordinated operations implemented to defeat insurgencies are necessarily context-dependent. However, modern forms of asymmetric warfare and the recurring refinement of tactics across cultures has required development of the specialized genre of operations known around the world as COIN. Much like fingerprints can be evaluated based on objective analysis of their unique combination of observable characteristics, the legal and doctrinal elements of COIN provide the template for assessing the “clearance operations.”

11. Successful counterinsurgency thus represents a complex challenge for military commanders. Insurgencies are asymmetric operations conducted in order to overthrow a government (or challenge governmental authority within a particular territory) in order to replace it with another ruling power, or to force desired political change.¹⁰ As Chairman Mao Tse Tung

⁷ British Army Field Manual, *Countering Insurgency*, Army Code 71876, Vol. 1, Pt. 10 (October 2009), available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, pp. 3-2 to 3-3.

⁸ See British Army Field Manual, *Countering Insurgency*, Army Code 71876, Vol. 1, Pt. 10 (October 2009) available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, p. 1-11 (“Those military, law enforcement, political, economic, psychological and civic actions taken to defeat an insurgency.”) (emphasis omitted); Armée de Terre, *Doctrine for Counterinsurgency at the Tactical Level* (April 2010), available at <https://info.publicintelligence.net/FR-TacticalCOIN.pdf>, Section II, Introduction (stating that “the first pillar in the struggle against an insurgency is based upon action among the population”).

⁹ Canada Land Force, *Counter-Insurgency Operations*, B-GL-323-004/FP-003 (13 December 2008), available at <https://info.publicintelligence.net/CanadaCOIN.pdf>, para. 103.1.

¹⁰ See NATO Standard, *Allied Joint Doctrine for Counter-Insurgency (COIN)*, Edition A Version 1, Allied Joint Publication-3.4.4 (July 2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625810/doctrine_nato_coin_ajp_3_4_4.pdf, para. 0203 (“Insurgency is defined as: actions of an organized, often ideologically motivated, group or movement that seeks to effect or prevent political change or to overthrow a governing authority

observed, counterinsurgency requires “constant activity and movement” because there is “no such thing as a decisive battle,” nor opportunity to rely upon “the fixed, passive defense that characterizes orthodox war.”¹¹ Commanders must simultaneously protect their own forces and lines of logistical support, reinforce the legitimacy and authority of local leaders, and erode the military and political capacity of the insurgency. Insurgents rely upon the support or neutrality of the general population. It follows that both the government and insurgent force seek to deepen the public perception that they represent the legitimate interests of the population.

12. NATO military experts describe counterinsurgency as “a complex form of security operations to enable stabilisation using all available instruments of power to create a secure environment, while promoting legitimate governance and rule of law.”¹² Such nuanced operations require unity of effort between disparate elements which necessarily entails a high degree of civil-military coordination and cooperation. Effective and deliberate COIN requires tiered efforts that simultaneously seek to defeat the insurgent military capability, provide security for the population, and buttress the ability of local leadership to address popular grievances that otherwise sustain the insurgents.

13. Authentic counterinsurgency efforts are thus focused on the overriding objective of bolstering or restoring governmental legitimacy. Securing the population, rather than regarding it as a monolithic enemy entity, is the first tactical goal at the outset of COIN. The welfare of the civilian population is the center of gravity for COIN planning. Counterinsurgency thus relies upon using “every opportunity to help the local populace and meet its needs and expectations. Projects to improve economic, social, cultural, and medical needs can begin immediately.

within a country or a region, focused on persuading or coercing the population through the use of violence and subversion.”).

¹¹ Samuel B. Griffith (tr), *Mao-Tse Tung on Guerilla Warfare*, (Fleet Marine Force Reference Publication (FMFRP) 12-18, US Marine Corps, Department of the Navy, 1989), *available at* http://www.irregularwarrior.com/files/Mao_Tse-tung_Guerrilla_Warfare.pdf, p. 52.

¹² Andre D. Rakoto & Gary Rauchfuss (eds), *Counterinsurgency: A Generic Reference Curriculum* (2020), *available at* https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_09/20170904_1709-counterinsurgency-rc.pdf, p. 3.

Actions speak louder than words.”¹³ Assistance towards the civilian population and coordination with local governance structures represent the *sine qua non* of genuine effort.

14. COIN requires that military commanders implement precautionary measures to protect civilians during military operations. To command is an active verb. The commander’s duty to control the application of violence by subordinate forces represents the essence of authentic COIN operations.¹⁴ Failure to protect civilians or subject them to indiscriminate attacks undermines the intransgressible imperative that “[i]n the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.”¹⁵

15. By contrast, operations that are not designed to protect the civilian population and restore respect for the government undermine the fundamental objectives of COIN.¹⁶ Any insurgency is built from the ground up. Its core consists of early supporters with a firm conviction to challenge the government, but recruits must be persuaded to accept the significant risks of joining the insurgency. It is accepted counterinsurgency doctrine that the “first basic need for an insurgent

¹³ US Army and Marine Corps, *Counterinsurgency*, US Army Field Manual No. 3-24, Marine Corps Warfighting Publication No. 3-33.5 (15 December 2006), available at <https://www.hsdl.org/?view&did=468442>, para. 5-75.

¹⁴ International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva, Martinus Nijhoff, 1987), available at https://www.loc.gov/rr/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf, art. 87, para. 3550 (“Undoubtedly the development of a battle may not permit a commander to exercise control over his troops all the time; but in this case he must impose discipline to a sufficient degree, to enforce compliance with the rules of the Conventions and the Protocol, even when he may momentarily lose sight of his troops”).

¹⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978), 1125 UNTS, 3, available at <https://ihl-databases.icrc.org/ihl/INTRO/470>, art. 57(1).

¹⁶ Australian Army, *Land Warfare Doctrine LWD 3-0-1 Counterinsurgency*, (December 2009), available at https://australianarmycadets.files.wordpress.com/2018/03/lwd_3-0-1_counterinsurgency_full_0.pdf, para. 3.8; Office of the Chairman of the Joint Chiefs of Staff, *DOD Dictionary of Military and Associated Terms* (June 2020), available at <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>, p. 112 (defining “irregular warfare” as “a violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s).”); British Army Field Manual, *Countering Insurgency*, Army Code 71876, Vol. 1, Pt. 10 (October 2009), available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, para. 1-13 (“legitimacy is a population’s acceptance of its government’s right to govern ... [w]ithout legitimacy, a political settlement will not endure ... [l]egitimacy is the central concern of all parties directly involved in a [COIN] conflict.”), paras. 3-2 to 3-3 (listing as the first principle of COIN, “primacy of political purpose” and further explaining that “political purpose and effective governance must have primacy and be seen to be working to better the lives of the people.”).

who aims at more than simply making trouble is an attractive cause. ... With a cause, the insurgent has a formidable, if intangible, asset that he can progressively transform into concrete strength.”¹⁷ Accordingly, reinforcing the political legitimacy of the counterinsurgent state power must remain the paramount objective in authentic COIN operations.¹⁸

16. Highly focused intelligence cycles are the fulcrum that guides the COIN campaign. This continuous and dynamic process inevitably results in a variety of operational postures and mission priorities across the area of operations. Every published COIN doctrine places intelligence collection as a very high priority for all tactical and operational activities.¹⁹

¹⁷ David Galula, *Counterinsurgency Warfare: Theory and Practice* (Praeger Security International, 2006), available at <https://pdfs.semanticscholar.org/f2d2/aedbcab918cc7c2d837882aff7068db6d4f.pdf>, p. 12.

¹⁸ Canada Land Force, *Counter-Insurgency Operations*, B-GL-323-004/FP-003 (13 December 2008), available at <https://info.publicintelligence.net/CanadaCOIN.pdf>, para. 117.2 (COIN forces must “abide by rules of engagement and conduct activities with a view to maintaining their legitimacy and the moral high ground.”), para. 309.4 (“[C]ommanders and even their soldiers must understand the need to help ensure the supported government remains legitimate and acts accordingly.”), para. 529.1 (“Even if the majority of tactical tasks are conducted with a view to gaining public support and winning campaign legitimacy, the populace will remember and the insurgents will exploit those few poorly conducted tasks that undermined legitimacy.”); NATO Standard, *Allied Joint Doctrine for Counter-Insurgency (COIN)*, Edition A Version 1, Allied Joint Publication-3.4.4 (July 2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625810/doctrine_nato_coinsajp_3_4_4.pdf, paras. 0110-0113 (describing the employment of military forces in COIN operations as support for the civil authorities that properly govern).

¹⁹ See Armée de Terre, *Doctrine for Counterinsurgency at the Tactical Level* (April 2010), available at <https://info.publicintelligence.net/FR-TacticalCOIN.pdf>, Section I, Introduction (stating that because “understanding the environment” is necessary to successful COIN “[f]or this reason, and for more than any other tactical method, in COIN, intelligence guides the action.”) (emphasis omitted); NATO Standard, *Allied Joint Doctrine for Counter-Insurgency (COIN)*, Edition A Version 1, Allied Joint Publication-3.4.4 (July 2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625810/doctrine_nato_coinsajp_3_4_4.pdf, para. 0340 (stating that COIN “must be based on timely, accurate and predictive analysis” to “increase the chances of neutralizing targets hiding among neutral or friendly subjects, as well as reducing the possible collateral damage which could alienate the local population support to the forces conducting COIN”), para. 0341 (in apparent recognition of the intelligence function of non-lethal fires stating that COIN operators “should focus less on material indicators intelligence and more on subjective but systematic analysis.”); Annex B (depicting in Figure B.1 and describing the “Learning and Adaptation” cycle as a continuous, self-reinforcing feedback loop); Canada Land Force, *Counter-Insurgency Operations*, B-GL-323-004/FP-003 (13 December 2008), available at <https://info.publicintelligence.net/CanadaCOIN.pdf>, para. 701.1 (“Good intelligence ... is especially inextricable to successful COIN, where it will be in constant ... demand ... Accurate intelligence will permit commanders to conduct operations with precision, reducing the detrimental effect on the host nation population and minimizing casualties among friendly forces.”); US Army and Marine Corps, *Tactics in Counterinsurgency*, US Army Field Manual No. 3-24.2, FM 90-8, FM 7-98 (March 2009), available at <https://fas.org/irp/dodd/ir/army/fmi3-24-2.pdf>, para. 5-16 (stating, as the first element of offensive mission variables “offensive operations should be based on the best intelligence available, while inflicting the minimal damage to the population, infrastructure, and local

Commanders who attack the insurgency while protecting the civilian population seek constant feedback from local civilian sources. Doctrine in the Indian Army recognizes the centrality of the population in the provision of intelligence not only as a resource supporting military operations but also as an indicator in itself. This insight frames intelligence as “a manifestation of the support from the people who are both a medium as well as a source.”²⁰ Kinetic force is always intelligence driven. Assistance towards the civilian population rather than its annihilation is a crucial aspect of COIN. Indiscriminate use of force against the civilian population is inconceivable as COIN strategy. Any military operations that included indiscriminate killing of civilians, raping of women, burning of homes and destruction of villages would be the polar opposite of authentic COIN. Deliberate efforts to destroy the well-being of the civilian population bear zero resemblance to COIN doctrine.

17. Because the civilian population is the real terrain of the armed conflict, COIN requires strict fire control measures. Every published COIN doctrine has explicit injunctions against conducting unnecessary kinetic actions or kinetic actions that would harm the population. British doctrine states that “in a COIN campaign, success or failure will depend upon the effectiveness of the intelligence effort” and recognizes the consequences of inaccurate detection or delivery of fires by stating that in COIN “a tactical action can have a strategic effect”²¹ Strict Rules of Engagement and fire control measures are often stated as official “minimum force” policies. The

economy.”); United States Government, Interagency Counterinsurgency Initiative, *U.S. Government Counterinsurgency Guide* (2009), available at <https://2009-2017.state.gov/documents/organization/119629.pdf>, p. 19 (stating that in conventional warfare, “decision makers mostly require intelligence about the enemy, but in COIN they primarily need intelligence about the population.”); Australian Army, *Land Warfare Doctrine LWD 3-0-1 Counterinsurgency*, (December 2009), available at https://australianarmycadets.files.wordpress.com/2018/03/lwd_3-0-1_counterinsurgency_full_0.pdf, para. 5.1 (“In a COIN campaign, success or failure will be influenced by the effectiveness of intelligence.”), para. 7-29.b(2) (describing targeting process for non-lethal fires by targeting “insurgents, supporters of the government and the uncommitted populace individually and collectively”), para. 5.7 (describing the intelligence cycle as “continuous and regular direction from the commander is crucial”).

²⁰ Indian Army, *Doctrine for Sub Conventional Operations* (December 2006), available at <https://documents.in/document/sub-conventional-operations-2006>, p. 40.

²¹ British Army Field Manual, *Countering Insurgency*, Army Code 71876, Vol. 1, Pt. 10 (October 2009), available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, p. 5-1.

State's ultimate claim to legitimate sovereign power relies upon judicious employment of its vastly superior military force. As described by the Allied Joint Doctrine for Counter-Insurgency:

The overall security aim should be to defeat the insurgents using all available means, whilst simultaneously using no more force than is *absolutely necessary*. A heavy-handed and overly destructive approach that causes civilian casualties and other collateral damage may boost the radicalization of the insurgents' narrative and only serve to enlarge their popular support and recruit new fighters.²²

Nothing alienates a population as quickly, or provides as much ready fodder for the insurgents' information operations, as the counterinsurgent's employment of excessive force and unnecessary destruction of property or the deaths of innocent civilians.

18. The primary purpose of COIN can never devolve to violent coercion. Popular support and reinvigorated loyalty to the sovereign authority is the key terrain in COIN. Destruction of insurgent forces and occupation of the geographic zone of operations are insufficient to foster sustainable peace. The Philippines' Minister of Defense during the Huk rebellion (himself a former insurgent) instituted reforms to instill a love of the Filipino people as the first priority of every soldier, and the killing of insurgents as the secondary goal.²³ Canadian doctrine requires "No more force may be used than is necessary to achieve an aim. The amount used must be reasonable and it must not be punitive. Once the aim is achieved, no more force should be

²² NATO Standard, *Allied Joint Doctrine for Counter-Insurgency (COIN)*, Edition A Version 1, Allied Joint Publication-3.4.4 (July 2016), *available at* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625810/doctrine_nato_coin_ajp_3_4_4.pdf, para. 0285 (emphasis added), A.3 ("It should be kept in mind that killing numerous insurgents will be seriously counterproductive if collateral damage kills peaceful civilians too. That will create legitimacy for the insurgency and lead to increased support from the population. For this reason, commanders have to establish procedures to achieve a balanced use of force and to avoid any excessive use of force that leads to collateral damage."); Indian Army, *Doctrine for Sub Conventional Operations* (December 2006), *available at* <https://documents.in/document/sub-conventional-operations-2006>, Appendix B, Supplementary Commandments, p. 67 ("Operations must be people friendly, using minimum force and avoiding collateral damage - restraint must be the key."); Ch. III.11.b, p. 33 ("The use of force should be judicious and governed by explicit rules of engagement that must hinge on the principle of 'minimum force'").

²³ Lawrence Greenburg, *The Hukbalap Insurrection: A Case Study of a Successful Anti-Insurgency Operation in the Philippines 1946-1955* (US Army Center of Military History, 1987), *available at* <https://babel.hathitrust.org/cgi/pt?id=mdp.39015034923618&view=1up&seq=162>, pp. 145-146.

used.”²⁴ In a similar vein, the COIN doctrine of the Indian Army establishes the inviolable essentials for every soldier as follows: “Remember that people you are dealing with, are your own countrymen. All your conduct must be dictated by this one significant consideration.²⁵ . . . Only fear God, uphold Dharma and enjoy serving the country.”²⁶

19. Authentic COIN operations seek at all times—and as a matter of strategic necessity—to reduce collateral property damage, human suffering, and the unnecessary or erroneous injury or killing of the population. Minimization of collateral damage amongst innocent civilians and infrastructure springs from the necessity of gaining trust between governmental forces and the population rather than reinforcing existing societal divisions. British doctrine articulates this premise as follows: “Force may solve a tactical problem . . . but if the use of force is perceived as excessive or ill targeted the neutral segment of the population may be antagonized or alienated and it may leave a lasting feeling of resentment and bitterness. Worse still, active support for the insurgents by those suffering or observing the effects of force may be engendered.”²⁷ Actions must be synchronized and precise because they must simultaneously buttress a state’s legitimacy in the eyes of the population. By extension, COIN requires finesse, patience, and unity of effort across sectors, because misuse of force in one village can have disastrous effects in others.

20. Accordingly, all COIN doctrine separates the targets of military operations into two distinct spheres, with different military objectives for each sphere. The first sphere consists of the population, who are the targets of rehabilitative efforts only: information operations, civil-military operations, psychological warfare operations and direct-action operations designed to protect them from the depredations of the insurgents. This sphere makes up the bulk of the

²⁴ Canada Land Force, *Counter-Insurgency Operations*, B-GL-323-004/FP-003 (13 December 2008), available at <https://info.publicintelligence.net/CanadaCOIN.pdf>, para. 318.1.

²⁵ Indian Army, *Doctrine for Sub Conventional Operations* (December 2006), available at <https://fdocuments.in/document/sub-conventional-operations-2006>, Supplementary Commandments, Appendix B.

²⁶ Indian Army, *Doctrine for Sub Conventional Operations* (December 2006), available at <https://fdocuments.in/document/sub-conventional-operations-2006>, Coas Ten Commandments, Appendix B.

²⁷ British Army Field Manual, *Countering Insurgency*, Army Code 71876, Vol. 1, Pt. 10 (October 2009), available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, p. 3-28.

population, encompassing the state-supporting, neutral and non-active-but-insurgent-sympathetic populations. The second sphere consists of the active insurgents, who are the targets of both rehabilitative efforts and kinetic operations. This sphere encompasses the opposing force that is attacking the government and the population, and those who provide significant direct support to the active insurgents. The distinction between these spheres, and the populations that fall within them, are fundamental to COIN doctrine.²⁸

IV. THE “CLEARANCE OPERATIONS” CONDUCTED BY MYANMAR’S ARMED FORCES

21. Myanmar’s “clearance operations” demonstrated none of the characteristics or indicia associated with counterinsurgency. Neither the operational nor the tactical aspects of these “clearance operations” demonstrate the accepted principles or planning criteria for military efforts focused on countering insurgents or responding to terrorist threats. To the contrary, Tatmadaw commanders and soldiers treated all Rohingya civilians as enemy forces subject to indiscriminate lethal force. Moreover, Tatmadaw “clearance operations” focused on annihilation of the civilian population rather than a coordinated diplomatic, informational, military, and economic effort that is the hallmark of authentic COIN.

22. Tatmadaw commanders cannot plausibly claim ignorance regarding the universally shared aspects of COIN operations. Authentic COIN campaigns share similar strategy and operational contours. COIN requires deliberate efforts to build civil capacity and to secure the civilian population. It necessitates limited direct attacks only, and persistent efforts to reinforce legitimacy and to separate insurgents from their perceived base of support. Genuine COIN necessitates patient interdisciplinary campaigns rather than murderous rampages. These

²⁸ British Army Field Manual, *Countering Insurgency*, Vol. 1, Pt. 10 (2009), available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, Figure 2.2, para. 2-15 (showing typical concentric-ring diagram); NATO Standard, *Allied Joint Doctrine for Counter-Insurgency (COIN)*, Edition A Version 1, Allied Joint Publication-3.4.4 (July 2016), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625810/doctrine_nato_coin_ajp_3_4_4.pdf, Figure 2.1, para. 0220 (depicting concentric rings as one-dimensional continuum); see generally, US Army and Marine Corps, *Counterinsurgency*, US Army Field Manual No. 3-24, Marine Corps Warfighting Publication No. 3-33.5 (15 December 2006), available at <https://www.hsdl.org/?view&did=468442>, “Elements of Insurgency”, paras. 1-59 to 1-68 (describing the elements that support an insurgency from an organizational standpoint based on the concentric-ring model).

characteristics transcend cultures and contexts. Modern counterinsurgent doctrine is universally understood and publicly available. No modern military can feign ignorance of its mandates.

23. Military operations of the armed forces of sovereign States, including counterinsurgency operations, are, by definition, highly planned and tightly controlled. Such operations are premised on an overarching objective that is framed as a mission statement to senior commanders. In every modern military, staff planners take such mission statements and separate them into detailed lists of specified and implied tasks. Rules of Engagement and tactical orders flow from this complex staff planning process. Logistics flow to the necessary areas, and units are moved in a choreography of operational integration. Reinforcements are positioned and equipment replaced or upgraded as necessitated by the requirements of the specified and implied tasks. In this deliberate planning process, the intentions of the force become plain.

24. In this context, the coordinated nature of the Tatmadaw's attacks against the civilian population employed strikingly similar tactics across a broad expanse of territory. The "clearance operations" were planned and executed based on explicit command guidance and pursuant to orders. They were the primary, if not exclusive, avenue of effort rather than a necessary adjunct to an overarching political strategy. Tatmadaw operations were not random acts of spontaneous and uncoordinated violence conducted by renegade commanders of undisciplined outliers. Among numerous other telltale signs of the operational intent, Tatmadaw commanders provided no grid coordinates to secured safe zones. Instead, they permitted soldiers to kill escaping Rohingya without any countermanding orders. Noncombatants, especially women and children, are entitled to affirmative protections from the effects of hostilities under both international humanitarian law and human rights law. Tatmadaw commanders provided no protection for civilians desperate to avoid the deadly effects of the "clearance operations," nor did they provide food, baby formula, shelter, water, or any other relief to fleeing civilians. There is no conceivable basis under COIN doctrine for such deliberate targeting directed against the civilian population.

25. As explained above, principles of minimal force are universal in COIN doctrine. No State wins in counterinsurgency through a campaign of intentional destruction. Military doctrine around the world universally reinforces that obvious point. Tatmadaw commanders cannot have been oblivious of this truism. If the "clearance operations" were truly for counter-insurgency

purposes, Myanmar authorities would have taken steps to protect the civilian population rather than inflict massive harm on them.²⁹

26. The objectives of the “clearance operations” must be assessed against the backdrop of the societal structure combined with preexisting legal and psychological measures marginalizing the Rohingya population. COIN never occurs in a cultural or military vacuum. An understanding of the social and legal context within a nation is an essential precursor for undertaking COIN. In Myanmar, this context included a national narrative and bureaucratic system to support the marginalization of the Rohingya population. The 1982 exclusion of Rohingya from the official listing of Myanmar minorities is one of the more visible manifestations of the integrated socio-economic, cultural, and political narrative. Similarly, institution of the NVC card led to an artificially created societal cleavage that served as a proxy for loyalty to the larger commonwealth of interests.

27. The long-standing pattern of persecution against the Rohingya created a loss of empathy within the whole of society that permeated Tatmadaw command and control structures. The sense that the affected population represents a monolithic enemy entity, accompanied by the decreased perception of human qualities within the target population, represent recurring features in situations where military actions are launched against an entire civilian group. Authentic COIN focuses on the fraction of the overall population engaged in armed opposition against the State. The “clearance operations” demonstrated no effort to reinforce local institutions or reinforce respect for governmental structures amongst the Rohingya population. Tatmadaw

²⁹ Australian Army, *Land Warfare Doctrine LWD 3-0-1 Counterinsurgency*, (December 2009), available at https://australianarmycadets.files.wordpress.com/2018/03/lwd_3-0-1_counterinsurgency_full_0.pdf, para. 3.8; Office of the Chairman of the Joint Chiefs of Staff, *DOD Dictionary of Military and Associated Terms* (June 2020), available at <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>, p. 112 (defining “irregular warfare” as “a violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s).”); British Army Field Manual, Vol. 1, Part 10, *Countering Insurgency* (October 2009), available at http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/16_11_09_army_manual.pdf, para. 1-13 (“legitimacy is a population’s acceptance of its government’s right to govern ... [w]ithout legitimacy, a political settlement will not endure ... [l]egitimacy is the central concern of all parties directly involved in a [COIN] conflict.”), paras. 3-2 to 3-3 (listing as the first principle of COIN, “primacy of political purpose” and further explaining that “political purpose and effective governance must have primacy and be seen to be working to better the lives of the people.”).

operations did not demonstrably focus on the obvious avenues of effort that are the hallmarks of authentic COIN.

28. The Tatmadaw regarded the entire Rohingya population as a homogeneous enemy to be defeated and destroyed through its “clearance operations”, or in their perceptions, as alien and inferior “Bengalis” who represented a threat to the existence of the ethnic Buddhist majority, and whose presence in Myanmar represented a “problem” that would finally be “solved”. As a result, the Rohingya endured coordinated and carefully planned offensive attacks regardless of their age, gender, or involvement with any insurgent or terrorist efforts. Authentic COIN can never encompass such indiscriminate slaughter of civilians.

V. CONCLUSION

29. Any argument that the Tatmadaw’s “clearance operations” against the Rohingya represented authentic or appropriate counterinsurgency is not credible. The “clearance operations” violated a wide variety of legal and moral constraints. There is no conceivable basis for such operations under modern military doctrine or developed state practice. The attacks were intentionally directed against the civilian population. They were juxtaposed against decades of oppression and human rights violations directed against the Rohingya on the basis of their ethnic and religious identity. The only plausible conclusion from the available evidence is that the “clearance operations” were conceived, coordinated, and conducted with the intention of destroying the Rohingya population on the basis of their ethnic and religious identity.

The whole respectfully submitted:



Michael A. Newton
Professor, Vanderbilt University Law School

Annex 360

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Annex 361

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Annex 362

Witness Statement No. 024, signed on 5 October 2020 (with exhibits)

WITNESS STATEMENT PROVIDED FOR THE PURPOSE OF HEARING IN THE
CASE

THE GAMBIA V MYANMAR

AT THE INTERNATIONAL COURT OF JUSTICE⁴

Name: [REDACTED] Gender: Male
 ID Number: [REDACTED] Father's Name: [REDACTED] (48)
 Place of Birth: Tula Toli Mother's Name: [REDACTED] (40)
 Date of Birth/Age: age 25 Marital Status: Married
 Nationality: Myanmar
 Spouse's name: [REDACTED] (age 20; died in Myanmar), [REDACTED] (23)
 Number of Children: Two babies in Myanmar that died during the attack, one child since coming to Bangladesh
 Current Place of Residence: Balukhali [REDACTED]
 Date of entry into Bangladesh: [REDACTED] 2017 – One day before Qurban

Ethnic origin : Rohingya
 Religion : Islam
 Village : Tula Toli
 Village tract: Min Gyi
 Township: Maungdaw
 Language(s) spoken: Rohingya
 Language(s) written (if different from spoken): n/a
 Language(s) used in interview: English and Rohingya
 Language of statement: English
 Proposed language of testimony: Rohingya

Current occupation: n/a
 Former occupation: [REDACTED]

Location of Interview: LAW Office, Kutupalong, Bangladesh

Date(s) of interview: September 29, 2020

Start of Interview: 9:53 AM Bangladesh time

End of Interview: 2:21 PM Bangladesh time

Name of individual conducting the interview:

1. [REDACTED] RCMP Investigator

Names of all persons present during interview:

1. [REDACTED] Witness

2. [REDACTED] RCMP Investigator and Monitor

3. [REDACTED] Interpreter

WITNESS STATEMENT OF [REDACTED]

Introduction

1. I, [REDACTED] have been asked to provide this witness statement in relation to the International Court of Justice (ICJ) case between The Gambia and Myanmar. It has been explained to me that the organization called Legal Action Worldwide (LAW) is conducting an investigation and gathering evidence in support to the case of genocide of the Rohingya brought forth by The Gambia.
2. I understand that this statement may be used in legal proceedings before the ICJ, at which time it may become a public document. I do not have any family members, close contacts, or friends remaining in Myanmar who may be put at risk by the use of this statement. I am willing to testify in court if necessary.
3. I understand that this statement is given voluntarily. I have not received any money or other compensation, nor have I been promised anything in return for this statement. I have not been threatened with respect to my participation in this interview or in any communication with the investigators assisting LAW.

4. This is my first time participating in an interview regarding my personal experience in Myanmar; I have never met other investigators, journalists, or other individuals. I do not have any social media accounts and have not published anything online regarding my personal experience in Myanmar.

Background, Occupation and Education

5. I used to live in Tula Toli, along with my wife [REDACTED] (age 20) and my two children. There were various paras within Tula Toli. South of the village was Don Para. North of the village was Mura Para. In between Don Para and Mura Para was Sor Para, which is where my house was located.
6. There was also a Rakhine village within Tula Toli. Within this village was a BGP post, which would have been located at a walking distance of about one minute to the west of Don Para. There was also a BGP base in Boli Bazar.
7. To the northwest of Tula Toli was Lobboi. Lobboi is populated by Kui, Murong, and Samma people. Lobboi is located at a walking distance of about ten minutes from Mura Para.
8. When I lived in Tula Toli, I [REDACTED]
[REDACTED] am unemployed in the refugee camp and I have never attended school.
9. I never served in the military or the police. People of Rohingya ethnicity were not allowed to work in any Myanmar Government agencies. I never used a gun.
10. I have never seen members of the Arakan Rohingya Salvation Army (ARSA).

Attacks on the Neighbouring Villages

11. One day before the attack on Tula Toli, I saw the military attack Diyal Toli and Waikong. Both villages are very close to Tula Toli. I saw them coming through Waikong on the main road and they fired a lot. I did not see this but I heard the sound of the

firing. They subsequently burned down some houses in Diyal Toli and Waikong, which I saw with my own eyes when I crossed the river after the military had left. I did not see anyone killed or injured but the villagers came to our village.

12. During the attack, the villagers from Diyal Toli and Waikong hid in the paddy fields. The military then continued their way towards Lobboi. I could see that they went in that direction and crossed the river, which is knee high in that area, because it is visible from Mura Para. They went to a school to cook their food and stay for the night. The military later fired into Tula Toli from Lobboi, and I heard that a person from Mura Para was hit, but I do not know that person's name.
13. Following the attack, people from Diyal Toli and Waikong crossed the river into Tula Toli. Nothing had happened in Tula Toli before and they felt that they would be safe here. Their intention was to stay until the next morning, and then leave. But they never had the chance to so prior to the attack on Tula Toli.
14. The chairman later told our village leaders that the military would be travelling to the Rakhine village in Tula Toli, and that they would fire in the air. But they would not enter the Muslim village and nothing would happen to the Rohingyas. The chairman said that if villagers feared anything, they should go to the beach. I heard this from the Rohingya village leaders [REDACTED]

Attack on Tula Toli

15. On Wednesday, two days before Qurban, at around 8:00 o'clock in the morning, the military entered our village from the north side. It was raining on that day. I know it was around 8:00 o'clock because it was after "Fajr" prayer. I also had a mobile phone and saw the time. I have since lost that phone. Some people had returned home, but I had stayed at the mosque to talk with others. We were all worried because of what had taken place the day before in Diyal Toli and Waikong. The mosque [REDACTED]

██████████ from my house. My wife and children were at home at the time.

16. From the mosque, I saw five militaries approaching. Two militaries went towards the beach while three militaries came towards the mosque. I was at a distance from them equivalent to the distance from ██████████ [Approx. 160 meters]. I know they were militaries because they were wearing leaf colored uniforms, which I recognize as the military uniform. Some of them were wearing half pants while others had long pants. They had helmets of the same color as their uniform, which looks like a bike helmet with strap underneath. They were also carrying long guns. I was shown a chart containing pictures of various weapons and circled those which look similar to the ones I saw that day being carried by the military [See Annex B]. I did not know any of the militaries.
17. As the militaries approached, they were firing randomly. Some militaries were also lighting houses on fire. I saw the military using "long sha" to set the houses on fire. While this was happening, villagers were coming out of their houses and running towards the shore. Some also went to the hills. When I saw the militaries, I ran to the shore with other villagers. When I was running, I did not see anyone being killed, but I heard that a person called Abu Shoma died in Mura Para.
18. Once on the shore, I saw that several people from Tula Toli, Diyal Toli, and Waikong had gathered there. There would have been around 1000 men, women, and children. The five militaries that I saw earlier were now on the beach and pointing their guns at us. But the killing had not started at that time. I was afraid the militaries would kill us so I escaped and crossed the river into Waikong. I took cover in a graveyard with big trees. I was about 30 bamboo lengths from where the events were unfolding on the shore. There were no trees obstructing the way and I had a clear view. I remember that I was hiding with my brother-in-law ██████████. Others villagers were also hiding in that same area. I did not know at the time but my parents, ██████████ and ██████████ had also crossed the river in a different area and survived. I found them at a later time after arriving in Bangladesh.

19. As I was watching from across the river, I saw one of the five militaries talking on the phone. I could not see anything different about this particular military; he was wearing the same uniform as the other ones. When he was done his call, some of the militaries that were in the village burning the houses came to the shore. There would have been about 30 militaries by that time on the shore, but I think with others that remained in the village, there was probably 100 militaries that day in Tula Toli. The BGPs could also have been there as they are dressed similarly, but I am not sure.
20. I also saw that Murong, Kui, and Samma people present also with the military. There would have been approximately 30 of them, but it was difficult to count because they were moving around; some of them were in the village and some on the shore. They were not wearing uniform, but instead were wearing regular clothes like us of different colors, such as half pants, shirts, and t-shirts. They were also carrying knives, as long as an arm, and sticks.
21. When the additional militaries arrived on the shore, that is when the killing started. The militaries shot and killed several men and women. The Murong, Kui, and Samma people would then go around and check with their feet to see if people on the ground were still alive. If they found somebody that was still alive, they would beat, stab, and cut people. If men had beards, they would cut their neck. If not, they would stab them.
22. I saw the men that survived the initial attack putting their head down. The militaries then shot these men in the head and killed them. Women that did not die were separated and told to sit in a water hole on the beach. This is a hole where water comes in naturally from the river and it was full of water that morning. There would have been approximately 100 women sitting there. I could see the military and Kui, Murong and Samma searching the women for their gold and jewelleries. I saw my wife [REDACTED] in the water hole but she did not see me. My daughter [REDACTED] (9 months old) was in her arms, and my son [REDACTED] (age 1 ½) was in the water beside her. I saw a military take my youngest one, throw her to the ground [*The witness made the motion with both arms over his head of his child being thrown down to the ground*], and kill her.

23. I saw the militaries take women to houses to Sor Para, in groups of six. The Murong, Kui, and Samma people were also involved in doing this. My wife and oldest child were part of the women taken to a house in Sor Para. I even remember that the owner of that house was Gura Mia; he died in the attack along with all of his family. My wife and child never came out of that house. The houses where the women were taken were locked, lit on fire by the military, and they burned down. They were burning the houses with lighters and launchers, which are straight and long guns, and the end looks like a banana flower [witness circled a RPG on the weapons chart, Annex "C"]. I do not know how they are fired but they can be fired from a distance. It would have been around 3:30 in the afternoon by then. I believe that the women were raped inside the houses.
24. I saw them bring all the dead bodies together into three piles. Around five people were still alive at that time and were digging a hole with hoes taken from the village nearby. I do not know all of them, but I know my relative [REDACTED] (age 35) was one of them. The hole was dug from 10:00 in the morning, to 3:30 in the afternoon. It was next to the location where the people were killed. The dimensions of the hole were about 7 hands by 7 hands long [witness indicated the hole was a little bit smaller than the interview room, which was measured to be about 12 feet x 15 feet]. The dead bodies were then put in the hole. The five villagers who dug the hole, along with old people and children that were still alive, were shot and also placed in the hole.
25. At one point, I saw an helicopter land in the Rakhine village, which was about 20 minutes walking distance from where I was positioned. It was coming from the south, from the direction of Boli Bazar. I had never seen this helicopter before. The helicopter was completely red. It had stickers on it but I cannot read. It stayed in the Rakhine village for half an hour and it then flew away towards the south. I assume that the helicopter brought weapons, ammunitions, and petrol. I think they brought petrol because after the helicopter had landed in the Rakhine village, I saw about 20-30 Rakhine villagers coming towards the shore. They were carrying clear bottles with them, similar to one litre water bottles. I saw that bags and clothes, which the villagers had been carrying, had been placed on the dead bodies in the hole, and the liquid,

which I believe was petrol, was poured on top from the bottles by the militaries. The militaries then lit a cloth with a lighter, and threw it on the dead bodies to light them on fire.

26. Around the same time as the helicopter landed in the Rakhine village, I also saw the Chairman Aung Kyaw Sin at the mosque in Sor Para where I had been in the morning before the attack. I believe Aung Kyaw Sin planned all of this. This was far from my hiding spot, but because of the way he walked, I had seen him many times, and recognized him.
27. While I was in Waikong, I pulled two people from the water. Some bodies had been thrown in the river, and because it was raining, the water was high, which caused the bodies to move to other places. One of them was a small girl; I do not know her name but she would have been 6-7 years old. She was still alive and I handed her over to other people. I have since met her in the refugee camp. Unfortunately, the other person I pulled from the water was already dead. I recognized her as Shura Khatun (age 16-17).
28. To my knowledge, around 580 people from my village died that day, not counting the children. Other people from other villages also died. Only the Rohingya people were targeted on that day. I personally know several people that died on that day whom I also saw on the shore. I do not know their exact age but they were all my friends: Mohammed, Sodul Amin, Naser, Kufait, Murtofez, Mufez, Roshid Ahmed, Klares, Azor Hussain, Abu Ahmed, Dil Mohammed, Nur Mohammed, Soyed Akber, Abdu Salam, Rofiq, Shofi Ullah, Sultan, Sobair, Lalu, Abdu Rahaman, Naru Salam, Anatu Rahaman, Salem, and Asem. I recognized my neighbour [REDACTED] (age 40) he was bowing down, a military pulled his hair and shot him in the back of the neck. They were all shot by the military.
29. I also know of my cousin [REDACTED] (age 27) who was killed on that day. I saw [REDACTED] on the beach that morning. Her husband and three children also died. I have a photo of her dead body on my mobile phone which I believe was taken by the Rakhine who then

released it on the Internet [witness provided the photograph in electronic format to LAW – Annex D].

30. I learned that 12 of the women taken into the houses survived.
31. I have been shown a map of Tula Toli (Annex A) and I was able to identify approximately the following locations:

- #1 is from where the military entered the village;
- #2 is Mura Para or North village;
- #3 is where some people were killed;
- #4 is where some people were killed;
- #5 is the mosque in Muna Para;
- #6 is Dun Para or South village;
- #7 is Sor Para or Beach village where my house was located;
- #8 is the location where the people were killed and burned;
- #9 is the graveyard where I was hiding across the river.

Rescue at Night

32. I left the area after it started getting dark and I went to Mori Kom. Around midnight, I found two friends there and we talked about what happened. Their names are: [REDACTED] and [REDACTED]. [REDACTED] is the grandson of [REDACTED] the famous religious leader in our village.
33. I received a call from another friend called [REDACTED] who told me that he was still alive in Tula Toli, hiding in a paddy field near the shore along with six other people, including [REDACTED]'s wife and children. [REDACTED] and I then headed back to the area. We met the survivors across the river near Waikong in a location called Halsira Mur, which is a place where the two rivers meet. The river is about one bamboo length, or 12 hands, wide in that area. We took some banana trees from the Waikong side and swam across the river with them. We then put the children on the trees, and while holding them, swam across again. The following people were rescued: [REDACTED] and

his father [REDACTED] [REDACTED]'s wife and three children; and a woman who had injuries to her head but I do not her name. The injured woman had survived and escaped from one of the houses.

34. When we went back that night, I could see that a small tarpaulin shelter had been put on the shore by the military where the people were killed. A light was on. I believe they did not want to leave any evidence of what happened.

Aftermath of the Attack

35. After rescuing other people, I did not sleep all night and walked all the way to Shil Khali with a large group of Rohingya villagers. We saw more than one hundred militaries near the border in Keyam Bong. They saw us from a distance, about one mile [The witness estimated that one mile was the distance from [REDACTED]] they did not fire nor made any attempt to stop us.
36. When we reached the river separating Myanmar and Bangladesh, we were told by different boat operators that it would cost between 30,000 kyats and 1 lakh to cross the river. I did not have any money, I had left everything in my home, so I took branches under my arms and swam across the river. I arrived in Bangladesh one day before Qurban.
37. After crossing the river, I stayed in Hansu Para and a person gave me 150 takas to travel to Kutapalong. I stayed at a cousin's house in Kutapalong. I have been living in the refugee camp since then.

Pre-August 2017 Restrictions

38. When I lived in Tula Toli, there were restrictions in place for our movements, and we had to seek permission to travel from one place to another.

39. You also needed to seek permission to get married and had to make two or three payments at the BGP post in order to get married. You also had to pay to add children to the family list. You even had to pay for a goat.

Victim Impact and Conclusion

40. With the blessing of Allah, the conditions in the camp are good. After one year in the camp, I have since re-married and have had one newborn. I have no work and I only eat rice from what I get with the ration cards.
41. I have nightmares since these events happened, and I always see in my sleep what happened in Tula Toli. I also saw my wife in my dreams, and she asked me to do the "Fatiha" ritual of giving food to the poor, in order to seek peace for her soul. But I am not able to do it as I do not have any money.
42. We hope for justice and we want to go back to Myanmar.

WITNESS ACKNOWLEDGMENT

This statement consisting of 12 pages and four annexes is true to the best of my knowledge and recollection. I have given this statement voluntarily and I have not been influenced by any coercion, duress or threat.

I am aware that this statement may be used in legal proceedings before the International Court of Justice (the "ICJ").

I have been informed by the interviewers about the procedures available at the ICJ to ensure protection of confidential information provided to the Court. I have also been briefed about the procedures that may be available to ensure my own protection and security.

I have been informed that I may be called to testify in public before the ICJ.

Print name: [REDACTED]

Signed [REDACTED]

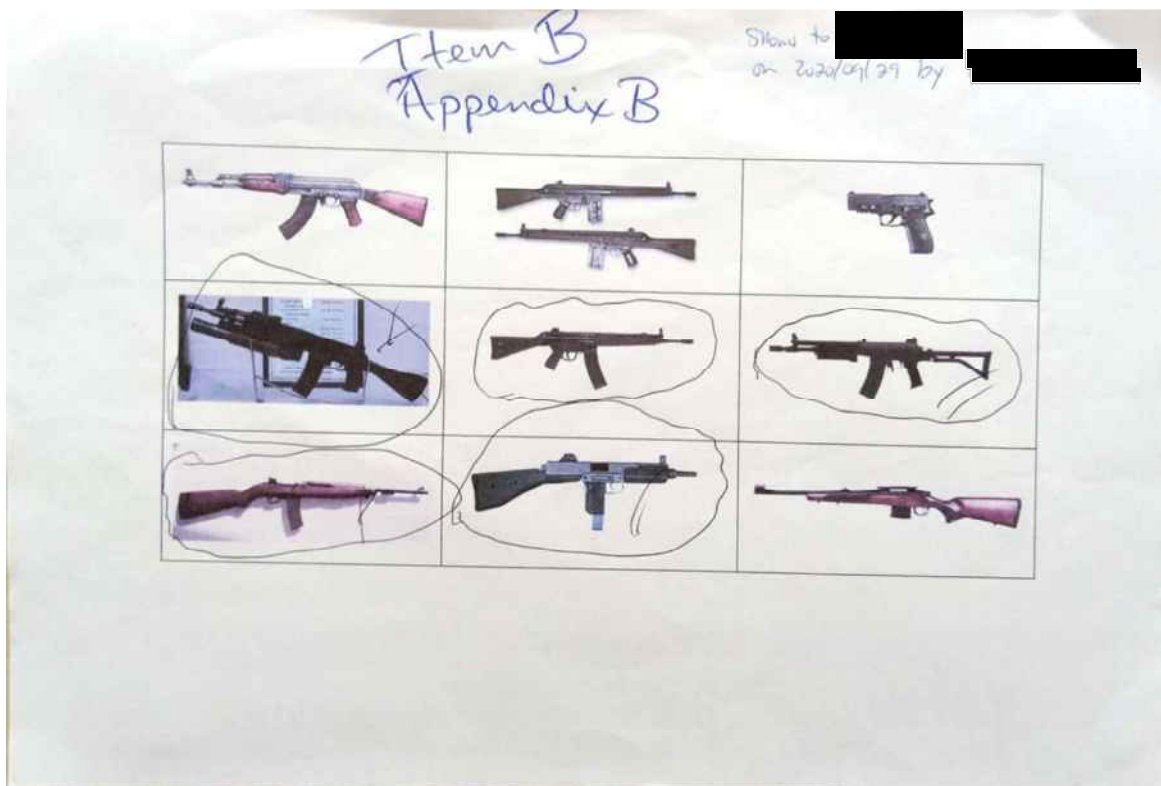
Date: October 5, 2020

Location: LAW office in Kutupalong, Bangladesh











Interpreter Certification

I, [REDACTED], certify that:

- a. I am qualified by Legal Action World Wide (LAW) to interpret from the Rohingya language into the English language and from the English language into the Rohingya language,
- b. I have been informed by [REDACTED] that he speaks and understands the Rohingya language,
- c. I have orally translated the above statement from the English language to the Rohingya language in the presence of [REDACTED] who affirmed that he heard and understood my oral translation of this statement,
- d. [REDACTED] has acknowledged that the facts and matters set out in his statement, as translated by me, are true to the best of his knowledge and recollection and has accordingly signed his signatures and initials as indicated.

Signature of Interpreter: [REDACTED]

Name of Interpreter: [REDACTED]

Date: 12th Oct 2020

Location: Cox's Bazar , Bangladesh

Annex 363

Annex not reproduced

Annex 364

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Annex 367

Witness Statement No. 029, signed on 8 October 2020 (with exhibits)

WITNESS STATEMENT PROVIDED FOR THE PURPOSE OF HEARING IN THE
CASE

THE GAMBIA V MYANMAR

AT THE INTERNATIONAL COURT OF JUSTICE

Name: [REDACTED] Gender: Female
 ID Number: [REDACTED] Father's Name: [REDACTED]
 Place of Birth: Shaif Bazer, Maungdaw Mother's Name: [REDACTED]
 Date of Birth/Age: 24 years old Marital Status: Married
 Nationality: Rohingya Spouse's name: [REDACTED]
 Number of Children: 4
 [REDACTED] 2 yrs, boy
 [REDACTED] 3 ½ months, boy
 [REDACTED] died at birth
 [REDACTED] 1 year 4 months, girl
 Current Place of Residence: Kutupalong Camp,
 Camp [REDACTED] Block
 Date of entry into Bangladesh: 25th, not sure what month, 3 years ago

Ethnic origin : Rohingya
 Religion : Islam
 Village : Tula Toli
 Village tract:
 Township: Maungdaw
 Language(s) spoken: Rohingya
 Language(s) written (if different from spoken): Can write my name in Burmese, but don't
 understand any Burmese words
 Language(s) used in interview: English and Rohingya
 Language of statement: English
 Proposed language of testimony: Rohingya

Current occupation: None

Former occupation: [REDACTED]

Location of Interview: LAW Office, Kutupalong, Bangladesh

Date(s) of interview: 2020-10-08

Start of Interview: 10:38 AM Bangladesh time

End of Interview: 1:16 PM Bangladesh time

Name of individual conducting the interview:

1. [REDACTED] RCMP Investigator
-

Names of all persons present during interview:

1. [REDACTED] Witness
 2. [REDACTED] RCMP Investigator and Monitor
 3. [REDACTED] Interpreter
-

WITNESS STATEMENT OF [REDACTED]

Introduction

1. I, [REDACTED] have been asked to provide this witness statement in relation to the International Court of Justice (ICJ) case between The Gambia and Myanmar. It has been explained to me that the organization called Legal Action Worldwide (LAW) is conducting an investigation and gathering evidence in support to the case of genocide of the Rohingya brought forth by The Gambia.
2. I understand that this statement may be used in legal proceedings before the ICJ, at which time it may become a public document. I do not have any family members, close contacts, or friends remaining in Myanmar who may be put at risk by the use of this statement. I am willing to testify in court if necessary.

3. I understand that this statement is given voluntarily. I have not received any money or other compensation, nor have I been promised anything in return for this statement. I have not been threatened with respect to my participation in this interview or in any communication with the investigators assisting LAW.
4. I have only participated in interviews regarding my personal experience in Myanmar upon arriving in Bangladesh but I don't remember the names of the agencies or individuals. I spoke with writers, but I don't remember names or how many times we met. I also met with CCDB who built the bathrooms in the camp.
5. Other people, like CCDB, have published things about my story on social media accounts but I have not published anything online regarding my personal experience in Myanmar.

Background, Education, Occupation

6. I lived in a house in Tula Toli with my husband, [REDACTED] and 1-year old girl, [REDACTED] at the time of the attack on my village.
7. The Chairman was Rakhine. His name was Aung Kyaw Sing.
8. Kun Para, the Rakhine village, has the military posts. In the Rakhine village, the BGP were there.

The Attack on Tula Toli

9. It was a Wednesday the day of the attack, four villages were attacked: Sor Para, Middle Village, North Village, and Kun Para. I was at home when they started setting fires to the houses in the North village and left my house at that point. My house was a little bit further to the beach, than this office to [REDACTED] [160 m [REDACTED] [REDACTED].
10. At 08:00 am, military and BGP surrounded the whole village. From Kun Para, the military are coming firing and shooting, also the BGP are coming from the Rakhine

village. The BGP are dressed like the military but their uniforms are grey and that's how I can tell them apart from the military. There were Rakhine people with them as well. They were also burning the houses. The Kui people were with them. When they started burning the houses, all of the people from the village went to the beach.

11. I knew they were military because they dress in green. *[Witness points to brown on color chart and describes the military as being dressed in a darker color than that brown.]* They have a flower, like a star, on their sleeve. They also have "99". It is on one side. *[Witness points to the star badge bottom left corner of page. Annex A] [Witness points to the top right badge (99) on the badge chart. Annex B].* They carry a gun and there is some stuff on their waist, where they carry knives. The gun is long and hangs over the shoulder. The military wears a hat, I don't know whether their hats were hard and soft because I did not touch them. The Rakhine were with the military. I knew they were Rakhine and Kui are different. Rakhine are in our village so we are used to seeing them in our village. They also have the swords, knives and sticks. I recognized the Rakhine from the village which is close to my house. As villagers, we know the difference between military and Rakhine and the differences in how they dress. Long gi and t-shirts are worn by the Rakhine. The sword is longer than the knife. The top of the sword is sharp about 2 fingers wide. Kui were wearing pants. They were also with the military and the Rakhine.
12. With the villagers, I was on the beach with my family. Some men and some women were hiding with me on the beach where it was sandy, so we were not hit by bullets. I was with my sister-in-law, mother-in-law and a lot of other villagers from Sor Para, minimum 500 people.
13. On the west side, there is Waikon. Those who were trying to cross the river were being killed by being shot by the military. From the sandy place where people were hiding, I could see that the military were slashing men with the short knives that they carry. The military were also shooting them with their guns. The military was shooting and many people were dying; men, women and children. There were many military there but I did not count how many.

14. There were 400 military who were coming from Kun Para. I heard this number from the men. On Tuesday, the day before the attack on Tula Toli, they attacked another village and I heard from the men that there were 400 military involved. If we had known we would die, we would not have stayed. But our Chairman told us to stay in our village.
15. The military asked use to move to the water, sometime in the afternoon. There was a pool with some water up to my waist where some women, men and children were told to go. I saw the military very closely when I was there in the pool of water. There was killing going on at that time. My small child was crying. There were also some men in the water. We were all together. My husband was not there with me, but I saw my father-in-law, sister-in-law and mother-in-law there with me.
16. Those who were dead were left on the ground and were covered with black clothes, which the villagers had brought with them. The Rakhine villagers and the Kui dug three graves on the beach and they were also the ones who put the dead bodies into the graves. From the water where I was sitting to the graves is about the same distance as this office to the Kutupalong road where the cars are. I saw the graves closely when they took me to the house in the village. They were roughly the size of this room.
[Approximate size of room 12' x 15']
17. After digging the grave, one red helicopter came from above. This was in the afternoon sometime. The helicopter dropped one large bag without landing at Lun Thi (BGP) post. I am unsure what was in the bag. It was far away, from about this office to the Kutupalong camp. I was still in the water at this time.
18. Also during this time, I saw Rakhine and Kui putting the dead bodies into the grave. After putting bodies in the grave, they put clothes from the villagers on top, then they put gas and the military lit the fire, which caused an explosion. Military and Lun Thi were killing people and putting the dead bodies in the grave.
19. The military started taking groups of 5-7 young women from the water and I was unsure why or where they were taking them. They were also taking mothers with

small children. The older teenage children were being killed on the beach, some were slashed and others were shot.

20. At sunset, they were taking me to the house, I was in the last group with my mother-in-law [REDACTED] (40-45), my sister-in-law [REDACTED] (18), my sister-in-law [REDACTED] (16), another boy, [REDACTED] who is my brother-in-law (10), [REDACTED] who is my brother-in-law (7), [REDACTED] who was brother-in-law (5), and finally, my daughter [REDACTED] who died when they threw her into the grave while she was still alive. Before the military took my group to the house, I had my daughter [REDACTED] with me who I was covering under my scarf. The military noticed and took her and threw her in one of the three graves. When I tried to take her back from the military, they used a tool used in rice paddies to beat me on my back side.
21. I did not understand why the 7 military were taking me to the village. They took us to one poor man's house, in Sor Para which is near the river. His house was not built strong which is why I was later able to escape. When I entered the house, I saw dead bodies there and women who were not clothed.
22. They took us to the kitchen part of the house which is separate from the main house. There were no bodies in that part of the house. The military took us into the poor man's house, but the Kui or Rakhine people were already in the house when we arrived. There were about 7 of them. I saw that they had knives, like swords, which are used to cut meat. The military did not come into the house with us. The Kui or Rakhine told us to sit, then they hit me in the head, after that I don't remember anything. I had two lakh and 50,000 Burmese kyat with me, as well as three ticals of gold jewellery including a chain, bracelets, earrings, nose ring, and ring. I had put this jewellery and hid it my bra along with the money.
23. After I became senseless, they set fire to the house. When the fire reached my hands, I woke up. My skin was burned on my foot, my right hand and my face. Many of the scars have disappeared with time. I have a scar on my head from when they hit me in the head.

24. The walls of the poor man's house were made of bamboo so they had become weak with the fire. I don't know if I was raped. My mother-in-law was there and I touched her leg but she was silent. When the straw roof was falling down, I saw my sister-in-law was leaving but I did not know where she was going. I followed her outside. We hid in the grass which was above my head. It was raining a little bit at that time. I found another woman who was my neighbour [REDACTED] We realized that we did not have clothes on and my money and gold was all gone. I could feel bruising on my arm and pain in my back side. I could not drink cold water because my teeth hurt.

25. In that grass, I found a box which had one long gi and one man's t-shirt. My sister-in-law was strong, but I had become weak because of my blood pressure. My sister-in-law tore the long gi into two pieces, and we each took one to cover ourselves.

The aftermath of the attack

26. Then we left the village and headed south. We crossed a road into people's houses on the east side and then crossed the river. There was another woman with us, she had been stabbed in the lower abdomen, there was a lot of mud and she got stuck there. She was unable to continue to walk with us. At that point it had become night-time and it was very dark. I was still with my sister-in-law. We crossed the river into Waikon, it took about 3 or 4 tries. I went to my sister-in-law's father-in-law's house. There was nobody there except the dogs and cows. Their house is a little bit higher. We did not sleep the whole night but we spent the night there.

27. On Thursday morning, I heard one person talking saying that they could not find their family. Two dogs came barking, and that's when the man saw us. He gave us some clothes, because we were not properly dressed. This man provided us with proper female clothing. That man asked whether we needed any food. We had not eaten anything. I realized my teeth were loose so I could not eat. That man offered us rice but we asked the man to bring us wherever he was going. He went outside to look for his family but he did not find them, so we started our journey to Bangladesh with the man, through Sadulla Sor, and Iusor. He helped us crossed two rivers.

28. We crossed the river again at Halenga Sor where there was a big tree. We sat under the shade of the big tree in the afternoon time. Then the man who brought us said take a rest here. There were a lot of people from Boli Bazar there and I saw one man who asked where I was going. He asked me whether I had any family and he took a picture to post online to see if other family members might see it. One of my uncles found that picture on Facebook. My uncle called the man who posted it. My uncle also called my husband and asked him to meet me in Halenga Sor. My husband was in Mui Kong and came to Halenga Sor with my husband's cousin brother. They arrived later that night at about 2:00 am. The people in Halenga Sor took me to a pharmacy and there I received medical treatment immediately where they bandaged my head.

29. The journey from Halenga Sor to Bangladesh took us 1 day and we arrived on the Friday. Nobody from Myanmar tried to stop us from crossing into Bangladesh. There was military at the fence between Myanmar and Bangladesh but they were far away. Myself, my sister-in-law, my husband, husband's cousin brother hired two laborers to take us to Bangladesh which cost 10,000 Burmese kyat. Some people took us to MSF hospital in Kutupalong. I was admitted for 7 days in hospital. After 7 days, I went to camp in Kutupalong.

Restrictions

30. One year before they killed us, they took away our fences. BGP came randomly and took our cows, chickens, money and other things.

Victim Impact and Conclusion

31. Life at the camp is very difficult. We only get rations, and I have two children so my husband is busy taking care of my older child and I am busy looking after my small child. We are unable to work and earn money.

WITNESS ACKNOWLEDGMENT

This statement consisting of 9 pages and 2 annexes is true to the best of my knowledge and recollection. I have given this statement voluntarily and I have not been influenced by any coercion, duress or threat.

I am aware that this statement may be used in legal proceedings before the International Court of Justice (the "ICJ").

I have been informed by the interviewers about the procedures available at the ICJ to ensure protection of confidential information provided to the Court. I have also been briefed about the procedures that may be available to ensure my own protection and security.

Print name:

Signed:

Date:

08/10/2020

Location:

LAW office, Kutupalong, Ukhiya,
Cox's Bazar, Bangladesh

20/10/08
Lineup shown to [redacted] Date/time shown: 12:10 Name of interviewer: [redacted]

Annex 'A'

Lineup shown to [REDACTED]

Date/time:

20/10/68
12.11

Name of interviewer: [REDACTED]



Annex "B"

Interpreter Certification

I, [REDACTED] certify that:

- a. I am qualified by Legal Action World Wide (LAW) to interpret from the Rohingya language into the English language and from the English language into the Rohingya language,
- b. I have been informed by [REDACTED] that he speaks and understands the Rohingya language,
- c. I have orally translated the above statement from the English language to the Rohingya language in the presence of [REDACTED] who affirmed that he heard and understood my oral translation of this statement,
- d. [REDACTED] has acknowledged that the facts and matters set out in his statement, as translated by me, are true to the best of his knowledge and recollection and has accordingly signed his signatures and initials as indicated.

Signature of Interpreter: [REDACTED]

Name of Interpreter: [REDACTED]

Date: 12/10/2020

Location: Cox's Bazar

Annex 368

Witness Statement No. 030, signed on 8 October 2020

WITNESS STATEMENT PROVIDED FOR THE PURPOSE OF HEARING IN THE
CASE

THE GAMBIA V MYANMAR

AT THE INTERNATIONAL COURT OF JUSTICE

Name: [REDACTED] Gender: Male
ID Number: [REDACTED] Father's Name: [REDACTED] (died 15 years ago)
Place of Birth: Tula Toli Mother's Name: [REDACTED] (died 10 years ago)
Date of Birth/Age: age 59 Marital Status: Married
Nationality: Burmese
Spouse's name: [REDACTED] (first wife; died in Myanmar in 2017); [REDACTED] (age 27; current wife)
Number of Children: 5 daughters, 4 sons, 5 grandchildren
Current Place of Residence: Balukhali [REDACTED] Camp [REDACTED]
Date of entry into Bangladesh [REDACTED] days before Qurban 2017

Ethnic origin: Rohingya
Religion: Islam
Village : Sor Para, Tula Toli
Village tract: Min Gyi
Township: Maungdaw
Language(s) spoken: Rohingya
Language(s) written (if different from spoken): n/a
Language(s) used in interview: English and Rohingya
Language of statement: English
Proposed language of testimony: Rohingya

Current occupation: Unemployed
Former occupation: farmer

Location of Interview: LAW Office, Kutupalong, Bangladesh

Date(s) of interview: October 4, 2020

Start of Interview: 9:52 AM Bangladesh time

End of Interview: 13:21 PM Bangladesh time

Name of individual conducting the interview:

1. [REDACTED] RCMP Investigator
-

Names of all persons present during interview:

1. [REDACTED] Witness
 2. [REDACTED] RCMP Investigator and Monitor
 3. [REDACTED] Interpreter
-

WITNESS STATEMENT OF [REDACTED]

Introduction

1. I, [REDACTED] have been asked to provide this witness statement in relation to the International Court of Justice (ICJ) case between The Gambia and Myanmar. It has been explained to me that the organization called Legal Action Worldwide (LAW) is conducting an investigation and gathering evidence in support to the case of genocide of the Rohingya brought forth by The Gambia.
2. I understand that this statement may be used in legal proceedings before the ICJ, at which time it may become a public document. I do not have any family members, close contacts, or friends remaining in Myanmar who may be put at risk by the use of this statement. I am willing to testify in court if necessary.
3. I understand that this statement is given voluntarily. I have not received any money or other compensation, nor have I been promised anything in return for this statement. I have not been threatened with respect to my participation in this interview or in any communication with the investigators assisting LAW.

4. In early days after arriving in Bangladesh, I was interviewed by a person from London, but I do not remember his name. I was also asked some questions by a person from Cambodia. I do not have any social media accounts and have not published anything online regarding my personal experience in Myanmar.

Background, Occupation and Education

5. I used to live in Sor Para, Tula Toli, along with my wife [REDACTED] (age 50). I had five daughters, four sons, and five grandchildren.
6. When I lived in Tula Toli, I was a farmer and cultivated rice and vegetables. Along with my four brothers, I owned 200 kanis of land in total. I am now unemployed in the refugee camp.
7. There is a Rakhine village west of Tula Toli called Min Gyi. I know some of the Rakhine by face, but I do not know their names. The Chairman of the village is Aung Kyaw Sin.
8. I have never attended school.
9. I have never served in the military or the police. I have never used a firearm.
10. I have never participated in the activities nor have knowledge about the Arakan Rohingya Salvation Army (ARSA).

Attacks on the Neighbouring Villages

11. I do not know the exact date, but I believe it was on a Tuesday, when the village of Waikong was attacked by the military. This would have been a few days before Qurban, as I remember arriving in Bangladesh four days before Qurban. The attack happened at around 10:00 o'clock in the morning, between the "fajr" and the "dhurh" prayers. It was rainy season just like it is now. We had finished planting the rice and it had started growing.

12. I was in my house compound at the time. Waikong is visible from there as it is right across the river from Tula Toli. I could see houses burning and I heard some firing. I could see the militaries were divided in three groups approaching Waikong on foot from different directions. Each group had about 50 militaries. It appeared like they were firing randomly. I do not know if anyone got hit as I was not close enough to see this.
13. I say these were militaries because they were wearing uniforms which are the color of coconut tree leaves. They were wearing hats made of cloth that were the same color as their uniform *[witness described with his hands a hat with a rounded crown, with a visor projecting from the front, such as a baseball cap]*. They were carrying guns made of metal that are about 2-3 feet long. When they were burning the houses, I do not know the weapons that they were using, but it was held in their hands. When they would fire the weapon, there was smoke at the end, and the houses would light up on fire. Some people called them launchers. I could not tell you more as I was not able to get close to them.
14. At around 12:00 o'clock in the afternoon, the militaries continued their way towards the next village, Dyal Toli, where the same thing happened. I saw houses on fire and I heard the sound of firing.
15. At around 2:00-2:30 in the afternoon, the militaries continued towards Lobboi. This village is further from Tula Toli and I did not see as much there. But I believe that they also burned some houses there as I saw black smoke coming straight up in the sky from that area.
16. Around the time of the "asr" prayer, my brother [REDACTED] attended a meeting with our Chairman, Aung Kyaw Sin. My brother was part of a group of about 10-15 Rohingya villagers that would assist him. They all had phones and could disseminate messages to other villagers on his behalf. My brother had a big house next to mine that was 2 storeys high and these meetings would often take place there.
17. I did not hear this myself but my brother later told me. During this meeting, the Chairman told those present that the military would be coming to Tula Toli the next

day at around 6:00-7:00 o'clock in the morning. The Chairman told them not to be afraid, that the military would burn a maximum of five houses, and that nobody would kill the villagers.

18. After the attack on Tuesday, several people from the surrounding villages left their homes. They went to different places, with some people crossing the river and coming to Tula Toli as we had not been attacked. I did not count how many people came to Tula Toli.

Attack on Tula Toli

19. The next day, which would have been a Wednesday, the military came to our village as the Chairman had said. I did not see the Chairman on that day. It would have been between 6:00-8:00 o'clock in the morning, but I did not have a watch and cannot say the exact time. They were coming on foot from the north, from the direction of Kui Para.
20. The militaries were wearing their leaf color uniform. I cannot tell you how many militaries there were in total because I never saw them all together on that day; some were on the beach and some were going through the village. They were wearing hats of the same color; some of the hats were of the same type described earlier, which others had cloth hat with a visor that went all around. They had boots and backpacks of the same color. In fact, most of their things is the same leaf color. They had white stickers on their shoulders, but I did not see this very well. It looked like a flower. They spoke Burmese, but I don't understand Burmese. I did not know any of them. I heard that some Rakhines were also there when they entered the village but I did not see that.
21. When the militaries first entered Tula Toli, they came through the mountains in Mura Para. They were burning houses in Mura Para, which are made of bamboo and dry grass, just like other houses in Tula Toli. I was at home at the time and it was decided that we should all head over to the beach, which is on the east side of the village. The following people were with me: my wife [REDACTED] my son [REDACTED] (age 30); my daughter [REDACTED] (age 18); my son [REDACTED] (age 14); my son [REDACTED]

(age 12); my son [REDACTED] (age 10); my youngest daughter [REDACTED] (age 8); my daughter-in-law [REDACTED] (age 25); my granddaughter [REDACTED] (age 3); my grandson [REDACTED] (age 1); my son-in-law [REDACTED] (age 28); my daughter-in-law [REDACTED] (age 25); my granddaughter [REDACTED] (age 4); my grandson [REDACTED] (age 2.5); and another granddaughter (age less than 2 months old). My youngest granddaughter had just been born and was not even given a name yet. All fifteen members of my family died on this day; I am the only survivor. The only photo I have left is one of my son [REDACTED].
[witness provided a copy of this photo – See Annex A].

22. On the beach, I estimate that there were about 1600-1700 people. This area of the beach is called Hawrotaua Kum. The group of people stretched for a distance equivalent from the LAW office to the Kutapalong Bazar *[this distance was measured to be approximately 160 metres]*. We were soon surrounded by the militaries. On three sides was the river, and on the other side were the militaries and the Rakhine village to the west. There were about fifteen militaries on the beach at the time. Other militaries were still burning houses. Our initial plan was to go to the beach and cross the river into Waikong, but the military did not let anyone cross the river. The villagers were so afraid that they just sat there on the beach.
23. That is when the militaries started killing some of the men one-by-one. I saw the following people being shot around me: my son [REDACTED]; Soyed Akber (age 60-70); Nurul Salam (age 40); and Rokim Ullah (age 20-22). When I saw the men being killed, I pretended that I was also dead. At one point, I saw that the military doing the killing around me was walking a little farther from me. I took my courage in both hands and told myself that I did not want to die like this. I ran towards the river and jumped in. They fired at me but luckily I did not get hit and was not injured.
24. Once I crossed the river on the Waikong side, I took cover behind a mango tree; I was holding the tree and I was shaking. I was alone where I was hiding and could still have a clear view of the location where the events were unfolding. Some other people had done the same as me and jumped into the river. Some got shot and some managed to escape. The river was high on that day which made the crossing difficult.

25. As I watched from the other side, I saw one military making a phone call. I do not know if he was calling the Chairman or his senior officer. After the phone call, the killing continued. I did not see my family members being specifically killed. But I saw some teenagers and children being cut in a slicing motion by the military with long arm's length knives. Some of the smaller babies that still drank milk from their mothers were thrown in the river alive; they floated on the water just like bamboo. As for the women, they had been separated and were sitting in holes on the beach where there is water. They did not do anything to them right away.
26. At around 10:00 o'clock in the morning, I saw a helicopter landing in the Rakhine village west of Tula Toli. It was a red and white in color, but I could not see any markings. It came from the south side. I saw that something was taken out, but I cannot say what it was because of the distance. I have never seen a helicopter up close so it would be difficult for me to estimate its size and capacity.
27. I also saw what I believe to be Rakhine and Kui people dig four big holes on the beach. The Rakhine and Kui were also wearing military uniforms. But the fact that these people were not carrying weapons and were cutting people, makes me think that they were Rakhine and Kui. There would have been about 10 of them in total. The holes were dug with hoes and the dimensions were equivalent to the size of the interview room *[the room was measured to be approximately 12 feet by 15 feet]*. I do not know how deep they were. Because it was sand, it did not take very long. I would say it took fifteen minutes per hole. The dead bodies were then collected and dragged into the holes. Some bodies were cut in two by the people with no guns before they were placed into the holes. Some clothes that the villagers had been carrying were also placed on top before it was lit on fire. I believe that petrol was used because the fire was burning a lot and it burned for a long time.
28. At around 2:00 o'clock in the afternoon, the military selected women from the water holes. Two groups of 5-7 women were first taken inside houses. I do not know what happened inside. After 10-15 minutes, the houses were burned. Another two groups of

5-7 women were then taken inside other houses, and those houses were also burned afterwards. From where I was hiding, I could tell of six houses in Sor Para where the women were taken: Gura Mia's house; Mohammed Ali's house; Mohammed Hussein's house; Ali Ahmed's house; Soyed Ahmed's house; and Abdul Malek's. There were other houses too. There was nothing between me and the houses; I could see this clearly but did not hear anything. I am aware that my brother's daughter [REDACTED] (age 20) survived from one those houses. When the house was burning, she managed to wake up and escape. [REDACTED]'s mouth was broken. Her child died inside the house.

29. I would estimate that the main events happened from 8:00 o'clock in the morning until 2:00 o'clock in the afternoon. As far as I know, only Rohingya people were targeted on that day. I am not aware of the military attacking the Rakhine village in Tula Toli or the Kui village in Lobboi.

Aftermath of the Attack

30. At around "asr" prayer or 4:00 o'clock in the afternoon, the militaries were still in Tula Toli and they were walking around. The houses in the village had been burned. I was shaking a lot at the time and I decided to leave the area. I travelled alone to Ayat Sor where I stayed one night and found some other people. I do not know these people as they were people from other villages. In the morning, I travelled with some people through Mori Kom, then Sil Khali, near the border with Bangladesh, where I stayed another night. I did not eat anything on my way there. I brought nothing with me; only the clothes I was wearing.
31. The next morning, there would have been around 500 people wanting to cross the river into Bangladesh. I did not have any money to pay the crossing on a small boat. But some other people paid for me. I heard they charged 5000 kyats per person. I arrived in Bangladesh four days before Qurban. I did not see any Myanmar authorities on my way to Bangladesh or at the border.

32. One of my daughter [REDACTED] who lived in Mura Para, later told me that she was able to escape to the mountains on the day of the attack, and then make her own way to Bangladesh. She told me that she was fired at by Burmese militaries once she got to the border.

Victim Impact and Conclusion

33. The situation in the camp is very difficult. I cannot afford a battery or solar panel and my house is very dark. I have to use a torch light.
34. I lost everything that day. I have since re-married, but when I think of the family members I lost, I become sad and it makes me sick. When I left Tula Toli, I did not even close the door or the gate of my house.
35. These crises are happening over and over again. If we go back now, they will kill us again. This also happened in 1978 and in 1991.
36. Even if I make a complaint, nothing will bring back my family. But I still want justice. I want what is mine and I want to go back home; Bangladesh is not my home. My parents were born in Myanmar and I was also born there, but they still deny our citizenship. I want to go back as a citizen, and live there as a citizen.

WITNESS ACKNOWLEDGMENT

This statement consisting of 10 pages and one annex is true to the best of my knowledge and recollection. I have given this statement voluntarily and I have not been influenced by any coercion, duress or threat.

I am aware that this statement may be used in legal proceedings before the International Court of Justice (the "ICJ").

I have been informed by the interviewers about the procedures available at the ICJ to ensure protection of confidential information provided to the Court. I have also been briefed about the procedures that may be available to ensure my own protection and security.

I have been informed that I may be called to testify in public before the ICJ and am willing to testify in person.

Print name: [REDACTED]

Signed: [REDACTED]

Date: 2020-10-08

Location: LAW office, Kutupalong, Bangladesh

Interpreter Certification

I, [REDACTED], certify that:

- a. I am qualified by Legal Action World Wide (LAW) to interpret from the Rohingya language into the English language and from the English language into the Rohingya language,
- b. I have been informed by [REDACTED] that he speaks and understands the Rohingya language,
- c. I have orally translated the above statement from the English language to the Rohingya language in the presence of [REDACTED] who affirmed that he heard and understood my oral translation of this statement,
- d. [REDACTED] has acknowledged that the facts and matters set out in his statement, as translated by me, are true to the best of his knowledge and recollection and has accordingly signed his signatures and initials as indicated.

Signature of Interpreter: [REDACTED]

Name of Interpreter: [REDACTED]

Date: 12th Oct 2020

Location: Cox's Bazar , Bangladesh

Annex 369

Witness Statement No. 031, signed on 8 October 2020 (with exhibits)

WITNESS STATEMENT PROVIDED FOR THE PURPOSE OF HEARING IN THE
CASE

THE GAMBIA V MYANMAR

AT THE INTERNATIONAL COURT OF JUSTICE

Name: [REDACTED] Gender: Male
ID Number: [REDACTED] Father's Name: [REDACTED] (died when I was
a child)
Place of Birth: Tula Toli Mother's Name: [REDACTED] (died in 2017)
Date of Birth/Age: age 25 Marital Status: Married
Nationality: Myanmar
Spouse's name: [REDACTED] (age 18; died in 2017); [REDACTED] (age 18)
Number of Children: 1 (8-9 months old) / 1 year old girl killed in 2017
Current Place of Residence: Balukhali, Camp [REDACTED] Block [REDACTED]
Date of entry into Bangladesh: [REDACTED] 2017

Ethnic origin : Rohingya
Religion : Islam
Village : Tula Toli – Sor Para
Village tract: Min Gyi
Township: Maungdaw
Language(s) spoken: Rohingya
Language(s) written (if different from spoken):
Language(s) used in interview: English and Rohingya
Language of statement: English
Proposed language of testimony: Rohingya

Current occupation: Labourer

Former occupation: [REDACTED]

Location of Interview: LAW Office, Kutupalong, Bangladesh

Date of interview: September 27, 2020

Start of Interview: 10:12 AM Bangladesh time

End of Interview: 3:00 PM Bangladesh time

Name of individual conducting the interview:

1. [REDACTED] RCMP Investigator

Names of all persons present during interview:

1. [REDACTED] Witness
2. [REDACTED] RCMP Investigator and Monitor
3. [REDACTED] Interpreter

WITNESS STATEMENT OF [REDACTED]

Introduction

1. I, [REDACTED] have been asked to provide this witness statement in relation to the International Court of Justice (ICJ) case between The Gambia and Myanmar. It has been explained to me that the organization called Legal Action Worldwide (LAW) is conducting an investigation and gathering evidence in support to the case of genocide of the Rohingya brought forth by The Gambia
2. I understand that this statement may be used in legal proceedings before the ICJ, at which time it may become a public document. I do not have any family members, close contacts, or friends remaining in Myanmar who may be put at risk by the use of this statement. I am willing to testify in court if necessary.
3. I understand that this statement is given voluntarily. I have not received any money or other compensation, nor have I been promised anything in return for this statement. I have not been threatened with respect to my participation in this interview or in any communication with the investigators assisting LAW.

4. I have participated in interviews regarding my personal experience in Myanmar upon arriving in Bangladesh by foreigners, but I do not know who they were. We were not in a good mental state at that time. I have never been interviewed by the UN Fact Finding Mission, the International Criminal Court (ICC), or other such organizations.
5. I do not have any social media accounts and have not published anything online regarding my personal experience in Myanmar.

Background, Occupation and Education

6. I used to live in Sor Para, Tula Toli, along with my wife and child. There were approximately 380 houses in Tula Toli. I do not know how many people lived in Tula Toli. There was usually one family under one roof, so there would be a lot of people.
7. There were various paras within Tula Toli. The north side of Tula Toli was called Mura Para. The middle area of Tula Toli was Sor Para. The south side of Tula Toli was called Don Para. Across the river to the north east is Diyal Toli. Waikong is also across the river to the south east. Further to the north west is Lobboi, a Rakhine village, which was about 1-2 hours away on foot.
8. There is a Rakhine village to the west of Don Para. The Rakhine village has approximately 260 houses. There was a BGP post in the Rakhine village, with about 10-15 *Lun Htin* posted there. This post is about 5-6 bamboo lengths from Don Para. The uniform of the *Lun Htins* is solid navy. I do not know any of them and I have never been to the post.
9. The chairman of our village is a "maugh" called Aung Kyaw Sin. He had been the chairman for two years. The relationship with the chairman was good with some people and I never personally had any problem with him. However, I have heard from other that he used to come to our village and take our chickens. He also got angry immediately before the attack because people were not taking him seriously. The previous Chairman's nickname was Futunna.

10. Before seeking refuge in Bangladesh, [REDACTED]
[REDACTED] I am now a labourer in the camp. I work in construction building things such as fences and roofs. I never attended school.
11. I never served in the military or the police. I never used a gun.
12. I have never seen members of the Arakan Rohingya Salvation Army (ARSA). They are like us and I cannot differentiate them. I am not aware of any ARSA members being in Tula Toli before the attack.

Meeting with the chairman

13. There were two meetings with the chairman before the attack on Tula Toli. One took place three days before the attack, and the other one was one day before the attack. On both occasions, the meetings took place in Sor Para at the house of Kabuitta also known as Nuru Salam, who was one of the Rohingya assistant to the chairman. Kabuitta is no longer alive; he died during the attack. I remember that [REDACTED] was there with me during the meetings.
14. During these meetings, we were told by the Chairman that they would not kill us and that nothing would happen. He told us to stay inside our houses. He also told us if other villagers came to our village, not to keep them because if we did, we will face violence and they will kill all of us. We did not take him very seriously and did not trust him.

Attacks on the Neighbouring Villages

15. One day before the attack on Tula Toli, I saw militaries arriving in a vehicle in Diyal Toli. I was in Sor Para at the time and came closer to the river to see better what was happening. The vehicle had four wheels and was light blue in color [witness pointed to light blue on color chart]. It looked like a vehicle that I have seen here before carrying soil and sand. I did not see any other markings on it. I heard from others that the military was from Boli Bazar. The militaries were throwing something by hand from their

vehicle on the main road, which would then explode and burn houses. I am not aware of anyone being killed in Dyal Toli that day.

16. All of the villagers from Dyal Toli came to our village that evening. They did not have a place to stay and asked us if they could stay in Tula Toli for one night. They told us that they would go elsewhere in the morning, towards Lobboi and then Bangladesh.

Attack on Tula Toli

17. I don't remember the exact date, but I think it was two days before Qurban, on what I believe was a Tuesday. I attended morning prayer on that day and then went home in Sor Para to have something to eat. I was home when the attack started at 7:00 o'clock in the morning. I had a watch at the time, but later lost it while I was running. My brother who was with me had a mobile phone. The following people were at home with me: my wife [REDACTED] (age 18) and my daughter [REDACTED] (age 1), my mother [REDACTED] (age 70), my oldest brother [REDACTED] (age 50) and his wife [REDACTED] (age 25); and my brother [REDACTED] (age 30) and his wife [REDACTED] (age 20). All of my family members were later killed during the attack. [REDACTED] had ten children of which only three survived the attack, one being my nephew [REDACTED] who was 2 ½ years old. My brother [REDACTED] had eight children of which only one son, 11 years old [REDACTED] survived the attack.
18. I saw approximately 100 militaries arriving from the north side, from the direction of Lobboi. The color of the military uniform is two tone, white and purple *[as indicated on the color chart]*. The militaries were carrying different sizes of guns and other weapons. They had pistols, which are short and fired with one hand, and kept on their belt. They also had long guns which are carried in their hands or held on their shoulder. I was shown a chart containing pictures of various weapons and circled those which look similar to the ones I saw that day being used by the military *[See Annex A]*. Finally, they had knives and something small that they would throw by hand, which would explode and make smoke. They were carrying bags on their back. I did not know any of the

militaries. I also heard from others that the BGP attacked people in the south village, but I did not see that.

19. Accompanying the military were 20-40 Kui, Samma, and Murong people. They were not wearing uniforms like the militaries. They were wearing half pants and some of them covered their faces with cloth. The Murong were wearing a white cloth wrapped around their head. I could not recognize the ones with their faces covered but I recognized some of the others because they used to come to our village before this conflict started. I know them by face, but I do not know their names. Some of them were from Lobboi and others from Dyal Toli. They were carrying knives and also handmade guns made of the wood from the shagum tree that only fires two shots. I believe that the chairman also brought them more guns at a later time.
20. When the military, Kui, Samma, and Murong attacked Tula Toli, my family members and I were worried and we ran from Sor Para towards the shore. People from Dyal Toli who had escaped as a result of the attack on their village the day before were also on the shore with us.
21. When the militaries arrived on the shore, they came from the north and the south and they surrounded us. The Kui, Samma, and Murong people were also with the military on the shore. I was at a distance of about 100 metres from them at that time *[witness mentioned the equivalent of the distance between the LAW office and the building across from the paddy field in the front of the LAW office]*. We could not go anywhere at the time as the militaries were surrounding us one side and the other side was the river. All of the villagers sat together on the sand. The militaries did not say anything to us. They collected other people from the village and brought them to the shore. There were approximately 2000 villagers on the sand with us.
22. After we had been on the shore for approximately five minutes, the killing started. There was a lot of firing and I did not keep my eyes open all the time. I was in a prone position with my face in the ground *[witness demonstrated position on video]*. But I would put up my head from time to time to see what was happening. I saw several men being

shot and killed around me. My cousin [REDACTED] (age 40) was shot and his head got separated. My uncle [REDACTED] (age 35) was holding his child to his chest and was prone forward; he was shot in the back and both of them were killed. Those that survived the shooting had their necks cut. My auntie's husband [REDACTED] (age 50) was beaten with a stick and a Murong with a white cloth around his head then cut his neck. I saw other people being killed around me but I do not remember their names.

23. During the killing, I pretended that I was dead and this is why I believed that I survived. I was covered in blood from the others and I was wearing only short pants at the time. Because I thought they were only targeting men at that time, I decided that I needed to escape. When I saw that no one was looking, I ran and jumped in the river, and the rest of my family remained on the shore. The military started shooting at me and I got shot in my right forearm. The bullet did not go through my arm, but instead just slipped off *[witness showed scar and a picture was taken – Annex B]*. I later received treatment for this injury from a local doctor in Balukhali camp. When I was hit, I fell in the river. Because the militaries were firing I did not come out of the water right away, and stayed there for about half an hour. I then completed the crossing. I went in the mountains in Waikong and watched from a hill. I would estimate that the distance between my position and where the events were unfolding was about two minutes walking distance, if there were no river in between. There were other people with me from Waikong but I do not remember their names.
24. I could not tell my child apart from the others, but I saw baby girls being thrown in the water by the militaries. As for the baby boys, they gave them much pain. The militaries would each take one leg and pull them apart, killing the boys in that manner. I saw 2-3 babies killed like that. Some other children were sliced. It was unbearable to watch and I had to look away from what was happening to those children. My mental state was not good at that time.
25. I also saw the women on the shore being separated by the military into three groups: young women, women with children, and old women. I was not far so I could tell who was young and who was older. The women with children were taken into houses in

Sor Para in groups of 5-6 women. Some of the old women were also taken into houses. I did not see what happened inside the houses but I heard some screams. Old women that could not walk were beaten with sticks and killed by the military. I do not know what happened to the group of young women. I also cannot say what happened to my wife or mother; it was raining at the time and I did not see this very clearly.

26. Around the same time, some other survivors were digging a hole on the shore. I recognized my brother [REDACTED] as one of them. Two other people were also digging the hole with him. The hole was about 12 feet x 15 feet *[witness mentioned the equivalent of the interview room, which was measured to be approximately 12' x 15']*. The depth of the hole was about waist high. The digging lasted from approximately 12:00 o'clock to 2:00 o'clock in the afternoon. The bodies were then carried by the diggers. My brother was subsequently shot and killed, while the other two diggers were killed with hoes. The bodies of the diggers were put in the hole by the Murong and Samma along with the other victims. Other bodies were just buried in the sand. I do not know what happened to my other brother.
27. At one point, I saw an helicopter land in the Rakhine village west of Tula Toli. It was full red *[as indicated on the color chart]* and I did not see any insignia or markings on it. I did not see what it did there and I did not see it take off. I believe the helicopter brought additional weapons and militaries. I say this because I saw other militaries arriving from the south side after I observed the helicopter land in the Rakhine village.
28. I subsequently saw one military take out a bottle from his bag, similar to a one litre bottle of water. This was poured over the dead bodies in the hole along with grass. Several other militaries were there at that time. The dead bodies were then lit on fire with a lighter. I became senseless when this happened. Some people in Waikong had to put water in face for me to regain my senses.
29. I did not see the Chairman Aung Kyaw Sin that day but I heard from others that he is the one that gave the order to attack us on that day. [REDACTED] and [REDACTED]

told me that they saw him after the killing. The Rakhine village west of Tula Toli was not attacked on that day.

30. I left the area around the time of the "maghrib" prayer. The sun was going down. Everyone else was leaving so I decided that I should leave too. The following are people that also survived the attack on the shore: [REDACTED] [REDACTED] and his brother [REDACTED], [REDACTED], [REDACTED] and [REDACTED]
31. I am not sure how many people died on that day.
32. I have been shown a map of Tula Toli (*Annex C*) and I was able to identify approximately the following locations:
 - #1 is Waikong;
 - #2 is Diyual Toli;
 - #3 is Don Para or South village;
 - #4 is Sor Para or Beach village;
 - #5 is Mura Para or North village;
 - #6 is the Rakhine village of Tula Toli;
 - #7 is the location of the hole where the bodies were burned; and
 - #8 is the direction where I swam across the river and where I hid.

Aftermath of the Attack

33. From Waikong, I travelled alone on foot to Ayat Sor, where I eventually met my in-laws. They then took me to some relatives in Mori Kom, another Muslim village, where I was able to get some food and water. I stayed there for one night. A doctor in Mori Kom looked at the injury to my right arm. Mori Kom is about 3-4 hours walking distance to the south of Tula Toli, on the west side of the river.
34. The next day, I went back to Tula Toli with my cousin [REDACTED] who was also from Tula Toli and was the only one who survived from his family. We went back to see if we could find other survivors. We watched across the river from a paddy field in

Waikong. Tula Toli was completely burned down. I could see a small white tent on the shore. There was a light on the tent. There were 5-6 militaries walking around, holding weapons, and guarding the grave. I also saw Murong and Kui carrying around household material, like furniture. I do not know what they were burning but I saw fire in several places on the shore, and I saw smoke from the place where they had burned the bodies. I could not see any dead bodies. We did not find any survivors.

35. After the "asr" prayer, we travelled very far to Sil Khali, on the border with Bangladesh. [REDACTED] was still with me. We then crossed the river on a "naw" boat and arrived in Bangladesh after "isha" prayer. I did not see any government authorities on the way to Bangladesh and nobody tried to stop us from crossing.

Victim Impact and Conclusion

36. With the blessing of Allah, I am not facing any difficulties in camp, and I am thankful that we have a place here.
37. I always think about the events and I get sick thinking about it. I have since re-married, but I always think of family, I see them in my dreams and I miss them very much. In addition to losing my family members, I also lost my land, goats, and cows.
38. I earn some money in the camp as a labourer but sometimes I am too sick to work and need to take medication. I then have to borrow money and repay later.
39. I feel very sad after speaking to you today. There is no cure for the sadness that I have, but if Allah finds a cure, I will be alright. I now hope for justice and I wish that we could go back home.

WITNESS ACKNOWLEDGMENT

This statement consisting of 11 pages and three annexes are true to the best of my knowledge and recollection. I have given this statement voluntarily and I have not been influenced by any coercion, duress or threat.

I am aware that this statement may be used in legal proceedings before the International Court of Justice (the "ICJ").

I have been informed by the interviewers about the procedures available at the ICJ to ensure protection of confidential information provided to the Court. I have also been briefed about the procedures that may be available to ensure my own protection and security.

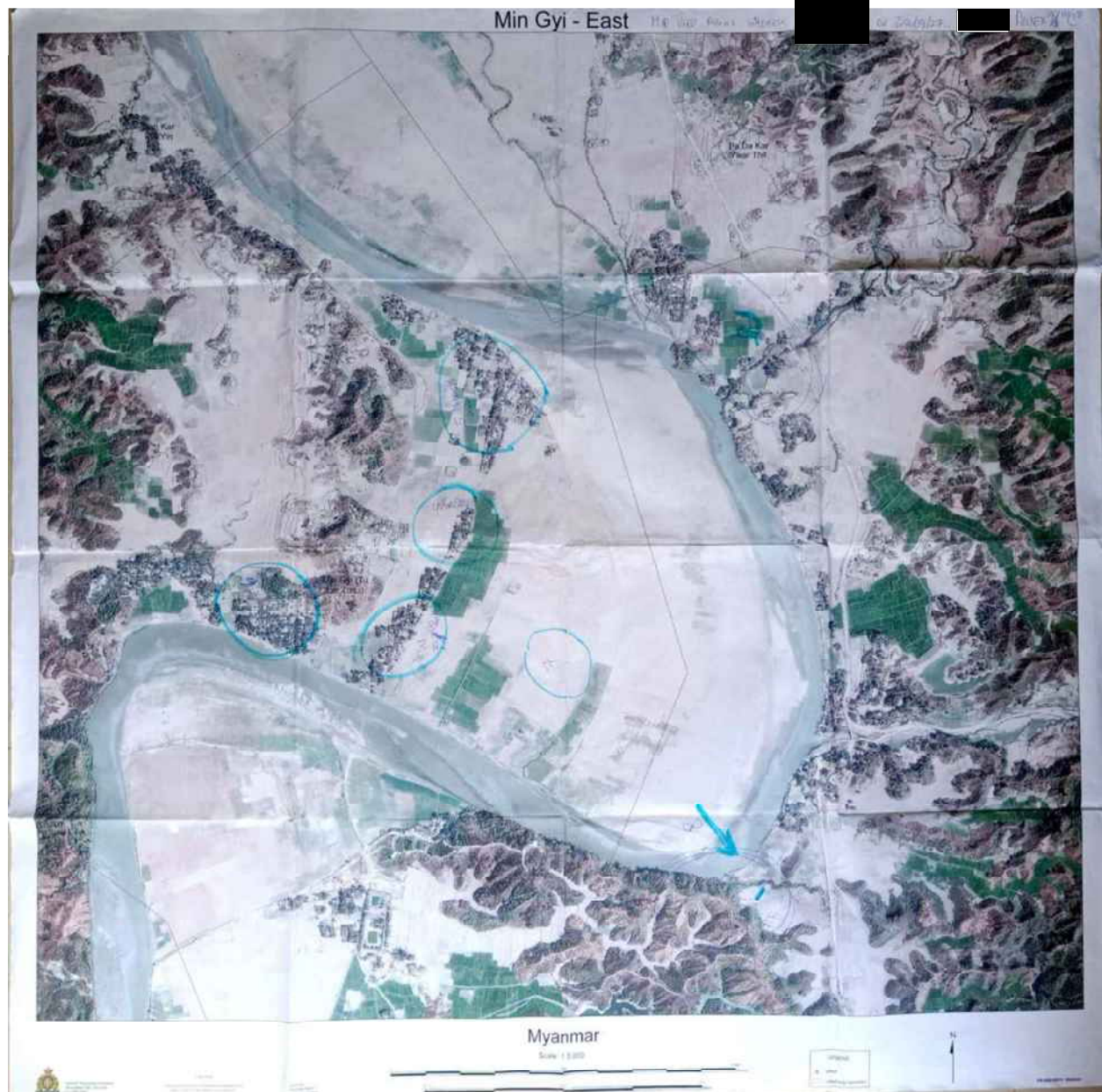
I have been informed that I may be called to testify in public before the ICJ.

Print name: [REDACTED]

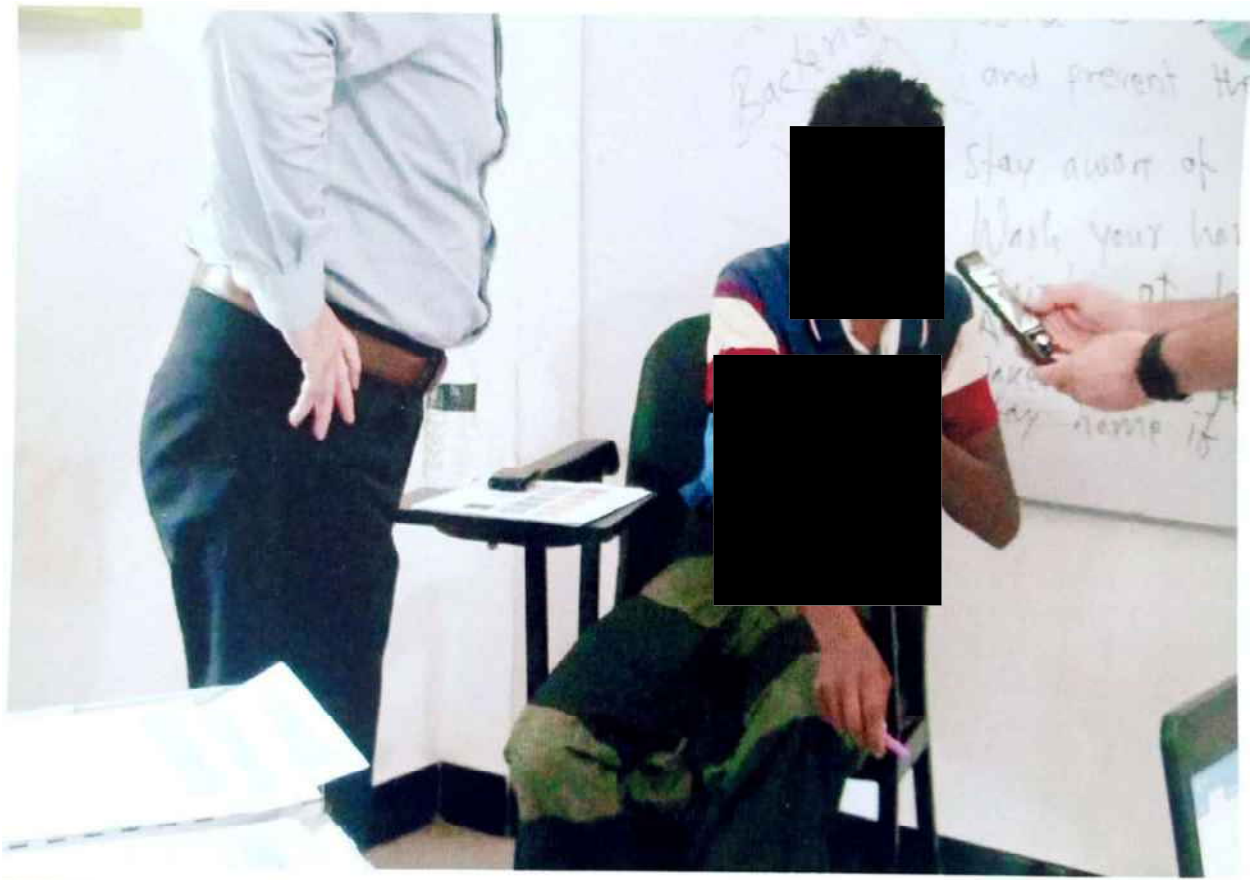
Signed: [REDACTED]

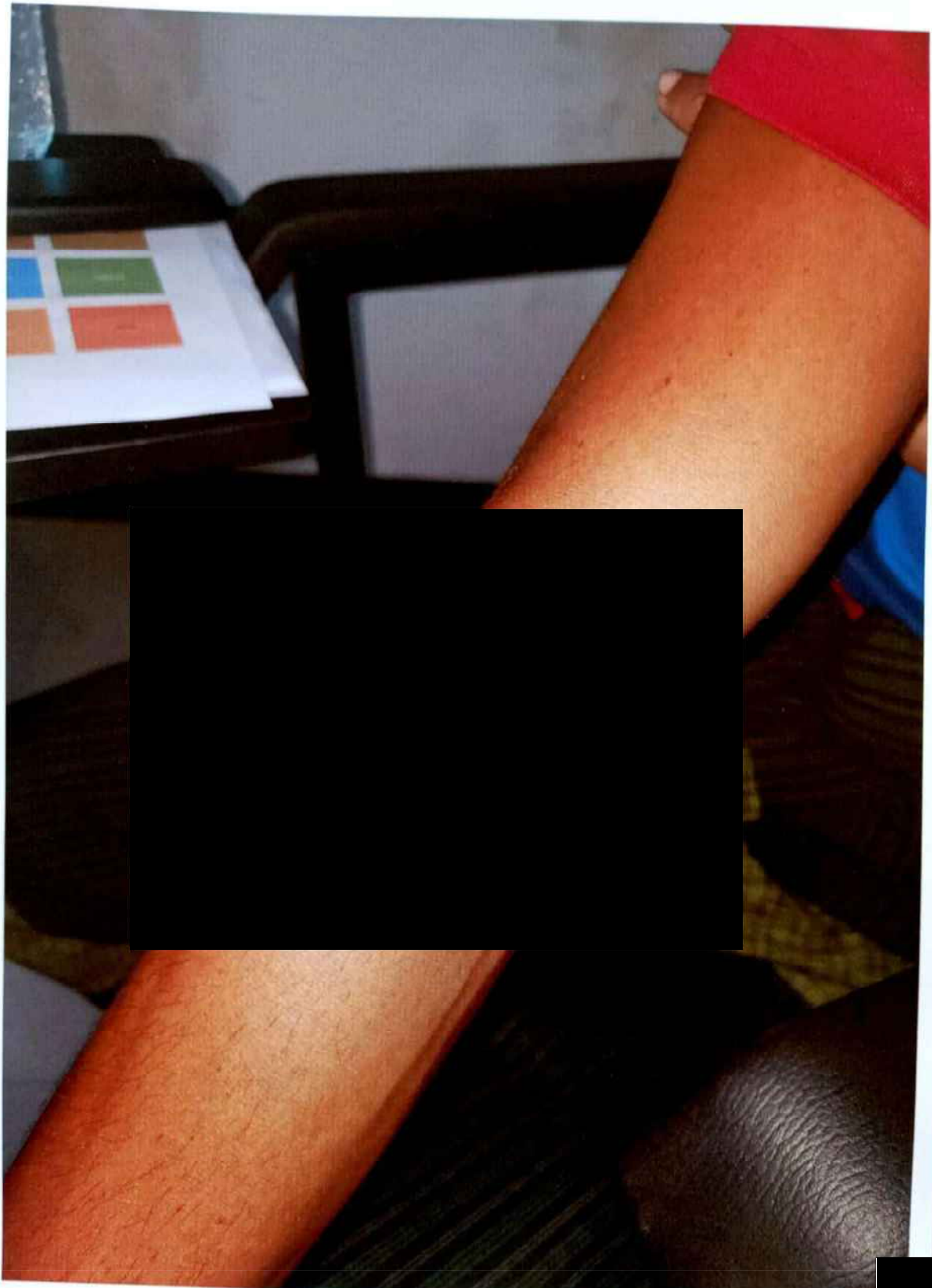
Date: October 8, 2020

Location: LAW Office, Kutupalong, Bangladesh





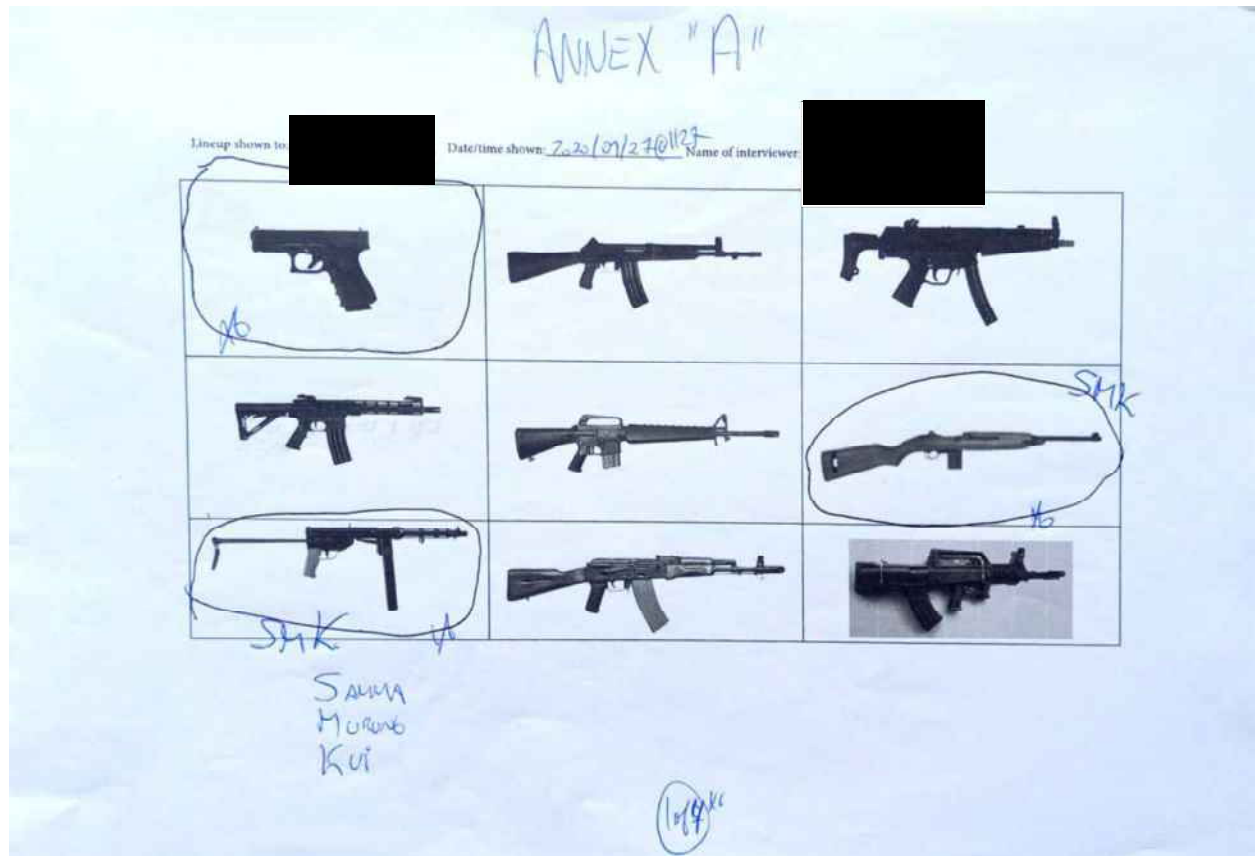




ANNEX "B"

Sharma
2023/10/08 @ 11:00

Scanned with CamScanner





SHK = Samma
Kun
moung

24/4/8





Interpreter Certification

I, [REDACTED], certify that:

- a. I am qualified by Legal Action World Wide (LAW) to interpret from the Rohingya language into the English language and from the English language into the Rohingya language,
- b. I have been informed by [REDACTED] that he speaks and understands the Rohingya language,
- c. I have orally translated the above statement from the English language to the Rohingya language in the presence of [REDACTED] who affirmed that he heard and understood my oral translation of this statement,
- d. [REDACTED] has acknowledged that the facts and matters set out in his statement, as translated by me, are true to the best of his knowledge and recollection and has accordingly signed his signatures and initials as indicated.

Signature of Interpreter

Name of Interpreter:

Date: 12th Oct 2020

Location: Cox's Bazar , Bangladesh

Annex 370

Witness Statement No. 032, signed on 8 October 2020 (with exhibits)

WITNESS STATEMENT PROVIDED FOR THE PURPOSE OF HEARING IN THE
CASE

THE GAMBIA V MYANMAR

AT THE INTERNATIONAL COURT OF JUSTICE

Name: [REDACTED]	Gender: Male
ID Number: [REDACTED]	Father's Name: [REDACTED]
Place of Birth: Tula Toli	Mother's Name: [REDACTED]
Date of Birth/Age: 42	Marital Status: Married
Nationality: Myanmar	Spouse's name: [REDACTED]
Number of Children: 6	Current Place of Residence: Balukhali, Camp [REDACTED]
Date of entry into Bangladesh: [REDACTED]	2017

Ethnic origin : Rohingya

Religion : Islam

Village : Tula Toli

Village tract: Min Gyi

Township: Maungdaw

Language(s) spoken: Rohingya, some Urdu

Language(s) written (if different from spoken): some Urdu

Language(s) used in interview: English and Rohingya

Language of statement: English

Proposed language of testimony: Rohingya

Current occupation: [REDACTED]

Former occupation: [REDACTED]

Location of Interview: LAW Office, Kutupalong, Bangladesh

Date(s) of interview: September 23, 2020

Start of Interview: 10:15 AM Bangladesh time

End of Interview: 2:26 PM Bangladesh time

Name of individual conducting the interview:

1. [REDACTED] RCMP Investigator
-

Names of all persons present during interview:

1. [REDACTED] Witness
 2. [REDACTED] RCMP Investigator and Monitor
 3. [REDACTED] Interpreter
-

WITNESS STATEMENT OF [REDACTED]

Introduction

1. I, [REDACTED] have been asked to provide this witness statement in relation to the International Court of Justice (ICJ) case between The Gambia and Myanmar. It has been explained to me that the organization called Legal Action Worldwide (LAW) is conducting an investigation and gathering evidence in support to the case of genocide of the Rohingya brought forth by The Gambia.
2. I understand that this statement may be used in legal proceedings before the ICJ, at which time it may become a public document. I do not have any family members, close contacts, or friends remaining in Myanmar who may be put at risk by the use of this statement. I am willing to testify in person for court if necessary.
3. I understand that this statement is given voluntarily. I have not received any money or other compensation, nor have I been promised anything in return for this statement. I have not been threatened with respect to my participation in this interview or in any communication with the investigators assisting LAW.
4. I have only participated in interviews regarding my personal experience in Myanmar upon my arriving in Bangladesh with journalists, but I do not remember their names.

5. I do not have any social media accounts and have not published anything online regarding my personal experience in Myanmar.

Background, Occupation, Education

6. I was born and lived in Tula Toli, in the village track of Min Gyi which is located in Maungdaw township. Prior to the attack on my village in August 2017, I was living with my wife and 5 children in my house which was located in Sor Para.
7. There were approximately 2700 people living in Tula Toli at the time, of which 362 houses on the official list, but probably closer to 500 in my village, and we were all of Rohingya ethnicity. On the other side of the Furma Hal river, north of Tula Toli, was a neighboring village called Dyal Toli (in Burmese Fa Te Ga) where other Rohingya people lived. This was less than half a mile away and would take me 10-15 minutes to walk, but you had to cross the river. The houses in my village were made of bamboo and dry grass.
8. The nearest BGP post from my village was in the neighbouring Rahkine village in Tula Toli. I believe they were 12 BGPs posted at this location. There were also 12 at another BGP post located in Sadulla Sor.
9. The Chairman of my village in 2017 was Aung Kyaw Sin. I did not see him the day of the attack on Tula Toli. The relationship between the Chairman and the Rohingya was bad and this is likely why our homes were destroyed.
10. Prior to the events in August of 2017, I was [REDACTED] located in the south village [REDACTED]
[REDACTED]
11. Apart from being fluent in Rohingya, I can also speak and understand some basic Urdu and I can write in Urdu.

12. I have no military or police service, and I have never used a firearm.
13. I don't know of Arakan Rohingya Salvation Army (ARSA) and have never seen them come in my village.

Events at the Old Mosque Compound

14. On August 22, 2017, prior to the first prayer of the morning, at around 4:00 am, as the sun was coming up, I saw the military and BGP arriving through the fields, surrounding and entering the village on foot. I was at home when I saw them at the time, which was about two or three minutes away and I went to hide alone in the mountains in fear for my safety. My wife and children stayed at home.
15. I was able to observe approximately 50 militaries and 50 BGP from my hiding position in the nearby mountain, which was at a higher level and offered a clear view. I was approximately 2 to 3 minutes away from the village and was hiding alone. The military uniform was green and the BGP uniform was beige, like the color of soil. They had guns that were about the length of one arm and backpacks. The one in charge had a pistol. They went through the villager's homes and brought the villagers to the old mosque area where they separated the men and women. They forced the women to take off their hijab to insult them and beat the people that were showing up late for the meeting. I was told that they looted items from the houses and took away our gold. They also took away all the knives or anything similar. The Chairman, Aung Kyaw Sin, and Assistant Chairman, [REDACTED] spoke to the villagers in the old Mosque. I could see them from my hiding position standing in front of the people. I could hear the voices but I was too far to hear what was being said. The military leader who was carrying a pistol also spoke to the villagers. I do not know who he is.
16. At 4:00 o'clock in the afternoon, the military and BGP ordered a group of 32 young Rohingyas to destroy the houses of [REDACTED]
[REDACTED] The Assistant Chairman who had spoken to the villagers in the

Mosque explained that these houses were being destroyed because they were absent when the military came into the village. At that time all the people had been freed from the Old Mosque, so I came back into the village from the mountain and saw this with my own eyes. The military and BGP left after destroying the houses.

Attacks on the Neighbouring Villages

17. On August 27, they burned the villages of Ayat Sor and Sadulla Sor, which are on the other side of the river, south of Tula Toli. I was in Tula Toli near the river and could see the fire. I could see the military, whom were easily recognizable with their green military uniforms, lighting the fire to the houses with launchers. A launcher is a weapon that is the length of an arm and is fired from the shoulder. The bullets are the length of a hand. I estimate that the walking time from Tula Toli to Sadulla Sor is about 5 to 7 minutes, about one kilometer away.
18. On August 28, they burned Dumbai village which is situated to the south of Tula Toli. It is about a 10-15 minutes walk from Tula Toli. I was in Tula Toli and could only see from a distance that the village was burning.
19. On Tuesday August 29, they burned four villages including Diyol Toli, Gara Toli, Air Sor and Waikong situated across the Furma Hal river. The villages are to the east of Tula Toli. I was in Tula Toli and I could see the military and BGP use the launchers again to burn and destroy the houses. I could tell they were militaries and BGPs because the military uniforms were green, while the BGP uniforms were either the color of soil, or different shade colored uniforms, including black and white.
20. Once these villages were burned, several people from those villages came to Tula Toli to seek refuge.

Meeting with Chairman

21. On August 29, the Chairman Aung Kyaw Sing sent the Assistant Chairman, [REDACTED] to tell us that the military was going to come through the village the following day, but

no harm would come to us and to stay in the village. I was standing on the road with other villagers when [REDACTED] told us this. We believed the Chairman and did not leave.

The Attack of Tula Toli

22. On August 30, at 8:00 o'clock in the morning according to my watch, the military and BGP came into Tula Toli from the north side of the village. I know it was on this date because it was 3 or 4 days before Qurban. I was outside of my house in Sor Para at the time and could see them coming. I was about 5 minutes away from them when I first saw them. As they were approaching on foot into the village, they were shooting at the Muslims. I did not see this, but I heard later that they killed two old people, Abu Shoma and Rokeya Banu, when they first arrived entering the village.
23. The military (green uniforms) and BGP (different shade colored uniforms) were about 100 and were armed with guns of which some were short, some were long and some other weapons that were used to burn the houses. The military had round hard hats with a metal badge at the front. The BGP had similar hats, but the same color as uniforms. They had patches on the shoulder. The military were carrying backpacks and belts like straps. The shoes were the same color of their uniforms. They were accompanied by approximately 100 Rakhine, Murong, Kui, and Samma armed with long knives. They were dressed in jerseys, shirts and short pants. I could recognize them from their facial features, dress and voice. Also, the Murong people have long hair. I recognized some of them, but I do not know their names.
24. Some villagers ran into the mountain to escape, and others ran toward the beach. My family and I also ran away and managed to cross the river on foot. The following people were with me: my wife [REDACTED] and our 5 children; my mother [REDACTED] (age 87); [REDACTED]; [REDACTED]'s wife [REDACTED] and their 3 children; and [REDACTED]'s

mother [REDACTED] It took us only a few minutes to make it across the river into Waikong from my house.

25. My hiding position in Waikong was in a cemetery next to a big tree. I was able to see many people shot and killed from my position on the other side of the river. I also saw them taking the women to the houses. I was just a short walk away from the location where this happened.
26. The location where I was hiding had a slight elevation from the beach and I could clearly see what happened. The military surrounded the people. They separated the men from the women and children. I saw them sit the women and the children in the water. After they shot the men with guns, they sliced the older men and some of the women's neck. All of the groups present did this: the military, BGPs and the civilians. The ones that were not dead from being shot or having their necks sliced were beaten to death over the head with sticks by the civilians. Children, who could not swim, were thrown into the river by the military to die, while other children were thrown into the fire when they burned the bodies.
27. The military then took the women that were sitting in the water in separate groups of 6 or 7 inside some houses. After 15 to 20 minutes the military came out and they set fire to the houses. I did not see any of the women come out. I know of 10 women who survived the beach that day whom are in the refugee camps and some have burn injuries. I have the names of these women who survived: [REDACTED] (age 30); [REDACTED] (age 50); [REDACTED] (age 45); [REDACTED] (age 35); [REDACTED] (age 30); [REDACTED] (age 27); [REDACTED] (age 27); [REDACTED] (age 18); [REDACTED] (age 30); and [REDACTED] (age 22).
28. They brought all of the dead bodies to the beach and dug three big graves. I could see them dig the graves and put the bodies in the holes. At that time, some people were dead, some were half dead. One of my relatives that I recognized on the beach, [REDACTED] (age 44), was used to dig one of the holes to put the bodies in. He was given a tool to use in order to dig the holes and once he was done, they killed him and threw

him in the grave. The holes were not deep and about the size of this room [*the interview was measured to be approximately 12' x 15'*]. I would estimate the holes were about one or two feet deep.

29. At 11:12 in the morning, a red helicopter came in to the Rakhine village. I did not pay attention to see if I recognized any logos, markings or symbols on the helicopter. The helicopter landed in the Rakhine village of Min Gyi, and I then saw with my own eyes 6 men bring the petrol from the helicopter in the Rakhine village to the beach and put it in the graves on the bodies and clothes they had piled in the graves.
30. From my position, I observed them bring petrol containers to the beach. They poured it on the bodies and burned them. The petrol was in 12 containers carried by the men from the Rakhine village. Each of the 6 men carried 2 containers. I recognized one of the men carrying the petrol to the beach as So Tung Phew (60 years old). I also recognized the others, but I do not remember their names. They were all from the Rakhine village. I saw with my own eyes the military, Rakhines and other civilians set the bodies of the victims on fire.
31. After the bodies were burned, it was approaching the evening. I estimate that prior to me departing the area, I observed the attack on my village for approximately 10 hours. At sunset, I left with my family, but they continued to burn down the houses. I saw them lighting the houses on fire in Tula Toli with my own eyes. They were using the launchers and torches to set fire to the houses through out the attack.
32. The Rohingya did not have any weapons to defend themselves as they had taken anything that could have been used as a weapon to defend ourselves when the military and BGP came into the village on August 22.
33. I am not aware of any other ethnic groups that were targeted on that day.

Aftermath of the Attacks

34. Following the attack on my village, I went to Morikom village which is west of my village and the next day we continued to flee for the border between Bangladesh and Myanmar in Sil Khali (Myanmar) and in order to cross into Onsifara (Bangladesh). The road to Bangladesh was difficult; we did not have any food or water. I left for Bangladesh via Sil Khali and crossed the river with a small boat. I had to pay 5,000 kyats to cross the river for each child and 15,000 kyats for each adult. It took about 10 to 15 minutes to cross the river by boat.
35. From the time I departed Waikong, the day of the attack, I did not meet any military, BGP or other Myanmar authorities. At no time did any authorities attempt to stop us from fleeing our homes on the way to Bangladesh.
36. When we arrived in Bangladesh we learned that 1,500 were killed. Amongst them 450 from my village of Tula Toli. I have personally prepared a list with the names of the victims of Tula Toli. It was difficult work to collect the names by talking to the survivors of Tula Toli in the different camps. I wrote the list in Urdu and got someone to translate the list in English *[witness provided a copy of the list he authored – See Annex A]*.

Pre-August 2017 Restrictions

37. The relationship with the Chairman was bad and this is likely why the homes were destroyed. I did not see him on the day of the attack.
38. Before 2012, the relationship with the neighbouring Rakhine village was good. In 2012, some Muslim people were killed and this was the start of a period of change. Following this event, Muslims from Tula Toli could not go into Min Gyi, but they could come to our village. In addition, starting in 2012, some Rohingyas were forced to go live in Internally Displaced People (IDP) camps within Myanmar.

39. The Rohingya people had to comply with a number of restrictions which other ethnic groups did not have to follow. There was a checkpoint near the village to go to the market. We were required to remove anything that would identify our religion to go to the market. To go to the market, we needed a permission paper which cost money. If we wanted to get married, we were required to remove our beard. Permission to get married was obtained via the BGP post. There was a curfew in the village, from the evening to the sunrise. Prior to 2012, the curfew was from 10:00 o'clock in the evening to 6:00 o'clock in the morning. After 2012, it changed from 6:00 o'clock in the evening to 6:00 o'clock in the morning. These restrictions only applied to the Rohingya people.
40. In 2016, we were required to remove the fences around our houses. It was ordered by the BGP and military following a meeting with the villagers. Again this was only for the Rohingya people. We had to keep a family list with a family photograph to keep track of the family list. If we needed to add a name to the list, we were required to pay 50,000 kyats. To add my son's wife on my list in order to transfer the name from another list to my own, it cost one Lakh.
41. At first we were provided a citizenship card, then they changed it, this was to vote. They then switched them to differentiate them from the others because of the religion.
42. I never got an National Verification Card. I was offered the NVC card, but the villagers did not want to accept. If we accepted the NVC card, we would lose their citizenship and their lands.
43. I was never arrested or detained. At one point I was accused of going to Bangladesh, and I was required to pay a penalty of one lakh or go to jail. This was back in 2016.
44. I was forced to do labour, like guard duty twice a month, this was since I was a child. This was not a paid duty.

Victim Impact and Conclusion

45. Life in the camp is difficult. We have rice, but no other food. I think about what happened and can not sleep often times. We have no more country; we were not considered part of Myanmar when we were there, and now in Bangladesh we are not considered part of Bangladesh.
46. The result of the attack that day was that I lost 16 family members; 8 on my brother's side and 8 on my sister's side.
47. I hope that we will win our case, we will get justice and we will be able to go back to our country.

WITNESS ACKNOWLEDGMENT

This statement consisting of 11 pages and one annex is true to the best of my knowledge and recollection. I have given this statement voluntarily and I have not been influenced by any coercion, duress or threat.

I am aware that this statement may be used in legal proceedings before the International Court of Justice (the "ICJ").

I have been informed by the interviewers about the procedures available at the ICJ to ensure protection of confidential information provided to the Court. I have also been briefed about the procedures that may be available to ensure my own protection and security.

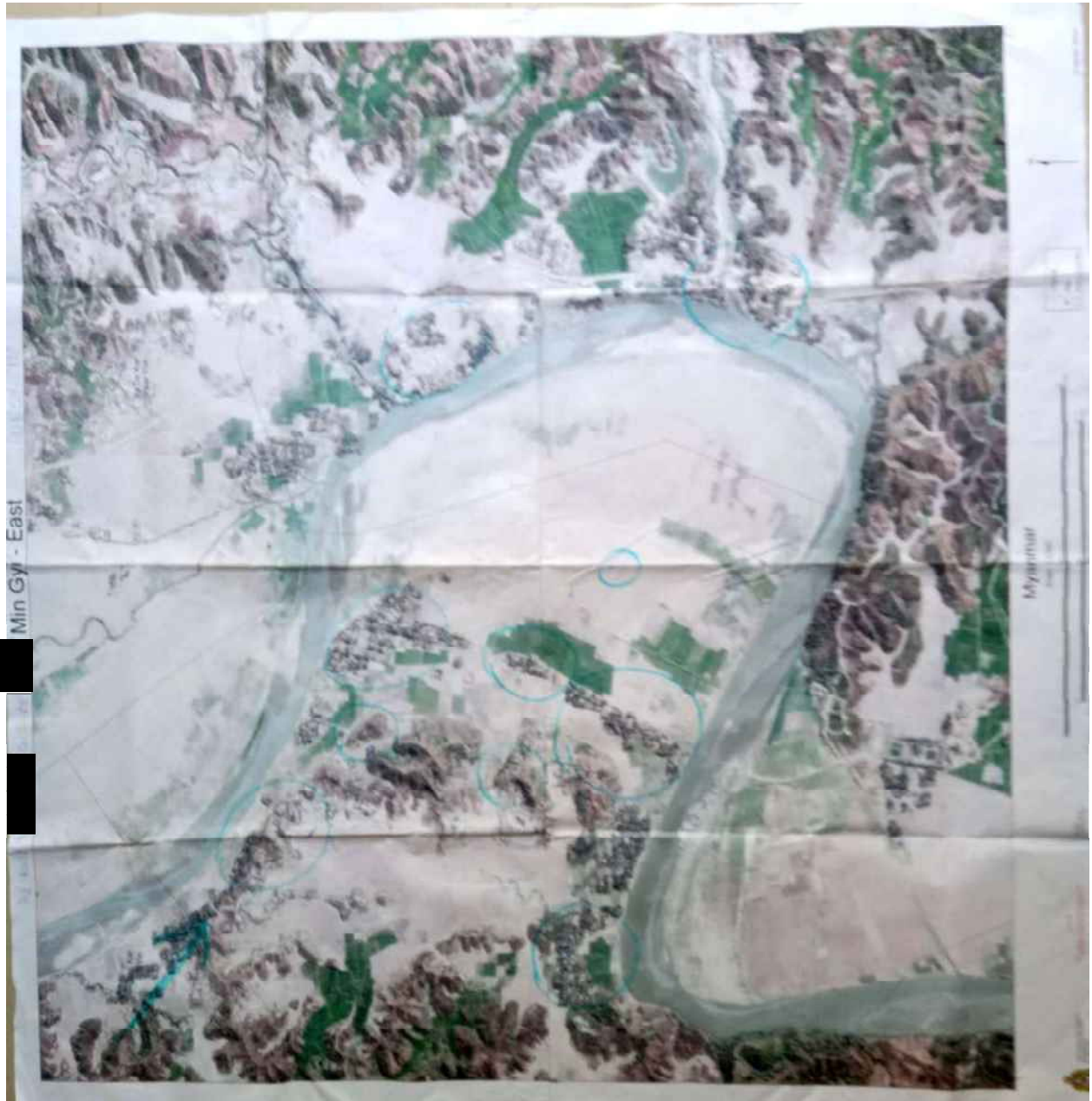
I have been informed that I may be called to testify in public before the ICJ.

Print name: 

Signed: 

Date: 2020-10-08

Location: LAW office, Kutupalong, Bangladesh





Interpreter Certification

I, [REDACTED] certify that:

- a. I am qualified by Legal Action World Wide (LAW) to interpret from the Rohingya language into the English language and from the English language into the Rohingya language,
- b. I have been informed by [REDACTED] that he speaks and understands the Rohingya language,
- c. I have orally translated the above statement from the English language to the Rohingya language in the presence of [REDACTED] who affirmed that he heard and understood my oral translation of this statement,
- d. [REDACTED] has acknowledged that the facts and matters set out in his statement, as translated by me, are true to the best of his knowledge and recollection and has accordingly signed his signatures and initials as indicated.

Signature of Interpreter: [REDACTED]

Name of Interpreter: [REDACTED]

Date: 12/10/2020

Location: Cox's Bazar

Annex 371

Witness Statement of Christina Lamb, signed on 8 October 2020

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

WITNESS STATEMENT OF CHRISTINA LAMB

I, Christina Lamb, of 28 Grosvenor Gardens, London, SW14 8BY, will say as follows:

Introduction

1. I make this statement to assist the International Court of Justice in proceedings brought by The Gambia against Myanmar under the Genocide Convention. This statement sets out my experiences as a journalist covering Myanmar, including the situation of the Rohingya Muslims, and, in particular, my visit to the refugee camps in Bangladesh in 2017.

Background

2. I have been a journalist for 33 years, based in Pakistan, Brazil, South Africa, Washington DC and London. After studying Politics, Philosophy and Economics (PPE) at University College, Oxford, I trained as a journalist at Central TV/ITN then went to live in Pakistan and worked as correspondent for the Financial Times from 1988-90. From there I went to live in Rio de Janeiro as Brazil correspondent. I spent one year at Harvard on a Nieman fellowship then joined the Sunday Times as Africa correspondent based in Johannesburg. In 1998 I returned to London to become Diplomatic Editor of the Sunday Telegraph. In 2003 I rejoined the Sunday Times and have worked there ever since, first as roving Foreign Correspondent covering the wars in Afghanistan and Iraq then as US editor 2009-13. Since then I have been Chief Foreign Correspondent based in London. I have won 15 major journalism awards including five times Foreign Correspondent of the Year as well as Europe's most

prestigious prize, the Prix Bayeux, and been named OBE by the Queen in 2013 and Honorary Fellow of University College, Oxford. I have authored nine books. In early December 2017 I was sent by my paper to Bangladesh to report on the situation of the Rohingya fleeing across the border from Myanmar. I stayed for several weeks in Cox's Bazaar interviewing Rohingya in camps as well and in Dhaka.

3. I was shocked at the stories I heard and the wide scale, particularly following on from reporting on Yazidis and girls abducted by Boko Haram in Nigeria over the previous two years and it was one of my motivations for going on to write a book, *Our Bodies Their Battlefield*, about sexual violence in conflict.

Visit to Kutupalong refugee camp

4. I flew from London to Doha then Dhaka then Cox's Bazaar in northeast Bangladesh on 2 December 2017 and met up with photographer Paula Bronstein, who I have previously worked with. The reports were for my paper's annual Christmas charity appeal and we went with a local interpreter we had hired as well as staff from Save the Children to Kutupalong refugee camp on 3 December as well as a number of times over the next 3 weeks.
5. The refugees were Rohingya. I was aware that, beginning in the last few days of August 2017, Rohingya people started pouring into Bangladesh from Rakhine state in western Burma, crossing the Naf River by boats or makeshift rafts or even swimming in some cases. I understand that as many as 10,000 a day were coming. People were still coming during my visit though by then far fewer. Most were mothers and children and they came with unimaginable stories of Burmese soldiers and Buddhist mobs moving into their villages, slaughtering the men, setting fire to their huts, then raping the women and girls often in front of their family. In my time in the refugee camps, I spoke to many of the refugees there about their experiences at the hands of Burmese soldiers and what emerged was a consistent pattern of systematic violence against Rohingya people, involving murder, rape, and the destruction of their villages. I recount in this statement some of the individual stories I heard, recalled from the detailed contemporaneous notes I took when interviewing individuals.

Borochara village

6. I met Shahida Begum, a 25-year-old Rohingya mother, shortly after arriving in Kutupalong camp. She was one of three young widows from the same village in Rakhine state, staying together, each of whom had lost a husband and a child. The other widows were Munira Begum, who was 30, and Madina Khaten, who was 25.
7. Munira described how “First they came for the men”, recalling the night a few months earlier in late September when Burmese soldiers burst into their homes in Borochora village in Maungdaw. “Then two days later they came for us.” She said:

“It was around 2am and I was breastfeeding my baby when I heard the first shot. Then there were so many it was as if it was raining fire. I could see flames in the distance from all villages around burning and rockets flying overhead.

That’s when the soldiers took the men, tying their hands with bind. Then two days later they came back, again after midnight, shouting “come out and see what happened to your husbands!” They entered our homes, pointed guns at our hearts and dragged us out.

They took all the girls and women of the village to a rice field and lined us all up – maybe 40 or so - and forced themselves on us. To start with we were all screaming but in the end it was quiet, we could cry no more.

I was gang-raped by five men, first one then the next. They beat me and slapped me and kicked me and bit me. I was too terrified to move. I saw two girls dead near me.

By the time the sun came up I was barely conscious. When I came to, I tried to find my children. I couldn’t walk but only crawl. There were bodies all around. Then I saw a small boy lying face down, shot in the back. It was Subat Alam, my eldest. He had been running towards me. He was 8.”

8. Shahida told me that she had grabbed her six-month-old baby son and two year old daughter when the soldiers burst in to her hut. “They were in my arms and soldiers came to snatch them away,” she said. “I tried to hold them but I could only protect one. They grabbed my baby boy and threw him to the ground then I heard a shot as I was running. I didn’t look back as I worried I would lose my daughter too.”

9. Pushed into the line of women at gunpoint, her heart was pounding so much she could barely stand. "I'd heard about women being raped in other villages," she said. "Then they bound me against a banana tree and raped me....I was raped by one soldier and was crying and shouting as he assaulted me. Afterwards he wanted to shoot or knife me but it was too dark."
10. Somehow she escaped to the jungle where she found her three remaining children huddled together in terror. "As the sun rose, we saw everything," she said. "All the cattle, chicken and goats killed and our houses burnt down. People beheaded, their limbs cut off, or shot."
11. Madina said "I was sleeping when the soldiers burst in. I managed to flee with my three children to the hill behind. I was very scared because I was five months pregnant. If a woman is pregnant they cut out the foetus from her belly. They think Rohingya are not humans. They want to wipe us out." She said "Then one soldier saw me and grabbed me. I was terrified he would feel my swollen belly. They had big knives and machetes."
12. As he raped her in the forest, she repeatedly prayed for the baby she was carrying. "I was shouting so my children cried," she said. "They were scared. That's when they took my eldest. I never saw him again. We know if the children are taken they are killed."
13. The three women told me that they eventually managed to escape, passing a graveyard east of the village then hiding for a month in the jungle with other rape survivors as well as the elderly and children from the village.
14. "We were hiding under bushes, moving from one place to another," said Munira. "It was raining day and night and we had no hope. We women had lost our appetite because of all the horror but our children were crying for food. All we could give them was fruits and leaves. Some days all we had was water from streams. We had to keep moving as the military were searching everywhere. Some people had managed to bury their crops before fleeing so after a week went back to the village to dig up

some millet but the soldiers saw them and shot them in the head. We kept seeing dead bodies. Some had died a few days before. Others were fresh.”

15. “It was hard to sleep,” said Shahida. “I would see those soldiers on me and pray for help.”

16. Eventually they crossed the river to Bangladesh and safety.

Tumbro village

17. A large number of Rohingya refugees – around 6,000 (according to assessments by the Bangladesh border force) – had not made it to the official Kutupalong camp, but were stranded on a muddy island Kona Bara in the river in a no man’s land. They were living in makeshift shelters from bamboo poles and plastic sheets and the conditions were horrendous. I was greeted by Din Mohammad, a community leader, aged 51, who had studied psychology at Rangoon university but had never been allowed to practise. “To the Burmese regime we are non-people,” he said. “For decades they harassed us every day, sent our people to jail, didn’t give us citizen rights but alien cards as if we were foreigners. We had no rights, no education – there were primary schools in our villages but no teachers. We weren’t allowed to travel to another village without permission, which they refused, or even to get married and they demanded more and more money for a license.”

18. He told me there were 300 families on the island, as well as 20 orphaned children and 120 who had lost one parent. I met a girl of 14, Amina, from Tumbro in Mongu township whose parents had been killed and she had been left taking care of her five siblings aged 4 to 12 as well as her grandmother. She told me her soldiers entered the village around midnight. “We were woken by shooting and everyone came out of our houses and there were lots of bodies. They had already taken away my parents. They set fire to our huts. We started running away but kept falling down and soldiers caught me. My neighbours managed to snatch me and we ran away.”

Chalipara village

19. In the main Kutupalong camp, I also interviewed a 14-year-old Rohingya girl called Yasmin, who was from Chalipara village. She told me that:

“The morning the Tatmadaw (the Burmese military) came, it was about 10am and I was taking a break from stitching leaves and playing outside our house with some friends. We didn’t hear the trucks as there is no road to our village so the soldiers had stopped on the main road and walked.

Five or six of them came to our house. They were in uniform with black masks and rucksacks. One soldier took a grenade from his rucksack and threw it inside where my mum and dad and two little brothers were. Immediately there were flames and I could hear them screaming. I tried to run in but my friends pulled me back. Before our eyes the house burnt to ashes.

We tried to run away as we knew the soldiers often took girls to rape. But they caught us. They took us to the jungle. I was scared and crying and screaming but one of the men put his hand over my mouth to stop me. They ripped my clothes, tied my hands behind me then two soldiers raped me, one after another. The second one was saying ‘kill her’ but I pleaded with them not to. I told them I already lost all my family, why kill me? Two of my friends bled so much they died. I can’t say what they did to me because when I think about those incidents I cry.”

20. She told me that her village was burnt down, and that after the Tatmadaw raped her:

“They left me naked. I just had a yellow scarf which I wrapped around me then I made my way very slowly to the river bank as I couldn’t walk well.

In the jungle I met a lady with her sons and she saw I was bleeding down my leg and asked what happened. She gave me cloth to wrap round it and helped me to the river bank. It was full of people trying to cross. Boatmen wanted money and I had nothing. I told them all I have is this nose-ring so they took that. It was the only thing I had from my parents.

We were about 30 people crowded into the boat. It had an engine but no roof against the rain and it took long, from dawn to early afternoon, maybe eight hours. Still, it was our good luck to find one as lots of people were on makeshift rafts which were very risky.

The boat took us to the island on the Bangladesh side. When we got there I left the lady because I was afraid. She had two sons about my age and I was scared they could also harm me so I said to her 'I will find my own way, Allah will be with me'.

Then I sat down and I was crying so hard that people of the island asked me what happened. They gave me rice-cake and water and also some money to cross to Teknaf [on the Bangladesh mainland].

After that I walked ten minutes along the broken road and saw some Bangladesh army. They could see I was Rohingya and gave me biscuits and water then put me in a bus to the transit centre. I stayed there two days and was so tired I couldn't talk. I was lying on the ground, my foot and stomach all swollen. Someone said she has no one and took me to Balukali camp."

Boli Bazaar

21. Another refugee, Sanoara Begum, 35, told me she was from Boli Bazaar, in Maungdaw, a village which had already been targeted in 2016. She told me:

"First the military came to our village and burnt all the houses so we fled to another village called Leda. But then the next night they came there about 9pm and shouted all you people must leave Myanmar, why are you still here? Then they started killing the men. They took my older son Mohammad Shaufiq and shot him in the chest and slit his throat. He was 15.

After that around midnight they seized younger girls and married women and took us to a school. There were six of us, four young girls and two married women and me. Two of us were pregnant. I was eight months pregnant.

They bound my hands and legs and lay me on the ground. I was raped by twelve soldiers, three at a time. I kept thinking about the baby and what would happen. They bit me. When I tried to resist they beat me with the gun, look I lost two teeth.”

22. She pulled back her lip to show me a gap. Then she said “After a while I was senseless then three more men came. One of them told me if you tell anyone we will kill you. Then another came in and shot me - they shot me twice, in my right knee and by my vagina.” She lifted up her trousers to show me. “Once with a pistol and once a big gun.”

23. She said:

“I lay so still I didn’t even dare move my eyeballs. Then I can’t remember anything. My husband and brother came to me and carried me. They thought I was dead but my fingers were moving a little so they realised I was alive. They sold my daughter’s gold nose-ring and took me to a doctor who gave me some medicine. I gave birth to the baby on the banks of the river but it was dead so we buried it there. I was a mother of four but now there are only two.

My husband and brother carried me the whole journey on a blanket because I couldn’t walk. It was six days walking to the river and we had to stop three days on a hill so they could rest.

We crossed by boat then we got to the border at Utipara, I was bleeding from the shot wounds so they took me in a tuk-tuk to Kutupalong camp and I was treated. I feel very much pain.”

Declaration

I, Christina Lamb, make this declaration voluntarily and believe that the facts stated in this witness statement are true.

Signed:



8

CLL
8/10/20

Dated: 8 October 2020

Annex 372

Annex not reproduced

Annex 373

Statement of Antonia Mulvey, Executive Director of Legal Action Worldwide,
signed on 9 October 2020 (with exhibits)

STATEMENT OF ANTONIA MULVEY, EXECUTIVE DIRECTOR OF
LEGAL ACTION WORLDWIDE (LAW)

1. My name is Antonia Mulvey and I am a UK-qualified lawyer of 17 years' experience. I am the Founder and Executive Director of Legal Action Worldwide (LAW).
2. Legal Action Worldwide (LAW) is a non-profit organisation with headquarters in Switzerland and the United Kingdom, and offices in the Netherlands, Kenya, Lebanon, Sri Lanka, Somalia and Bangladesh. LAW has a presence in South Sudan and Jordan. LAW was founded in 2013 following extensive discussions with the UN, international lawyers, academics and international non-governmental organisations, which identified a need for a new organisation to provide 'on-the-ground' creative legal thinking in countries affected by conflict.
3. LAW's focus is on increasing access to justice, improving Rule of Law and addressing human rights violations and abuses, with a particular focus on gender and discrimination, sexual and gender-based violence, natural resource exploitation and transitional or transformative justice. LAW provides legal information, assistance and representation to individuals and communities to facilitate their meaningful access to justice thereby empowering them to assert their legal rights. LAW works with justice institutions, law faculties and national partners to strengthen their ability to deliver survivor-centred and effective justice and uphold human rights. LAW conducts strategic advocacy with decision makers and supports national champions to promote human rights and the rule of law.
4. Between June 2017 – September 2018, I was an investigator for the United Nations Independent International Fact-Finding Mission on Myanmar, covering the file of sexual and gender-based violence and violence against children. I have 22 years experience interviewing vulnerable victims and witnesses, specifically sexual and gender-based violence. I am a rostered expert for the UK Government Prevention of Sexual Violence initiative and a rostered justice expert for the UK Government Stabilisation Unit. I am a rostered sexual and gender-based violence expert for UN Women and Justice Rapid Response. In 2016, I was appointed a Visiting Fellow at the Centre for Women, Peace and Security at the London School of Economics and from 2012-2013 I was a Visiting Scholar at Columbia University law school, New York.

5. LAW has undertaken activities in Bangladesh since September 2018. These have primarily focussed on empowerment of Rohingya women, but also male survivors of sexual violence, and facilitating the meaningful engagement of the Rohingya community in the international justice processes that are being undertaken. At the present time, LAW represents 172 Rohingya on an individual basis, as well as two Rohingya networks; Shanti Mohila, a network of more than 400 Rohingya women and girls, displaced from Myanmar during the 2017 ‘clearance operations’ and group of 18 Male Survivor Advocates. All of LAW’s Rohingya clients are located in the camps in Cox’s Bazar, Bangladesh.
6. In December 2019, LAW supported three Rohingya refugees, Yousuf Ali, Hasina Khatun and Hamida Begum, who were displaced from northern Rakhine state, Myanmar to Bangladesh during the 2017 ‘clearance operations’ by the Myanmar army (Tatmadaw) in traveling to The Hague, from the camps in Cox’s Bazar, in order to witness the hearings on provisional measures in the case before International Court of Justice (ICJ) in the case between The Gambia and Myanmar on the application of the Convention on the Prevention and Punishment of the crime of Genocide (10-12 December 2019). H.E. Mr. Abubacarr Tambadou, then Gambian Attorney General, Minister of Justice, and agent in The Gambia’s case, noted in his statement to the court: “I am also pleased that The Gambia’s delegation today includes members of the Rohingya community, including those who have travelled from the refugee camps in Bangladesh.”
7. On 24 February 2020, LAW entered into a memorandum of understanding with Foley Hoag LLP, legal representatives of the Republic of The Gambia (“The Gambia”) before the ICJ in its case against Myanmar (ANNEX 1). Through the memorandum of understanding, LAW agreed to provide Foley Hoag with access to the witness statements of LAW’s Rohingya Clients in order to consider those statements for potential submission as evidence as part of The Gambia’s case against Myanmar before the ICJ.
8. Between 28 April and 9 October 2020, LAW gathered witness statements from its Rohingya clients. These statements have been gathered through remote and in-person interviews in line with LAW’s Standard Operating Procedures (ANNEX 2). Some witness statements were compiled by three senior criminal investigators, [REDACTED] and others by a team of police investigators from the Royal Canadian Mounted Police. Three interpreters attended the interviews.

9. [REDACTED]

10. In-person interviews were conducted and statements prepared by a team of investigators provided by the Royal Canadian Mounted Police at LAW's secure centre near the camps in Cox's Bazar between 22 September and 9 October 2020.

11. Additionally, LAW has provided to Foley Hoag a copy of the representations submitted to the Victim Participation and Reparations Section of the International Criminal Court in October 2019, pursuant to the Notification by the Prosecutor of a Request to Pre-Trial Chamber III for an investigation dated 4 July 2019 ("Victim Submission"). The submission includes information provided by male and female survivors of sexual violence, perpetrated by members of the Tatmadaw and Border Guard Police.

12. LAW has requested that Foley Hoag protect the identity of its Rohingya clients within the memorial to the International Court of Justice.

13. This statement consisting of 3 pages is true to the best of my knowledge and recollection. I have given this statement voluntarily and I have not been influenced by any coercion, duress or threat. I am happy to provide further clarification or an additional statement as needed.

Signed: 

Date: 9 October 2020

Annex 374

Witness Statement of Alex Crawford and Neville Lazarus, signed on 12 October 2020

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

WITNESS STATEMENT OF ALEX CRAWFORD AND NEVILLE LAZARUS

I, Alex Crawford, of Sky TV News, 6 Centaurs Business Park, Osterley, Isleworth, Middlesex TW7 5QD, England, and I, Neville Lazarus, of Sky News Asia, 2 Floor, Dalmia House, Scindia House, Connaught Circus, New Delhi, India 110001, will say as follows:

Introduction

1. We make this statement for the assistance of the International Court of Justice in proceedings brought by The Gambia against Myanmar under the Genocide Convention.
2. I, Alex Crawford, am Special correspondent for Sky News and have worked as a journalist in television, radio and newspapers for 40 years. I have reported on most major stories around the world over the past fifteen to twenty years and have headed several foreign bureaux for Sky News including in Asia (based New Delhi), Africa (based Johannesburg), the Gulf (based Dubai) and the Middle East (based Turkey). I have received various recognition for my work over the years including three Emmy awards; three British Academy Film and Television Awards (BAFTAS) and five awards for the British Royal Television Society Journalist of the Year.
3. I, Neville Lazarus, am the Sky News India reporter and producer, and I cover stories for Sky News across Asia. I have been involved in award-winning reports from Afghanistan, Iraq, Syria, Egypt, Libya, Myanmar, Pakistan, Sri Lanka, Nepal, Bangladesh and India. I have received 2 Emmy awards for my work, including one for coverage of the Rohingya crisis in 2018, for which I also received a BAFTA.
4. Sky News has been covering the Rohingya crisis from the first week of September 2017. We arrived in Bangladesh on 5 November 2017 with Sky News cameraman Martin Smith.
5. Our report from November 2017 was the only independent eyewitness journalist account from inside Myanmar during the worst phase of violence against the Rohingya population in Myanmar.
6. We went unencumbered by any Myanmar minders, entirely on our own, and collected first-hand accounts with photographic evidence as well as what we saw with our own eyes.

7. We personally witnessed and video-documented the shocking deprivation, desperation and horror of thousands of people who were stranded on the beaches of Dang Khali Sau in Maungdaw district of Myanmar. (See Map, Exhibit 1)
8. Our statement includes time-stamped references to video footage that we filmed as part of the night time voyage to Dang Khali Sau on 7 November 2017.¹

The Journey

9. We arrived at Cox's Bazar, Bangladesh in the afternoon of 5 November 2017 and went to the refugee camps. We heard that people were still coming by boat, and so we went further south to Teknaf and then down to Shah Pori Dwip. Both Teknaf and Shah Pori Dwip are where the refugees were landing in large numbers by boat.
10. During our research, travel and talking to people in the camps, we were told about people trapped on the beaches in Maungdaw district and who were in desperate conditions. We did not know where exactly on the beaches of the Naf River or how many people were trapped.
11. Boat journeys had become dangerous and the Bangladesh government had stopped its fishermen from carrying out any activity on the river. There were a number of reports of overloaded boat wrecks which resulted in many refugees drowning in the swollen Naf River. In October, Sky News documented this in several reports.²
12. We spoke to several people who told us that Bangladesh put an end to all water transport by their fishermen, who were the main conduits of this travel. There has always existed a very close relationship between both the communities, i.e. Bangladeshi (Muslim) and Myanmar (Rohingya) on either side of the Naf River.
13. We heard that Bangladeshi fishermen were being arrested and their boats were being burnt. We both saw wreckage of two burnt boats at Shah Pori Dwip.
14. We started contacting fishermen to inquire about them taking us to these locations, as there were relatives on the Bangladesh side who were attempting to organise 'rescue missions' to pick up friends or family. We contacted a number of fishermen through our local helper.
15. Eventually our local helper found a friend who had hired a fisherman to bring his relatives from one of the beaches in Maungdaw. We met with the fisherman beforehand to talk through the arrangements, as we were taking a journey with a risk to all our lives. Almost 200 Rohingya people had already died trying to do just this.
16. On 7 November 2017, we left our hotel in Cox's Bazar and travelled to a small village in the Shamlapur area, which is on the western coast of Teknaf (southern tip of Cox's Bazaar district).

¹ See Alex Crawford, "Rohingya babies dumped and left to die in Myanmar crisis", Video, *available at* <https://news.sky.com/story/rohingya-babies-dumped-and-left-to-die-in-myanmar-crisis-11123366>.

² See, for example, Ashish Joshi, "'I watched my children drown': Rohingya mother shares devastating story", *Sky News* (16 October 2017), *available at* <https://news.sky.com/story/i-watched-my-children-drown-rohingya-mother-shares-devastating-story-11083942>.

17. We bought ourselves life jackets and kept updating our editors in London through messages and our GPS locations. We set out in complete darkness as the fisherman and his crew were also afraid of being caught by the Bangladesh police who were patrolling the area.³
18. We left in a traditional, wooden, crescent-shaped Bangladeshi fisher boat. It had a few holes in the bottom and all along the way the crew of the boat were bailing out water that was filling up at the bottom.
19. The route that we followed was to travel south of the western coast of Teknaf. We had to head south into the Indian Ocean to evade the Bangladesh Coast Guard watch tower and an anchored Coast Guard boat further into the sea.
20. The Boatman had given clear instructions that under no circumstances a torchlight or camera light was to be switched on. They were very anxious of being caught by security.
21. We were told that once we travel into the Naf River upstream we should be very quiet and keep a watch for patrolling Myanmar Coast Guard boats.
22. The journey lasted for about three and a half hours. We reached the beach of Dang Khali Saur, and in the distance we could see torch lights flickering at us. It was a signal, and the boatman responded likewise.⁴
23. The boat had to be anchored some distance away, so we had to jump off in nearly waist-deep water and wade inland, and then we saw the crowds of people. We hadn't even reached the beach, but people were already gathering on the shoreline. Soon we there were tens of people coming to us. The crowd soon rose to hundreds. This was the first time an outsider / foreigner had come to the beach.⁵
24. Many were tugging and pulling at us, imploring, begging and showing us their physical condition. (Exhibit 2) Each one wanted to tell us their story, showing their children to us, or their old and infirm and hurt.⁶
25. We started talking to them and asking questions and were told that some of them have been trapped on the beach for weeks, some for a month and some for two months.⁷
26. Babies had been born on the beach. We filmed one with its umbilical cord still attached. (Exhibit 3) They were born into almost starvation with no drinking water, no medical facilities, and just some plastic held up by two bamboo poles to protect them from the elements.⁸

³ See Alex Crawford, "Rohingya babies dumped and left to die in Myanmar crisis", Video, at 0:10-0:24, available at <https://news.sky.com/story/rohingya-babies-dumped-and-left-to-die-in-myanmar-crisis-11123366>.

⁴ *Id.* at 1:23-1:35.

⁵ *Id.* at 1:35-1:50.

⁶ *Id.* at 1:55-2:20.

⁷ *Id.* at 1:50-1:55.

⁸ *Id.* at 5:28-6:27.

27. We saw horror in the eyes of men, women and children. And we were told by them that there were thousands and thousands just on that strip of beach.⁹ (Exhibit 4)
28. All the while we were there, there was this low sound, a hum of noise. It was the crowd wailing: old men, young men, children and women – all wailing. It was an eerie sound to us - of agony, pain, distress, misery and helplessness – all rolled in one. We cannot adequately do justice to this in words. It was a unified, spontaneous, continuous moan of repressed pain because of the fear of being heard and attracting the Myanmar guards they said were close by.¹⁰
29. They all looked confused, dazed. It just seemed to us absolutely cruel beyond belief that these people had been forced here and left to die on this little strip of the beach.
30. We were told by the victims on the beach that the Myanmar military corralled them onto the beach and then laid land mines behind them to prevent them from going back. Narrow strips of land were left open like gates, which were manned by the military. Anyone trying to go back was severely beaten or taken away.¹¹
31. We were shown a young man, unconscious, with his ribs protruding through his chest. (Exhibit 5) We were told he was severely beaten by the guards for trying to fetch drinking water. He tried to go through the narrow passage manned by the guards who caught him and beat him. To us, it seemed that he would die without immediate medical intervention.¹²
32. We were shown men working on a raft, which they were trying to make out of bamboo, string and discarded plastic jerry cans. Running out of food and water, they could wait no longer. The 40-sq-foot raft had taken them 5 days to make, and they estimated another 5 days was needed to finish it.
33. Makeshift rafts like these would be packed with babies, children, women and men making a dangerous journey over a swollen river. It was a do-or-die situation for them. A choice between the devil and the deep blue sea. Desperate, scared, fuelled by the fear of landlines, assault, starvation, rape and death.¹³
34. Many children seemed to be on their own, their parents killed or lost while fleeing.¹⁴
35. We were warned that we must leave, as someone had spotted some Myanmar soldiers walking towards the beach. Our boatman wanted us to leave immediately. They had explained the patrols came at certain times, and our arrival had been timed in-between patrols.
36. We waded through water to get back into our boat. There was a surge of people wanting to clamber onto our boat with us. The boatman tried to keep people at bay. It was horrifying to see the mad scramble to get out of this place. We decided to leave,

⁹ *Id.* at 2:30-3:50.

¹⁰ *Id.* at 3:52-4:15.

¹¹ *Id.* at 5:00-5:30.

¹² *Id.* at 6:55-7:09.

¹³ *Id.* at 6:35-6:55.

¹⁴ *Id.* at 7:18-7:30.

taking with us the most vulnerable – babies, children, the sick and their families. Thirty more people crammed on to our tiny boat.

37. We felt that we had actual visual footage and documentary evidence of the horrors being endured by these forsaken people.
38. What struck us both was the large number of children that had come across to Bangladesh as refugees. More than half of the refugee population were children. Young men were conspicuous by their absence, which raised disturbing concerns about where they were.
39. We got back to the safety of the village from where we had set off just before sunrise on 8 November 2017.
40. There could have been deaths there on the beach, but because it was night time we couldn't see, and we were concentrating on the living.
41. Our journalistic careers have taken us to several crisis regions across the world - Iraq, Syria, Afghanistan, Pakistan, Yemen, Mali, Libya, Democratic Republic of Congo, South Sudan to name a few - but what we saw that night was a shocker. We all think this is one of the worst things we've ever seen in decades of working in journalism.
42. The continuous wailing of the women and men was and still is haunting.

Statement of Truth

I, Alex Crawford, and I, Neville Lazarus, make this declaration voluntarily and believe that the facts contained in this witness statement are true.

Signed: 

Dated: October 12, 2020

Signed: 

Dated: 12/10/2020

Exhibit 1, Map of Dang Khali Sau, Maungdaw, Myanmar

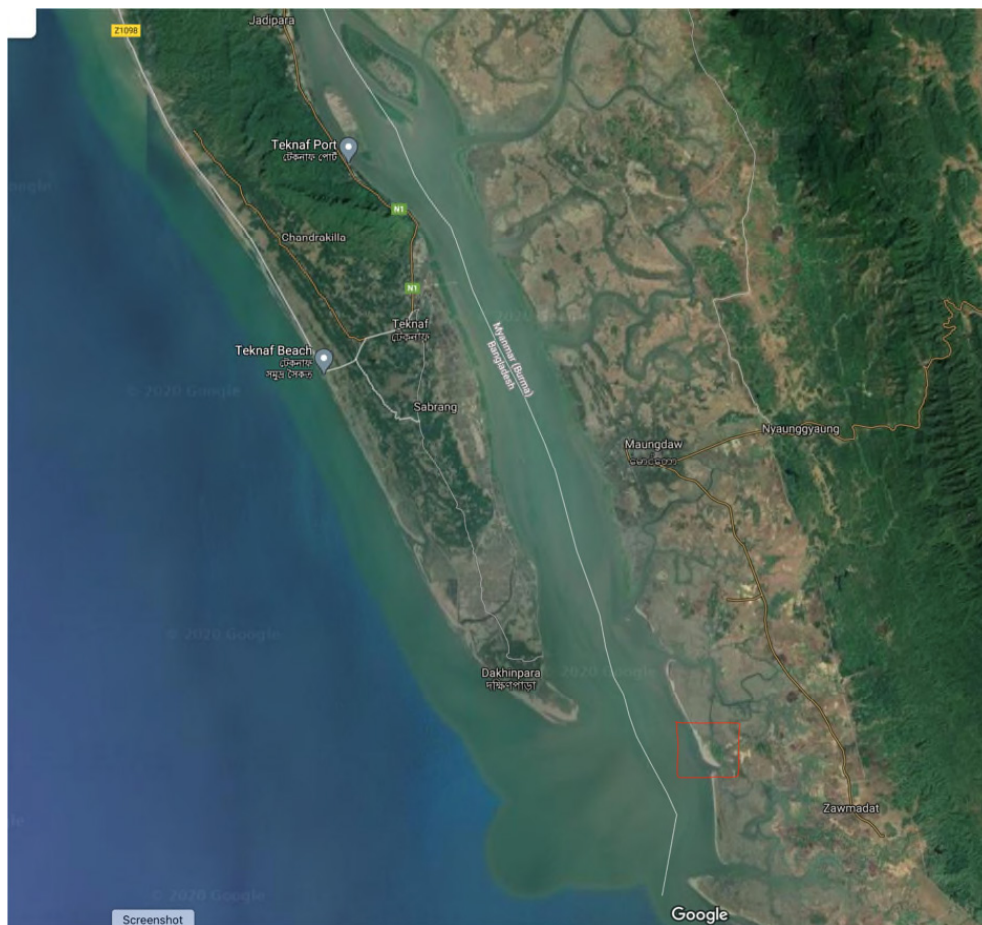




Exhibit 2 – Physical Condition



Exhibit 3 – Babies Born on Beach

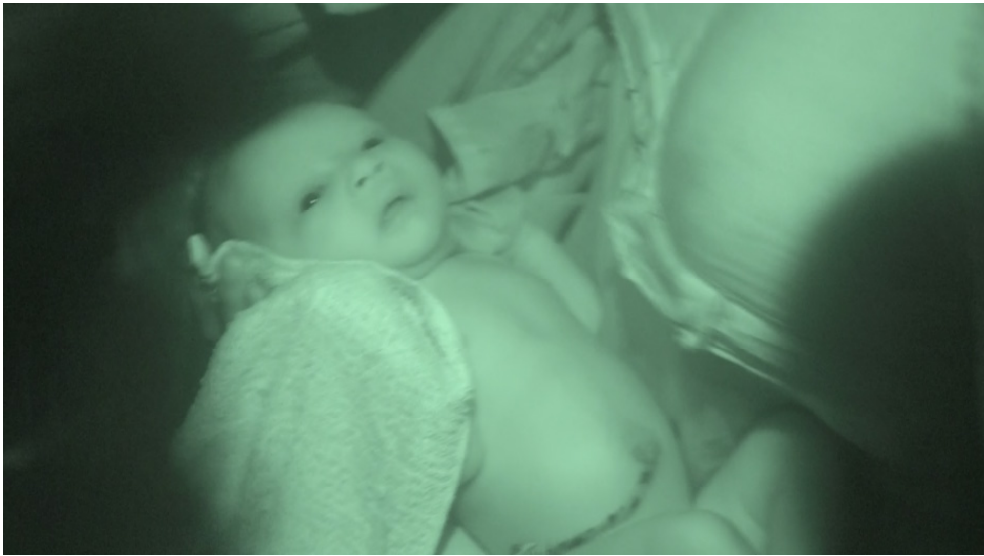


Exhibit 4 – Hundreds Seeking Help



Exhibit 5 – Injured Man



Annex 375

Witness Statement of Jonathan Head, signed on 14 October 2020

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

WITNESS STATEMENT OF JONATHAN HEAD

I, Jonathan Head, of 36/19; Chavana Place, Soi Ari 4, Phaya Thai, Bangkok, Thailand, will say as follows:

Introduction

1. I make this statement for the assistance of the International Court of Justice in proceedings brought by The Gambia against Myanmar under the Genocide Convention. This statement sets out my experiences as a journalist covering Myanmar, including the situation of the Rohingya Muslims, and, in particular, two visits I took to Northern Rakhine State in 2017 and 2019.

Background of my experience of Myanmar

2. I have been a journalist for 32 years, and a foreign correspondent for 24. I have studied and involved myself in South East Asian issues for most of my life. I have been schooled in the BBC's journalistic values. Impartiality, rigour and fairness are at the core of these values. I have significant experience of covering conflicts in the region and elsewhere, and understand the need to consider their complexities and ambiguities.
3. I studied Burmese history as part of my MA course at SOAS in 1984-5 under Professor Bob Taylor.
4. I am currently the BBC's South East Asia Correspondent based in Bangkok, a position I have held since 2012. I previously held the same post from 2000-2003 and 2006-2009.

In the course of my tenure as a journalist covering South East Asia, I have visited Myanmar on 14 occasions.

5. My first experiences of Myanmar started with very limited and short government-approved visits. This included two in 2001, one to cover an Association of South East Asian Nations ("ASEAN") meeting and the discussion about the possible release from house arrest of Aung San Suu Kyi ("ASSK"), the other to cover a ground-breaking visit by then-Thai Prime Minister Thaksin Shinawatra. I also visited in October 2006 to cover the opening of the constituent assembly. My visit in March 2007 was the first chance foreign journalists had to see Naypyitaw. After the so-called 'Saffron Uprising' in September 2007, when large-scale anti-government protests broke out in Yangon and several parts of Myanmar, it became impossible for me to obtain a Myanmar visa of any kind, so I had to cover the story of the uprising itself, and cyclone Nargis in May 2008, from Bangkok.
6. My involvement in the story of Rohingya Muslims in Myanmar began in January 2009, when from Bangkok I covered the plight of boats packed with fleeing Rohingyas which were being pushed back out to sea by the Thai navy. A BBC colleague in Dhaka broke this story when he was informed by Indian Navy contacts on the Andaman Islands of the arrival of starving and dehydrated boats full of Rohingya migrants. My colleague spoke Chittagong dialect and was able to get their story of being towed out to sea by the Thai navy and left to drift, after their engines were disabled. I kept reporting this story through most of January and early February 2009 as we got more details of similar boats in Aceh, and was able to press the Thai government to change its policy.
7. The next occasion on which I travelled to Myanmar to cover the situation of the Rohingya was in early November 2012 (I was the BBC correspondent in Istanbul from August 2009 to August 2012 before returning to the role of South East Asia Correspondent – so I was then near the start of the my third (and current) stint as the BBC's South East Asia Correspondent). On that trip, I reported from Sittwe and the camps of Rohingya displaced by the communal violence in June and October that year. I was able to interview recently displaced Rohingya and Kaman Muslims in camps on the outskirts of Sittwe, more displaced people from Kyaukpyu in Sintamaw, and to film



burned Rohingya communities in Pauktaw. I also interviewed members of the Rakhine Buddhist community, including the abbot of the main temple in Sittwe.

8. I was able to visit Myanmar several more times over the following years. I had the opportunity on these visits to interview government officials and Rakhine Buddhists. I questioned ASSK on the Rohingya issue on November 2012 at her home in Naypyitaw, during the official visit of the then-President of the European Commission, Manuel Barroso. I challenged her on her failure to speak out against the treatment of Rohingyas in Rakhine. She responded that she was not an expert on immigration (I had asked her why she did not advocate giving citizenship to Rohingyas), that to use her moral authority, as I suggested, would be a misuse of it in a conflict in which both sides had suffered. She rejected my suggestion that it was the Rohingya community which had suffered disproportionately.
9. I went to Sittwe again in June 2013 to cover the visit of the UK Minister for Overseas Development. I used the opportunity to get permission to take a boat trip to an isolated and troubled Rohingya community in Rathedaung. This community was entirely surrounded by hostile Rakhine Buddhist villages, with which there had been violent clashes in June 2012. All their livestock had been taken, and they were unable to travel outside the village for health treatment or trade, and were in a parlous economic state. At this time, 2012 to 2014, it was near-impossible for journalists to get permission to visit Maungdaw or Buthidaung – applications for permits were nearly always denied.
10. From early 2014, the BBC had a reporter, Jonah Fisher, based in Yangon, and I did not go back to Myanmar after that except to help cover the election in November 2015. In May 2015, I reported extensively in southern Thailand on the plight of trafficked Rohingyas and Bangladeshis in Thailand and the Andaman Sea. I did not cover the October 2016 attacks by Rohingya militants and the military clearance operation that followed, as my colleague Jonah Fisher did so from Yangon.
11. In June 2017, Jonah Fisher left Yangon, and was not immediately replaced so that the BBC did not then have a reporter in Yangon. On 25 August 2017, when we received the first reports of attacks on military and police posts in Rakhine, we were all tied up covering the trial, and flight, of former Thai Prime Minister Yingluck Shinawatra. Over



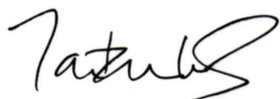
that weekend we received sparse information, but by 28 August there were increasingly alarming reports of significant violence and destruction in a number of Rohingya communities. I began getting information from a network linked to Rohingya activists about specific places like Chut Pyin, in Rathedaung. I warned my editors that, given the huge exodus of an estimated 87,000 individuals who fled the military operation after a much smaller number of attacks in October 2016, we should expect a very big humanitarian disaster. I lobbied the Bangladesh Embassy for a visa, and applied for a Burmese visa too, although I argued with my editors that if we had no access to Rakhine State there would be little value being in Yangon or Naypyitaw. However, the BBC covers Bangladesh from its Delhi bureau, which sent the first BBC teams to Cox's Bazaar on 3 September.

September 2017 Northern Rakhine State Visit

12. On Monday 4th September 2017, I received visas for both countries. The BBC bureau in Yangon then learned of two government-organised trips to Northern Rakhine State ("NRS"). We had missed the first, and were told they would not welcome westerners, but that a single space might become available on the second, which was leaving Yangon via Sittwe on 5th September. My name was put down, and I was approved. It was challenging trying to manage all the equipment routinely needed for broadcasting, carrying safety kit, sleeping kit and food. Normally, because of the requirements for broadcasting, we travel in teams of two or three. With limited electrical power likely to be available I needed to carry a large number of batteries. I was also without a translator. The trip was approved by the president's office, and organised by the Ministry of Information ("MOI"), which sent a single official to accompany us. Transport and security would be provided by the local authorities in NRS.
13. There were 18 of us on our trip, all but three of us local journalists, although some of the local journalists were working for international media. I was given invaluable help by at least three other Burmese journalists, including with translations of what people told us. The other westerner was a freelance Canadian documentary-maker. There was a senior journalist working for a Singapore media group as well.



14. We flew to Sittwe, stayed overnight, and took a 6-hour boat journey north to Buthidaung, where we were put into a three-vehicle convoy. We had a substantial armed police escort, and space was very limited in our vans; we took the 1-hour road trip over the forested Mayu Hills to Maungdaw with our luggage on our knees.
15. On arrival in Maungdaw, we were taken to the office of the township administration and briefed by Colonel Phone Tint, the State Minister for Border Security. He gave us the standard and official government position; that there had been terrorist attacks, in which more than 300 people had been killed, and several bridges and some 2,700 buildings destroyed. Asked about who was burning down the Muslim villages, he stated that 100 percent of them were being destroyed by the Muslims themselves. He said eight camps had been established for displaced non-Muslims. When asked about the whereabouts of the many displaced Muslims he said he had no idea where they were. When asked about allegations of rape by Burmese security forces he insisted troops and police were too busy in action in the jungle to investigate these allegations. He then said: "you women journalists (referring to my female Burmese colleagues), just look at the women making these accusations – they are not of a quality that anyone would want to do that to them".
16. We were taken from there to a nearby school. Several dozen Hindu residents were sheltering there, and we were encouraged to interview them about attacks by Rohingya militants which they said had driven them from their homes nearby. I filmed a little of this but did not pay too much attention, as we were escorted by police and officials, and it hardly seemed possible in those circumstances to get an honest and authentic account. However, one Hindu man did go off script, stating that it was soldiers who attacked his village. He seemed quite sure of this, but was then taken aside by other members of his community, advised that he had got this wrong, and came back quickly and changed his story, to agree that it was the Muslims who had attacked the village. My Burmese colleagues observed this interaction and translated it for me. As I explain below, it turned out later I had reason to value my video material from this school.
17. We were next taken to a Muslim neighbourhood called Shwe Zar, still within Maungdaw town. A handful of local community leaders were brought to us, by the roadside. One agreed to be interviewed, but again with officials and police present. This



seemed to cause them to be nervous and hesitant. They told us they just wanted peace restored, and the opportunity to restart the local economy. The greatest problem was restrictions on their movement even to the town centre, which was only 2 kms away. No one would talk about the violence, or who was responsible. I formed the impression that the presence of officials and police caused them not to talk about this. Walking quietly away from the main road with a couple of my Burmese colleagues we found some young men who said they were very afraid, that they feared for their lives, and wanted to follow the rest of the Rohingya community to Bangladesh, but their own leaders had ordered them not to.

18. From there we were taken to a Buddhist monastery in Maungdaw town called Zaw Ti Kar Rom. A monk described how he had seen the Muslim residents of the houses next to the monastery set light to their own homes. A cluster of houses, perhaps six or seven, was burned to ashes. The monk gave photographs from his phone to the Burmese journalists, apparently showing people in Muslim dress setting the houses on fire, and posing for the photographs, some brandishing machetes. We looked closely at the photographs and some of us felt immediately that they looked odd, that perhaps the scene had been staged. This was right in the town centre, in the middle of a massive security emergency. Why would they take the time to pose, in daylight, while performing an illegal act? Why would they allow themselves to be photographed in this way? The head-coverings of the women looked odd too, ill-fitting and unlike any Muslim head-covering I had seen before.

19. Later, after returning to Yangon and having time to go through my own video material in detail, I was able to identify two of the alleged 'Muslim' perpetrators in the photographs: they were two of the displaced Hindus, both wearing identical clothing to what they were wearing when we met them. One, a woman in a distinctive orange and lacy blouse, had been especially vocal about the violence she had suffered at the hands of Muslims. The head-covering she was wearing in the staged photos appeared to be a tablecloth. My conclusion was that the photos had been staged quite close to the time of our arrival, in order to support the government's assertion that Muslim villages were being destroyed by their own inhabitants.



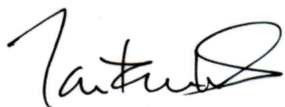
20. The next day, 7th September 2017, we were told by our MOI minder that we would head south of Maungdaw in the morning, and make a journey north in the afternoon.
21. We stopped first at the main Muslim market. It was moderately busy, but much quieter than usual, according to local people. We were, as always, escorted by armed police, and we found it difficult to speak to people. Most did not want to talk. The few that did simply stated that they were suffering economically, and they were frightened. When asked what they were frightened of, most would not answer. One man did state that he was frightened of the government. Not one person stated that they were frightened of the Arakan Rohingya Salvation Army ("ARSA"), or Muslim militants. No-one had been prepared for us to speak to, so there was no-one to support the official narrative. We simply walked up to people and asked if they would speak.
22. Our journey south took us on a new and smooth road which runs a little inland of the old road, alongside a low ridge of hills. We noticed new-looking barracks and police posts along the way, and a helicopter landing pad right next to the road. We stopped at a village called Mawrawadi, inhabited by ethnic Rakhine Buddhists, who told us there had been a history of violent incidents with nearby Muslim communities. They had sent most of the women and children away to Maungdaw or Buthidaung towns after the 25 August 2017 violence broke out. They had heard gunfire and were frightened. I asked whether their Muslim neighbours were still there, as we understood that outside Maungdaw town nearly all Muslims had fled. They did not know. They said that they were too frightened to go and check.
23. Our drive continued south, towards the town of Alel Than Kyaw, on the coast, where one of the first ARSA attacks had taken place on 25 August. We began to see extensive areas of housing around the mainly Muslim village of Chain Hkar Li, which had been burned down, and abandoned boats and abandoned goats and cattle. There were no people at all on a 15 minute stretch of the drive. In Alel Than Kyaw, we were allowed to get out and wander around. Most of the town had been burned down. Parts of it were still smouldering. There was a Médecins Sans Frontières ("MSF") clinic there, identifiable by the sign, which was completely destroyed. There was some livestock wandering in the ruins but no inhabitants.



24. A police lieutenant, Aung Kyaw Moe, described the morning of the attack. He said they had received advanced warning of it, and had moved the non-Muslim population and government officials into the relative safety of the police barracks, which had a rudimentary bamboo fence and steel gate around it. He said a large crowd of Muslims had run up shouting from the beach. Mostly they appeared to be armed with swords and sticks. An immigration official whose house was close to the beach was killed, he said. But the police opened fire on them from the barracks, and eventually they ran away. When they came out, they recovered 17 of the attackers' bodies. He said the Muslim population had burned down their own houses and then run away. I asked, through a colleague, why, if the Muslim population had fled soon after the attack, there were still smoking ruins two weeks' later, in the rainy season when it rains every two or three days. He said a few Muslim inhabitants had stayed behind, and must have just set their homes alight before fleeing in the past few days. He gave no more details.
25. We were allowed to walk towards the beach, where we could see four columns of smoke in the near distance, and hear sporadic automatic weapons fire. At least one burst sounded like a heavier machine gun. I filmed more of the burned ruins and asked my Canadian colleague to shoot a TV stand-up for me. A few colleagues had walked along the beach, and met a Rohingya man walking towards a very distant group, who he said were trying to get a boat across to Bangladesh. It would have taken us too long to walk there, so we went back to our minder and asked him to drive us round to the point where the Rohingyas were gathering. He refused, citing security concerns. He was also concerned that we had taken much longer here than expected, and were more than an hour behind schedule.
26. On the drive back we suddenly spotted a thick column of smoke billowing out from a cluster of trees in the rice-fields – the trees usually indicate a village. My Singaporean colleague shouted to stop the car, sufficiently dramatically that the whole three-vehicle convoy stopped. I think our minder probably thought she was feeling sick. We all piled out, and began walking quickly across the rice-fields in the direction of the smoke. Our police escort came with us, trying to deter us from proceeding by telling us it was not safe.



27. I saw two ethnic Rakhine men pushing a cart, with difficulty, across the rice-fields. It was piled high with cooking utensils and at least 2 bicycles, one of which appeared to belong to a child. They seemed embarrassed to be asked questions by us, and said they had seen the smoke, gone to check, and had 'found' the items there.
28. We saw new columns of smoke and could hear the loud cracking of burning timber and bamboo. One policeman tried to persuade us this was explosives, and we should go no further. We ignored him. One house, on its own in the fields, was going up in flames, filling the blue sky with smoking debris. It took about 15 minutes to burn to the ground.
29. In the trees, there were several other houses already ablaze, and a group of young Rakhine men, some armed with long swords. They did not want to talk, but said they had not done the burning and had just come to see what was happening. They started leaving immediately when they saw us. Two walked back further into the village, we realised to collect others who were there and bring them out. In total, I saw eight men. We walked further in and saw the madrasa had just been set alight, on one corner of the palm-thatch roof. Within five minutes it was completely ablaze. A plastic jug, smelling of petrol, was left in the path, along with the pages of religious passages in Arabic script, which we believed were copies of the Quran, torn and strewn on the path. There were articles of women's clothing also strewn on the path, with a burned bicycle and a child's plastic rocking horse. One of my experienced Burmese colleagues spoke to a boy next to the burning houses, who told her the village had been set alight by the Rakhine men we had seen and the police. We learned that the name of the village was Gawdu Thara. At the time we had no idea what had happened to its Muslim inhabitants. Two weeks later I was able to find a family in southern Bangladesh who had lived there, and had fled, with the rest of the community, four days before I had seen it partially burned down.
30. We discussed among ourselves what we had seen. None of us had actually seen the young Rakhine men setting the houses alight, and all but one of the other journalists felt unable to state categorically that the men we saw had done the burning. One of the Burmese media groups there wrote that Muslim militants has burned the village, although there was no dispute about the identity of the men we met, who openly acknowledged that they were ethnic Rakhine. In my view, on the basis of what I saw



and all the surrounding circumstances, it was impossible that anyone else could have been responsible for the destruction other than members of the Rakhine community [supported or encouraged by the military]. We had stayed for 30 minutes after the men left, and had wandered around the remains of the village. No-one else had been there. Some buildings, such as the madrasa, had clearly only just been set alight, and once alight the buildings burned quickly, so they cannot have been set alight much before our arrival. Our own armed police guard did nothing to halt the damage, and called in no other forces to ascertain what had happened or prevent further damage. They just watched the village burn, as though it were a normal occurrence, as though it was appropriate. There was a police barracks not far from the village.

31. We were at Gawdu Thara from 1437 to about 1525. Our schedule had now been even further delayed. Our minder, who was clearly very worried by the effect on us of what we had seen, decided to abandon the planned trip north of Maungdaw, and instead took us to look at the border fence along the Naf River.
32. The following morning, we started the long journey back to Sittwe, and our flight back to Yangon. I edited my material and it was broadcast on the main BBC bulletins on the night of 8th and during the day on 9th September 2017. I also wrote further reports debunking the fake photos of 'Muslims' burning their own homes.
33. While in Maungdaw, we had been surprised to discover a decent 3G phone network, which worked most of the way along the road south to Alel Than Kyaw. I was able to send out a few reports from there, and tweeted what we had seen at Gawdu Thara. The government official spokesman Zaw Htay challenged with a tweet of his own: "Hard evidence? Where are Rakhine youths setting fire in your photo? We won't accept anyone who's burning like #ARSA". My debunking of the faked photographs was also challenged by the editor of one Eleven Media, one of Myanmar's biggest news groups. Zaw Kyaw Lin denied that the two perpetrators I identified as displaced Hindus were the same people, and accused me of making allegations without evidence. Zaw Htay had also tweeted the faked photographs on the night of 6th September copying the English text used by several other tweets, after some of the Burmese media, including Eleven Group, had published them, as evidence of Muslims burning their homes, although he later took his down.



Trip to Bangladesh

34. After my reporting from Rakhine State, in early September 2017 the BBC asked me to replace a BBC team which had been reporting in Cox's Bazaar in Bangladesh. I travelled there with my Bangkok cameraman, and teamed up with a Delhi-based producer, a Dhaka-based producer, and a local translator who spoke Chittagong dialect and had good contacts with the Rohingya community there.
35. We made a series of video reports on the plight of arriving Rohingya refugees, but focussed on trying to find people who had fled from Gawdu Thara, the village I had filmed being burned in NRS, and on making contact with the Rohingya militant group ARSA. I made reports for BBC TV, website and radio on both those issues.
36. We found the family of Adbul Majid after six days. There was a makeshift refugee settlement we heard about in some fields of crops which were being rented to them by a local landowner. The lack of space in the established camps was forcing newcomers to settle wherever they could. People were clearing tropical scrub off the small hills that sat among the fields, and putting up rudimentary shelters there. We found Abdul Majid sitting with his family under a plastic tarpaulin, rigged onto a flimsy structure of branches and bamboo.
37. He told me he had lived all his life in Gawdu Thara. I brought out photographs I had taken at the burning village, and he quickly identified the madrassa, which I filmed just after it had been set alight, and he described the layout of the village accurately. He became emotional when he saw the video of the village being burned. I asked him to tell me what had happened. He described hearing sustained gunfire, which was very loud, and running with his family into the rice-fields. There was some uncertainty about the date, but by running carefully through the number of days he had been in Bangladesh we established that the attack happened on 3 September 2017. He said the gunfire lasted about an hour, together with a great deal of shouting. After that they decided to make their way to the nearby Naf River and take a boat across to Bangladesh. He said they had already heard about trouble in other parts of NRS. They had grabbed



two bundles of possessions when they left, mostly cloths and blankets. He had a handful of Burmese money, worth a few dollars, and nothing else.

August 2019 Northern Rakhine State Visit

38. In August 2019 the BBC Yangon bureau learned that a place was available for a BBC journalist to join a government-run trip to Northern Rakhine State, to see the preparations the Myanmar government was making to receive any Rohingya refugees who agreed to return to Rakhine. When the itinerary was announced, I realised two of the reception facilities we would be shown had been constructed on Rohingya villages, which satellite photographs showed had been partially burned in the violence of August and September 2017, and then razed in early 2018. The BBC decided that we should make a report putting together what I was able to see on the ground, together with the satellite evidence we had collected, to show what appeared to be a policy of deliberately erasing Rohingya settlements.
39. The trip was from 29 to 31 August 2019. We took a commercial flight to Sittwe, and were then driven to take a boat across the Mayu River to Ma Kyi Chaung, from where a recently upgraded road now offers the fastest route to Maungdaw. Our itinerary was set and non-negotiable, according to the Ministry. We were taken first to a recently-built reception centre at Hla Poe Kaung, built on the site of two Rohingya villages, Haw Ri Tu Lar and Thar Zay Kone. There I asked the camp administrator why the Rohingya villages had been destroyed. He denied this, then suggested the villages were located elsewhere. When I told him I had satellite images which showed without doubt that the Rohingya villages had been on the exact spot where the camp had been built, he said he had only recently been appointed to the job and knew nothing about this.
40. The following day we were taken to the border post at Taungpyo Letwe to see how any returning Rohingyas would be processed, and from there to a planned resettlement at Kyein Chaung, both locations in the north of Maungdaw township. Kyein Chaung had been constructed, with funds donated by the governments of Myanmar, India and Japan, on the site of a Rohingya village called Myar Zin. Speaking off the record to officials there, they confirmed that Myar Zin had been razed to make way for the new



resettlement camp, made up of orderly rows of stilted houses, and fenced in with barbed wire.

41. As on all government trips, we were in convoy and not allowed to stop except at places on the official itinerary. However we filmed as best we could from our vehicles, and I was able to film a new government and police barracks on the site of Myo Thu Kyi, just outside Maungdaw town, and compare it to identical shots from a vehicle of My Thu Gyi which I had taken in September 2017, when it was still visibly a partially burned Rohingya village.
42. We were also taken to Inn Din, site of a massacre of ten Rohingya men on 2 September 2017, which was acknowledged by the Myanmar military after it was investigated by two Reuters journalists – who were later sentenced to seven years in prison, though subsequently freed.
43. Only the Rakhine Buddhist portion of the village remained. The Muslim Rohingya quarter, which had comprised about three quarters of the village, was burned back in September 2017, and was now completely erased. I was able to film at a barbed-wire fence at the point where the Muslim quarter used the start, and where now a newly-built and very large Border Guard Police barracks lies. No trace of the Muslim community remains.
44. These four examples were used in a BBC report published in September 2019 alleging that the Myanmar authorities were deliberately destroying the remains of Rohingya communities abandoned by their inhabitants during the military clearance operation of 2017.

Declaration

I, Jonathan Head, make this declaration voluntarily and believe that the facts stated in this witness statement are true.

Signed:



Dated:

14/10/2020
Jonathan Head.



