INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

THE GAMBIA

v.

MYANMAR

REJOINDER OF
THE REPUBLIC OF THE UNION OF MYANMAR

VOLUME IV

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30 December 2024

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Annex 107

Government of India, Census of 1891, Volume IX, Burma Report (Superintendent, Government Printing, Burma, 1892), Vol. I, Appendix D (extract)

Available at:

https://www.networkmyanmar.org/ESW/Files/1891-Census-Report.pdf

GOVERNMENT OF INDIA.

CENSUS OF 1891.

IMPERIAL SERIES.

VOLUME IX.

BURMA REPORT.

VOLUME I.

OPERATIONS AND RESULTS,

WITH

TWO MAPS, FOUR DIAGRAMS AND FOUR APPENDICES.

BY

H. L. EALES, I.C.S., Provincial Superintendent of Census Operations.

RANGOON:

PRINTED BY THE SUPERINTENDENT, GOVERNMENT PRINTING, BURMA.

1892.

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TILDEN
1905

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Burmese and its dialects.

185. To return once more to the Burmese language. We find that while in structure, ideology, and vocabulary Burmese is non-Aryan and belongs to the Polytonic division of speech, it has borrowed its alphabet and mode of writing that alphabet from Sanskrit through the Pali scriptures which were brought over from Ceylon. The Burmese alphabet bears internal evidence of its foreign origin. The Burmese language possesses two kinds of literature. The first which is foreign consists of translations of sacred books into Burmese and of more or less, chiefly less, truthful annals of the Burmese nation, and the other which is indigenous but untaught and almost unrecognized as literature, is represented by the songs and lyrics composed by various obscure poets and singers. The existence of this literature is almost unknown, but some of these lyrics are of considerable merit and show true poetic feeling. This national literature is as different as possible from the stilted unnatural style of the Court historians. Shwe Yeo has drawn attention to them in his account of Burma and his eulogy is well deserved. That there is a strong lyric and dramatic power of expression in the Burmese language is readily acknowledged by those who have heard a Burmese singer improvise a song.

Arakanese.

186. In addition to Burmese itself there are six dialects returned by those who are included in the Imperial return as Burmese-speaking. Of these by far the most important as well as the most interesting from a linguistic point of view is Arakanese. Although in the instructions issued no attempt was made to obtain the various dialects of Burmese, 344,848 persons voluntarily returned Arakanese as their parent-tongue. On the occasion of the census of 1872 319,364 persons were returned as Arakanese (not merely those who speak Arakanese be it noted). In the Arakan division alone they formed 65·9 per cent. of the total population of Arakan, and with 12,084 persons and others who were returned as Arakanese in the rest of Burma, they made up a total 331,448 or 12 per cent. of the total population of Lower Burma. In 1881 the number returned as speaking Arakanese as a mother-tongue was 358,559 or 61 per cent. of the total population of the Arakan division, which was returned as amounting to 587,518 persons. The slight decrease in the proportionate strength of the Arakanese in 1881 was due partly to the fact that at the second census the return was not by the birth but by the language spoken, and that many who were returned as Arakanese by birth in 1872 were returned as speaking Burmese, Hindustani, or Bengali in 1881; but most probably this decrease of their strength in proportion to the total population of Arakan, was due to the influx of Chittagongian coolies who, though they rarely settle in the country, swarm down in the harvest and rice-milling season, during which period the census of 1881 was taken, whereas they would have all returned to their homes by August, the month in which the census of 1872 was taken. From this it is clear that if the census of 1881 had been taken in August instead of in February the proportion of those returned as speaking Arakanese as compared to the total population of Arakan would have been considerably greater. The decrease in the last intercensal period is undoubtedly due to the fact that according to the instructions of the Government of India no return of dialects was enforced. The choice of returning either Arakanese or Burmese was left to the enumerated. Enumerators were not, however, ordered to enter those who returned Arakanese as their parent-tongue as speaking Burmese as this might hurt the susceptibilities of the Arakanese needlessly. Arakanese is an older and more archaic form of Burmese. It bears the same position to Burmese that lowland Scotch, *i.e.*, the English spoken south of the Highlands, bears to the English of today. It contains the rougher sounds unsmoothed down and old archaic words and phrases which have fallen into disuse. It bears a closer resemblance to the Burmese spoken when the Burmans first forced their way down the valley of the Irrawaddy and across the passes of the Arakan Yoma.

Tavoy.

187. The next dialect of Burmese is Tavoy. The number of those who returned it is already given, and the remarks just made about the return of the Arakanese dialect apply with equal force to Tavoy. At the next census there will probably be no gain in allowing the enumerator to enter either of these dialects, and he might be directed

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APPENDIX D.

Extracts from the Reports of Deputy Commissioners and Presidents of Municipalities.

IN selecting the extracts that are given in the following pages only the salient points have been considered. The reports naturally cover the same ground in most districts, and in many districts where the census operations were carried out without a hitch the reports are consequently less interesting. I have, moreover, been obliged for want of space to omit much matter, that has already been discussed in the report.

From Major W. F. H. GREY, Deputy Commissioner, Akyab, to the Superintendent of the Census Operations, Burma,—No. 685-16R., dated the 9th April 1891.

* * * * *

The preparatory work commenced late. The first indent for **A** and **B** Forms which was forwarded to the Secretariat through the Commissioner on the 4th June was in some way lost or mislaid. A fresh indent was subsequently submitted, but the registers had to be prepared in manuscript in July. The printed forms were eventually received on the 16th August, when the registers were revised and copied on them.

The instructions for the preparation of Subdivisional Registers were received on the 12th September. They were prepared and submitted by the 29th idem, and were received back in this office on the 7th November.

The numbering of houses was commenced on the 1st October and was not completed till the end of December.

In the district, excluding the Municipality, for which a separate report has been submitted, and the Port of Akyab, the census of which was taken by the Port Officer under special instructions, the following agency was employed :—

	Unpaid.	Paid.	Total.
Charge Superintendents	8	*Nil.*	8
Supervisors	224	*Nil.*	224
Enumerators	1,588	360	1,948
Total ...	...	...	2,180

The estimated cost for which sanction was obtained was Rs. 535, and the actual expenditure Rs. 533. The enumerators were paid by piece-work. Only those received pay who had to work outside their own village. The rate of pay varied from Re. 1 to Rs. 8 (in the Naaf) according to the distance of the scene of work from the enumerator's home.

The highest rate, as shown above, was paid in the Naaf township, which is largely populated by Bengalis knowing no Arakanese. Consequently competent enumerators were scarce and some had to travel far. Before another census is taken it should be considered whether the Naaf schedules should not be prepared in Bengali.

2. Specimen schedules and Handbooks of Instruction were received on the 28th November and were issued to Township Officers on the 1st December. As there were not a sufficient number to allow of issues to each supervisor and enumerator, orders were issued providing for the instruction of the persons concerned at convenient centres. There was not, however, at this date much time left for the process before the actual enumeration began, and in future it would be better to issue the specimen books, &c., either at an earlier date or in greater numbers.

The schedule forms were received on the 3rd January. The Block lists were written up in the office by the sanctioned establishment aided by clerks from different departments, the work being completed in 12 days. They were then distributed and the preliminary enumeration was commenced about the 20th January and was completed about the 15th February.

The final census was carried out on the night of the 26th February by the agency already stated. As noted above there was much difficulty in procuring qualified enumerators in the Naaf, and the same difficulty prevailed elsewhere in a lesser degree owing to

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Annex 108

Census of India, 1911, Vol. IX, Burma (Government Printing, Burma, Rangoon, 1912) (extract)

Available at:

https://legal-tools.org/doc/vcj9hs/pdf

Annex 108

Census of India, 1911

VOLUME IX

BURMA

PART I.—REPORT

BY

C. MORGAN WEBB, M.A., I.C.S.

FELLOW OF THE ROYAL STATISTICAL SOCIETY
SUPERINTENDENT, CENSUS OPERATIONS



RANGOON
OFFICE OF THE SUPERINTENDENT, GOVERNMENT PRINTING, BURMA
1912

powerful and widespread race is due to Indian immigration. Just as in the past the Burmese tribes assimilated what was essential and what was advantageous from the immigrant Indian, and evolved a highly individualised racial existence from the amalgamation, there is reason to believe that the present phase of Indian immigration is strengthening rather than weakening the hold of the Burmese on the province. It is true that they have lost for the time being a portion of its urban industry, but it has still to be demonstrated that the loss is more than temporary. It is more than compensated by the remarkable manner in which they have availed themselves of the opportunities afforded by the colonisation of its available wastes. The dispersal of the Burmese population over its unoccupied portions is a far sounder basis of future permanence and stability than would have been obtained by a larger concentration in its towns for the purpose of sharing in its urban and industrial development. In the course of the discussion on urban population in Chapter I of this report, it was demonstrated that the increase of the Buddhist or indigenous population has been tending towards agricultural pursuits, the percentage of town dwellers diminishing from 67 to 61 per cent. between 1901 and 1911. There is perhaps no more stable form of population than a peasant proprietory firmly established on the land. In the meantime, the Indian immigrant has been concentrating in the towns, more than a half of the Indian population being town dwellers in the main portion of the province comprising the natural divisions of the Central Basin and the Deltaic Plains. It would be contrary to experience to anticipate that a comparatively small town population with a disproportionately large number of males will succeed in affecting to any considerable extent the racial existence of a widely dispersed rural community. It is interesting, in view of the concern now being generally felt as to the continued existence of the Burmese race, to consider the view, previously obtaining, that it would be to the mutual advantage of both Burma and India to colonise the unoccupied areas of Burma by the surplus population from the most congested districts of India. A brief review of the previous policy and its results is of considerable importance not only in indicating its marked divergence from the present point of view but also in estimating the future possibilities of Indian immigration and its effects on the population of the province.

76. Assisted Indian Immigration.—For some time subsequent to the annexation of Pegu by the British in 1852, the policy of the Government was to intervene actively to promote the migration of cultivators from India to Burma. It was considered to be a mutual advantage to relieve the congestion of the most densely populated districts in India, and to introduce new crops, new methods of cultivation and much needed population into Burma. Repeated attempts were made to encourage such migration by direct action, but they were all unsuccessful. The whole subject was reconsidered by the Famine Commissioners in 1888, and their recommendations were embodied in the Circular of the Government of India in the Revenue and Agriculture Department, No. 96F.—6-59, dated the 19th October 1888. While adhering to the general principles of relieving specially congested tracts in India by transferring the indigent population of those parts of Burma, and of promoting the wealth of Burma by developing the cultivation of tracts lying waste and unproductive, it was considered that such attempts should in future be made by private capitalists, as personal supervision and continuity of effort were essential to success. Rules were framed and published in Revenue Department Notification of the Government of India, No. 521R., dated 24th July 1889, to carry out the recommendations. Only two estates were formed under these rules, as follows:—

(i) a lease expiring in 1953 of 27,506 acres to Mr. Mylne at Kyauktaga in the Pegu District with an option of renewal for 63 years at a rent equal to two-thirds of the ordinary revenue on land cultivated and of similar renewals in perpetuity,

(ii) a grant of 15,000 acres in 1894 to Rai Jai Prakash Lal Bahadur, C.I.E., at Zeyawaddy in the Toungoo District, the revenue after 1994 being two-thirds of the ordinary rate.

In the meantime the attitude of the Local Government towards Indian immigration was rapidly changing. The extraordinary extensions of cultivation effected by the Burmese emigrants from Upper Burma in the delta districts, demonstrated that it was not essential for the progress or prosperity of the province to colonise its waste areas by means of settling Indian immigrants upon the land. Indian labour was required, but rather in the direction of preparing the crops for

export after they had been reaped, than in introducing new crops or in extending the area under cultivation. It was determined that the system of agriculture most suited to the province was that of the peasant proprietor, in which the cultivator held his land direct from the State in small plots, sufficient for supplying the full requirements of family life, and not too large for cultivation by the members of the family without recourse to assistance by outside labour. The settlement of Indian labour on the land introduced new and complicated relations of landlord and tenant, contrary to the ideals towards which the efforts of Government were consciously directed. It attempted in a petty, cumbersome and ineffective manner what was being accomplished expeditiously, effectively and on the largest scale by the indigenous population. It was supplying an unfelt want partly by deflecting labour from where it was urgently needed. In 1908, the Local Government caused an enquiry to be instituted into the working of these estates, from which it appeared that the object of the concessions had not been realised to any considerable extent. In the cause of the Kyauktaga grant, the grantee was no longer recruiting from the congested districts in India referred to in the circular, but was engaging for cultivation ordinary coolies who had come over, mostly from Madras to labour on public works, and who would have been more usefully employed, so far as Burma was concerned, if they had continued on such work. On both the grants, the immigrants were paying somewhat high rents to the grantee, and they did not appear in some cases to be living under ordinary sanitary conditions. They had introduced no new kinds of cultivation and had failed to adapt themselves to the climate and manner of life prevailing in Burma.

The total population settled on the two estates is less than 10,000. On the Kyauktaga grant the majority of the settlers are of agricultural castes from the United Provinces, the district of Fyzabad supplying the greatest number from any individual district. On the Zeyawaddy grant the majority of the settlers are from Behar, the Shahabad District supplying 3,494 of the total. In both grants the immigrants live in self-contained Hindu villages, influencing but little, and influenced but little by, the Burmese life surrounding them. They have maintained their caste system and rules with greater success than the majority of Hindu immigrants into Burma who are necessarily brought more closely into contact with the disintegrating influence of Burmese life and opinion.

Grant or lease.	Persons.	Males.	Females.
Kyauktaga ...	4,415	2,589	1,826
Zeyawaddy ...	5,065	2,800	2,265
Total ...	9,480	5,389	4,091

77. Nature of demand for Indian immigration.—The results of these two efforts to establish an Indian peasantry in Burma confirms the opinion that the natural attraction of Burma for the Indian immigrant is not its agricultural possibilities. With the exception of the agricultural immigrants from Chittagong into the district of Arakan, few Indians come to Burma with the intention of embarking in agriculture. The economic demand of Burma is not for agricultural but for urban labour, not for the raising of a crop, but for its disposal, and for the supply of the agricultural population of the province with their general requirements. It is true that the extension of cultivation in the past has proceeded so rapidly that a large portion of the extended area has been necessarily mortgaged to pay the expenses of transformation of wild jungle into culturable land. Owing to this necessity, Indian money-lenders have obtained control of large areas of cultivated land. It is also true that the purchase of land is a favourite form of investment with Indian merchants and traders who have made their money in non-agricultural industries in the larger towns of the province. This possession of land by Indian landholders has stimulated to some extent the cultivation of the land by Indian cultivators. But the number of Indian agriculturalists among the total population is extremely small. Reference must be made to Imperial Table XVD and to Subsidiary Table No. VIII of Chapter XII of this report for a complete analysis of the impression made by the Indian on the agriculture of Burma. Hindus and Mahomedans combined do not amount to more than 3·3 per cent. of the total agricultural population, using the term in its widest sense. Or, putting the same facts in another way, the percentages of the Hindu and Mahomedan populations of the province supported by agriculture

Agriculturalists by religions.	
Religion.	Percentage of total agriculturalists.
Buddhist ...	88·6
Animist ...	6·3
Hindu ...	1·1
Mahomedan ...	2·3
Christian ...	1·7

Annex 109

Burma Gazetteer, Akyab District, Volume A, compiled by R.B. Smart (1917)

Available at:

https://press.un.org/en/2018/sc13331.doc.htm

BURMA GAZETTEER

AKYAB DISTRICT

VOLUME A

COMPILED BY

MR. R. B. SMART

(DY. COMMISSIONER), SETTLEMENT OFFICER, AKYAB



RANGOON

SUPERINTENDENT, GOVERNMENT PRINTING, BURMA

1917

[Price—Rs. 2-4 or 3s. 5d.]

CamScanner

on a drainage scheme to which the Local Government is contributing Rs. 3,50,000. The conservancy establishment is under the direct supervision of an Assistant Health Officer whose work is controlled by the Civil Surgeon as Health Officer. In rural areas little is done for the protection of public health. At township headquarters gangs of coolies are provided by the District Cess Fund for surface clearing, opening drains and cutting down vegetation, while there are also two qualified sanitary inspectors and one man of local training employed in the district in adopting preventive measures on the occurrence of infectious and contagious diseases and in instructing villagers in simple sanitary methods.

CHAPTER XIV.

Minor Articles.

Akyab subdivision; Akyab township; Akyab town; Rathedaung township; Angumaw; Atetnanya; Kudaung; Myinbu; Pethadu; Pyachaung; Rathedaung; Thayetchaung; Zigaing; Pônnagyun township; Kundaung North; Pônnagyun; Porebyin; Minbya subdivision; Pauktaw township; Bawdaliywa (Sindamaw); Kyauktaung; Pauktaw; Padu-ale; Pônnagyi; Minbya township; Minbu; Minbya; Kyauktaw subdivision; Kyauktaw township; Apaukwa; Kyanirgan; Kyauktalôn or Thayettabin; Kyauktaw; Lamutabin; Paiktheywa; Shwepye; Taungdaung-Haya; Myohaung township; Kyaukkyat; Myaungbwè; Myohaung; Teinnyo; Buthidaung subdivision; Buthidaung township; Aungtungyaw; Badaga; Buthidaung; Gwazôn; Migyaunggyi; Paungdawbyin; Payabyin (Dodan); Pônnyoleik; Sangetin; Senihmyinbya; Sudaung; Tetminchaung; Theindaung; Zaditaung; Maungdaw township; Aseikkya; Baguna; Gritchaung (Bawle); Indin; Intula; Kamaungseik; Labawza; Laingthe; Laungdôn; Maungdula; Maunghnama; Mingalagyi; Myinhlut; Myothugyi; Ngakura; Nyaungchaung; Pandawbyin; Saingdaung; Satônbôk; Shweza; Tatchaung (Maungdaw); Tettobyin; Thawinchaung; Thazegôn; Thetkaingnya; Udaung; Ushingya; Yedwingyun; Yenaukngatha (Maungpushe); Ribinchaung.

Akyab subdivision.

The headquarters subdivision of the district, comprising the Akyab, Rathedaung and Pônnagyun townships, was

constituted as it stands at present in the year 1906. With the exception of a narrow strip of country lying between the Mayu range of hills and the Mayu river and another narrow strip along the Yo *chaung*, the subdivision forms the watershed between the lower Kaladan and Mayu rivers. It is bounded on the north by the Buthidaung township and by hills, on the east by the Yo *chaung*, the Kywelan *chaung* and the Kaladan, converges to a point in the south at the mouth of the Kaladan and has on the west the sea and the Mayu hills. It borders on the Kyauktaw township in the north-east, with the Yo *chaung* and the Kywelan *chaung* in between; the Myohaung and Pauktaw townships lie along the east of the Kaladan; the Mayu hills separate the Maungdaw township from the north-western corner of the subdivision, and the portion of the Buthidaung township which adjoins the Akyab subdivision is separated by a number of winding little streams and a portion of the Mayu river.

Akyab township.

This is a small township with an area of only 72 square miles and a population of 49,539 in 1911, of which 37,893 resided in Akyab town. The township is an island separated on the north and north-east from the Pônnagyun township by the Mingan *chaung*; the wide estuary of the Kaladan, constituting the Akyab harbour, lies to the east, the Bay of Bengal to the west and the estuary of the Mayu to the north-west. Akyab lies at the southern extremity of this island with a harbour on one side and the open sea on the other. The Arakanese are in the minority in this locality, no less than 60 per cent. being Natives of India, mostly Chittagonians. Unlike the rest of the district this township is not cut up by tidal creeks, all portions being accessible by road. A road 11 miles long, which is metalled for about half its length, runs through the township from north to south and there are unmetalled branch roads in all directions. The township, as it stands at present, was constituted in 1891. The country is undulating, being broken up by sandy ridges. The soil is porous and not suited to good paddy cultivation and large areas are left fallow for grazing. Large herds of cattle exist in the villages and a fair amount of cattle-breeding and dairy-farming, which are non-existent in most parts of the district owing to the scarcity of fodder, are carried on. In the villages within easy reach of Akyab the Chittagonian cultivators grow vegetables to meet the demand in the town.

Akyab town.

The headquarters of the Arakan Division and of Akyab district, Lower Burma, situated in 20° 8′ North and 92°

Annex 110

United Kingdom, Arakan Commissioner's Office, Monthly Report of the Commissioner, Arakan Division, for August 1947, 13 September 1947, National Archives, FO/643/74

No. S $\frac{431}{433}$/ I-2/1.
Arakan Commissioner's Office,
Akyab.
13th September 1947.

To,

The Chief Secretary to the
Government of Burma,
Home Department.

(with 2 spare copies)

Subject: - Monthly Report of the Commissioner, Arakan Division, for August 1947.

1. MILITARY

The 4th Burma Regiment and the Burma Armed Police Striking Force are in operation in Kyaukpyu and Sandoway Districts and the 1st Chin Rifles in Akyab District.

The disposition of the troops in Akyab District at the strategic points was disturbed on account of the necessity to station a platoon each of the Chin Rifles at Paletwa and Maungdaw in view of the situation arisen out of the murder of the SDO, Maungdaw.

The situation in Kyaukpyu District has improved considerably by the establishment of army posts at Kanhtaunggyi, Sanyin, Kraindaung and Koyanbyin in Myebon Township, which were the HQs of the pyaukkya leaders. Dalet, Ru, Thayettaung and Renegyi, which were dangerous for the executive officers to tour these areas for four years, have been occupied by the BAPSF, who are doing very good work. Lwan Tha Aung's gang has dwindled down in number and strength on account of the surrender of 41 of his followers to the BAPSF at Dalet.

Owing to bad weather and lack of sea-worthy craft, the Striking Force could not move beyond Kyeintali in Sandoway District. Troops and the police were ambushed by the Red Guards on three occasions and, on one occasion, Major Balmer, second in command of the 4th Burma Regiment, one sepoy and the serang of the motor boat were severely wounded and one sepoy was killed. One more company of the 4th Burma Regiment has been sent to Sandoway in order to raid Thadechaung in Sandoway Township, which is the HQ of the armed Red Guards, and to dispatch one platoon to Kyeintali and thereby relieve the detachment of the BAPSF to proceed by land to Gwa. The BAPSF stationed at Taungup are doing very well in cooperation with the police and the local PYT. Up to the end of the month, 36 Red Guards surrendered before the BAPSF together with all the arms in their possession.

The result of the military operations has been recorded in the minutes of the Divisional I.S. Committee meetings, a copy of which has been sent to the Chief Secretary.

The relation between civil and military is very cordial.

2. ADMINISTRATION

U Ba Tin (1), Myook, relieved U Maung Maung Gyi, Township Officer, Taungup, on the 16th August, and the latter assumed charge of Sandoway Township on the 25th August.

U Tha Aung, retired Myook, was appointed SDO, Maungdaw, with the approval of Government in place of U Tun U, who was murdered by six Muslims.

Owing to the acute shortage of officers, the Head Clerk of Cheduba Township was appointed T.O. in the place of U Ba Gyaw who was seriously ill.

The most important event, which affects the administration of Akyab, was the brutal murder of U Tun U, SDO, Maungdaw, by six Muslims. In this connection the Deputy Commissioner has reported as follows: -

"The month witnessed a most daring and brutal murder of U Tun U, Sub divisional Officer, Maungdaw, by the Muslims. I have no doubt that this is a result of long fostered communal feeling by the Muslims. The assassins who committed the murder were suspected to be employed by the Muslim Police Officers who have been organizing strong Muslim feeling and dominating the whole area. This is a direct affront and open challenge to the lawful authority of the Burma Government by the Muslim community of Buthidaung and Maungdaw Townships whose economic invasion of this country was fostered during the British regime. Unless this most dastardly flouting of the Government is firmly and severely dealt with this alien community will try to annex this territory or instigate the Pakistan to annex it. There are about 200,000 Muslims in Buthidaung and Maungdaw Townships, thousands of whom are purely new comers from the starving millions of Bengal who followed the wake of the British reoccupation. The murderers, who can count on the support of just these two lakhs, obviously will not have the courage to resort to such a daring affront to Burma Government, unless they feel that their action will have also the moral support of their millions across the Naaf. At present there is little doubt that all these Muslims in the Maungdaw Subdivision are heavily armed. Unless sufficiently large forces of military are stationed all over this Subdivision, the risk of another communal slaughter will always remain great. The spark that this disloyal community may light may eventually lead to a war with Pakistan. Government of Burma will therefore have to take great care about this problem".

Necessary action is being taken with a view to impress upon the Muslim population that they are under the Government of Burma. One platoon of the Chin Rifles and the No.3 Western Range Police Flying Squad have been despatched to Maungdaw. The police and other Muslim officers suspected to be concerned in the murder have been transferred out of Maungdaw Subdivision. The DSP, who is now in Maungdaw, has been instructed to warn the Muslim PSI and the CPO, who have a large number of bad characters under their control, that they will the arrested under the P.O.P. Act should they fail to comply with the transfer orders issued. I shall visit Maungdaw on the 16th September with the DIG Police, Western Range, in order to study the reaction to the new regime set up there and to take effective measures for prevention of communal feeling. In view of the necessity to close the frontier at Maungdaw by strict enforcement of the Immigration Act and to prevent smuggling of rice and other commodities across the frontier, troops will have to be stationed there permanently and at Bawli Bazaar and Taungbro. This subject has been discussed with General Thomas, GOC, and I.G. Police, who visited Akyab on the 3rd September.

The situation in Akyab and Sondoway Districts is still bad owing to the large number of small gangs of armed dacoits and Red Guards scattered all over the district as the large gangs were broken up on account of the intensive campaign by the armed forces. About 150 headmen in Akyab District are still living away from their jurisdictions whereas the headmen in Sandoway District refused to do anything which is likely to offend the Red Guards. The situation has been made more difficult owing to the necessity to serve three months' notice

of termination of their services. The future administration of these two districts will depend on the election of good headmen loyal to Government in power. I am glad election of headmen in this Division has been postponed until the end of the year. The consensus of opinion of the district officers is that apart from the difficulty to hold the elections, people with strong anti-government feeling will be elected, if the elections would take place in the present abnormal conditions, and thereby enable the reactionary elements and anti- Government organizations to do more mischief and embarrass Government.

Expect-Myebon and An Townships, which are HQ of the important followers of U Seinda, the rest of Kyaukpyu District is quiet. The armed gangs led by (Bonpauk) Tha Gyaw, Hla Gyaw and Lwan Tha Aung have dwindled down in number and strength as the result of the surrender of their followers and occupation of the strategic points in these two townships by the 4th Burma Regiment and the Armed Police Striking Force. The decision not to withdraw the troops from Araken for the present has relieved the anxiety of a large number of executive officers, who have been working sincerely in order to restore law and order and to suppress the unlawful activities of the anti-Government organizations.

3. TOWNS

Nothing of importance to report.

4. RELIGIOUS

Nothing of importance to report.

5. COMMUNAL

There was communal tension between the Chins and Arakanese in Myebon Township consequent upon the attack on two Chin villages and whole-sale looting of the inhabitants by the pyaukkyas and dacoits and between the Muslims and Arakanese on account of the brutal murder of the Arakanese SDO at Maungdaw. The situation has eased owing to timely action taken for restoration of amicable relations between these communities and re-shuffling of the police and civil officers in Mangdaw Subdivision.

6. JUDICIAL.

Nothing of importance to report.

7. LAW AND ORDER.

AKYAB DISTRICT

Figures of important crime are as follows: -

Nature of crime	Month ending 15th July	Month ending 15th August
Dacoity	35	18
Robbery	7	14
Murder	5	7

There was considerable decrease in dacoit owing to the surrender of four armed gangs. Most of the people in the rural areas are still afraid to report the crimes committed and the figures of reported cases cannot be taken as indicating the true state of affairs.

On the 2nd August, a combined military and civil police party, in an attempt to capture a gang of dacoits in Pauktaw Township, located their hiding place in a thick jungle. The dacoits fled on the approach of the armed forces. The hut used as the meeting place of the dacoits was destroyed by burning.

On the 3rd August, a pyaukkya surrendered at Minbya police station with one Jap rifle and three rounds of ammunition.

On the 4th August, San Hla Phaw's gang, consisting of ten members, surrendered at the Rathedaung police station with one Bren gun, one Tommy gun, five British rifles, five Jap rifles and 114 rounds of ammunition. Three more members followed suit with one Jap hand grenade, two Bren magazines and one Tommy gun magazine. The wife of one of the surrendered dacoits was murdered by the rival dacoit gang.

On the 5th August, a D tug carrying a party of troops and police was fired upon between Paledaung and Myingaseik. Two Chin sepoys sustained slight injuries.

On the 7th August, a combined military and civil police raided Nwatingok village in Rathedaung Township, which was the HQ of a dacoit gang. Seven armed dacoits retreated into the jungle after firing a few rounds. The rendezvous of the dacoits was burnt down.

On the 8th August, the military camp at Pyinyaung village was attacked by 20 dacoits. They retreated when the military returned fire.

The most important gangsters, such as Tha Gyaw, Hla Gyaw, Maung Tu, Boh Aung, Hari, Saw Rai Than and Sein Tun Aung, still remain at large and the crime situation in Akyab District will give cause for anxiety until they are accounted for.

KYAUKPYU DISTRICT

There were 14 dacoity, 9 robbery and 6 murder.

It has been reported that Red Flag Communists from Sandoway District came over to Ramree Township and looted village defence guns, tax-tickets and revenue collection from five headmen. They are being hunted down by a detachment of the 4th Burma Regiment and the police.

On the 17th August, at about 10 p.m., ten Red Flag Communists armed with rifles attacked the house of the headman of Hone-Wa village, Ramree township, and took away a licensed Jap rifle, land revenue tax-tickets and revenue collection of Rs.500/-.

On the 22nd August, unknown number of men armed with three Jap rifles and one revolver attacked the house of the headman of Kandawbyin and took away one licensed Jap rifle and the land revenue tax-tickets.

On the 23rd August, the headman of Chaungpya village-tract reported that his licensed rifle and land revenue tax-tickets were taken away by Red Flag Communists.

A combined police and military patrol party arrested two followers of Lwan Tha Aung and recovered one German rifle and 3534 rounds of .303 ammunition at the outskirts of Sanyin village, Myebon Township.

On the 27th August, one man from Ramree township and two men from Kyaukpyu Township, who had contact with notorious gangster Maung Wai of Ramree, were caught with 375 rounds of .303 and Sten gun ammunition by a Surveillance Head Constable as they were about to board the Arakan Flotilla Launch at Kyaukpyu.

On the 28th August, police and local PYT (S.P.) raided Kanchokpyin village, Ramree Township, early on the morning, and arrested four pyaukkyas (three alive and one wounded) and captured two .303 rifles.

As the result of the efforts made by the D.S.P. and the Kyaukpyu police in order to recover ammunition left behind by the Army in Kyaukpyu Township, the following have been surrendered to the police.

.303 ammunition	173023
Tommy and Sten gun ammunition	14635
Jap machine gun ammunition	4630
Hand grenades	295
Phosphorus	77
Bombs	114
Anti-personal booby traps (in working order)	2
Two-inch mortar bombs	84

SANDOWAY DISTRICT

Figures of important crime are as follows: -

Nature of crime	Month ending 22nd July	Month ending 22nd August
Dacoity	13	6
Robbery	14	6
Murder	4	3

The situation in Sandoway District has deteriorated owing to the difficulty to dispatch a detachment of the 4th Burma Regiment and the BAPSF to Kyeintali and Gwa for want of a sea-worthy craft, high floods and bad weather. In this connection the Deputy Commissioner has reported as follows:

"The general situation in the district as regards law and order is worse than it was last month. I anticipate that it will further deteriorate before the situation begins to improve. At a secret meeting, the Red Guards passed a resolution to kidnap the Deputy Commissioner, Deputy Superintendent of Police and any other Government officer to be used as hostage for the release of the Yebaws now in custody in the Sandoway jail. Although the crime figures in this district are low, namely 6 dacoity, 6 robbery and 3 murder, it does not mean that the situation is peaceful. It only shows the iron control of the Red Guards' hand on this district, because no one dares to report many cases of murder, dacoity, whipping, illegal confinement, etc. The Red Guards have set up a permanent system of parallel courts at Yahaingkadoe, Batthwa and Nyaunggyaung in Gwa Township. Appeals lie to the Appellate Court at Kyeintali. They endeavoured to stage a hunger march of thousands of innocent villagers into Sandoway to demand free wunza from the rice Project godowns. On receipt of this news, I issued orders under section 144 of the Criminal Procedure Code. 45 representatives from 25 village-tracts in Gwa Township, under Red Guard leader Kywin Gyan (whom we have arrested on the 24th) came to the outskirts of Sandoway and sent three representatives to interview me. I informed them that their demand was absurd and it would take Rs.3 lakhs worth of paddy to feed their so-called destitute who, I am reliably informed, are in no way starving. It is in fact only a political dodge to embarrass the administration and I told the representatives that in agitating against Government they were harming themselves, because the present Government is their own Government. They then went away."

The fact that the Red Guards dominated the district is amply proved by the following instances.

On one occasion, five Red Guards arrested two Police Constables and took away the police papers in their possession relating to the looting of arms by the Red Guards.

They were warned not to meddle themselves in matters in which the Red Guards were concerned.

On another occasion, a police party of Gwa Police Station was warned by 12 armed Red Guards that no Government servants were to carry arms or to come into their villages and that they would be attacked if they would come armed. As the police party was released, the Red Guards shouted that they were rebels and that no army or police must come into their area.

A party of Red Guards arrested two Process-Servers at Singaung in Sandoway Township and subsequently released them with a warning not to serve any notice or summon. All the Process-Servers are now afraid to go out of Sandoway Town.

On the 14th August, three PYTs were arrested by the Red Guards and they have not been heard of since then.

A party of PYTs who came to Taungup to attend a meeting sponsored by local AFPFL was ambushed on the way and two PYTS were wounded.

On the 17th August, a police party returning in a truck from Myabyin in Sandoway Township was ambushed by the Red Guards. One Police Constable was killed and one Sub-Inspector and two guides were wounded.

One platoon of Burma Regiment and a detachment of the armed police under Major Balmer, second in command of the 4th Burma Regiment, and the D.C. patrolled Thade area, which is the stronghold of the Red Guards in Sandoway Township, from the 19th to 21st August. In the course of the search for Red Guards they seized 1,122 rounds of .303 ammunition, one hand-grenade, one bayonet, one DBBL gun, daggers and many important documents. On returning to Sandoway in a UB, they were ambushed in the Pyunkhaung chaung. About 70 Red Guards fired at the party with LMG, Sten guns and rifles from the hills on both sides of the chaung. The Red Guards also tried to fire a two-inch mortar, but fortunately the bombs failed to explode. One sepoy was killed and Major Balmer, three other sepoys and the serang of the UB were severely wounded. The Red Guards ran away when the hills were attacked by our armed forces.

On additional company of the 4th Burma Regiment has been despatched to Sandoway so as to enable a platoon of troops to be stationed at Kyeintali. The unit of the BAPSF which has reached Kyeintali by the land route has been instructed to proceed to Satthwa and Gwa on arrival of the 4th Burma Regiment at Kyeintali. I shall proceed to Sandoway in the first week of October, if the situation does not improve by the end of September, in order to direct the operations personally as I did successfully last March. At present, the operations have been handicapped for want of a sea-worthy craft and a suitable number of motor trucks in good working order, and I have requested the Transport and Communications Department for approval to the maintenance of the trucks now in commission which are being used both by the civil and military officers.

8. JAILS

On the 8th August, 145 under-trials in Akyab lock-up went on hunger strike and demanded better treatment by provision of a blanket for each under-trial and permission to smoke an hour a day. The D.S.P. settled the matter and the hunger strike was called off.

The accommodation in Akyab lock-up is congested and the D.C. has instructed the D.S.P. to transfer some of the detenus to the lock-ups at Kyauktaw and Myohaung, which were empty.

Owing to the instigation of Kyaw Mya, the Communist leader, about 100 prisoners and detenus in Akyab jail went on hunger strike on the 13th August. All of them, expect 14 convicts, have called off the strike.

On the 12th August, 32 detenus in Sandoway jail also went on hunger strike and demanded that they should be tried in court. The D.C. and the D.S.P visited the jail, on the 16th August, and explained the case against each of them. They called off the hunger strike the same evening. It is understood several telegrams were sent to Rangoon by the local Communist party and AFPFL requesting for general amnesty on the ground that the condition of these hunger strikers was serious. It was only an attempt to coerce the Government to release them on ground of health, as evidenced by the fact that they called off the strike soon after they were informed that they will not be released under any circumstances.

In accordance with the order of Government necessary precaution has been taken to guard the jails properly.

9. COMMUNICATIONS.

Owing to the difficulty to install a wireless set at Gwa in Sandoway District, the I.G. Police has been requested to supply the Striking Force with a wireless set. The Telecommunications Department has done nothing although the D.C., Akyab, has requested the Chief Engineer and the officer in charge, Telecommunications. Akyab, to install wireless sets at Rathedaung, Buthidaung, Maungdaw, Ponnagyun and Pauktaw. The same remarks apply to our proposals for installation of a wireless set each at Cheduba, Ramree and An in Kyaukpyu District, which are practically cut off during the rainy season.

10. FINANCE AND ACCOUNTS.

Nothing of importance to report.

11. REVENUE

AKYAB DISTRICT.

	Demand.	Collection.	Remission.	Outstanding.
Land revenue (1945-46)	13,13,582/8/	10,18,081/7/	6,072/3/	289,428/14/
Land revenue (1946-47)	15,03,563	6,73,412	1,251/12/	828,899/4/
Taungya revenue (1946-47)	3,987	2,092/8/	34	1,860/8/

Rs.543 out of the outstanding land revenue for 1945-46 and Rs. 74, 273/12/- out of the land revenue for 1946-47 were collected during the month, which must be considered satisfactory in view of the disturbed condition of the district. Owing to the flood a considerable sum of money which should have been collected as land revenue was spent on re-planting the damaged areas.

KYAUKPYU DISTRICT.

	Demand	Collection	Remission	Outstanding
Land revenue (1945-46)	275,910	161,857	19,358	94,695
Land revenue (1946-47)	280,561	116,403	124	164034

Except in Ramree and An, the collection of land revenue is very satisfactory, in view of the strong agitation for non-payment of taxes by the followers of U Seinda. There is very little hope of getting a substantial portion of the outstanding for 1945-46.

SANDOWAY DISTRICT

No land revenue was collected during the month. The Red Guards were very active and have been threatening the people not to pay taxes. The people in Sandoway District are least affected by the war and strong measures are being taken to make the people pay the taxes due to Government.

12. EXCISE

Nothing of importance to report.

13. SUPPLIES AND INDUSTRY

The distribution of supplies improved considerably since the reorganization of the Civil Supplies Department. The formation of CONCOS has been handicapped for want of the sanctioned staff of Cooperative Officers. I have brought this matter to the notice of the Secretary, Agriculture and Rural Economy Department.

14. RELIEF AND WELFARE

The Welfare staff was very busy helping the people in distress on account of the flood. About 900 bags of rice were taken to the villages and the rice was distributed to the people in the affected areas. The distribution at the very doors of the destitutes, gave general satisfaction and they thanked the Government for the measures taken promptly. One lakh of dhani byits and 16,000 bamboos are being collected for distribution to the people, who lost their houses. The Welfare Officer has left with a boat-load of about 300 bags of rice to Seneti village in Buthidaung township, where the people were reported to be starving.

15. LABOUR

Nothing of importance to report.

16. AGRICULTURE

The devastating flood which inundated the basin of the Yochaung, Kalachaung, Thayechaung, Renchaung, and the Denyochaung in Akyab district completely destroyed over 40,000 acres of paddy plants. It threw the people into confusion and desperation. As the result of the hard work and close cooperation between the township officers, the officers of Agricultural and Relief and Welfare departments, and the leaders of various political organizations and representatives of the villagers, the whole of the flood affected areas have been replanted. The additional allotment of two lakhs of rupees was distributed within a few days, which is a record in distribution of Agricultural loans in the history of Arakan. In fact, the officers worked up to mid-night. On the whole, the monsoon continues to be favourable and there is hope of a good outturn of paddy.

The Agricultural conditions in Kyaukpyu and Sandoway districts are satisfactory.

17. FOREST

Nothing of importance to report.

18. MEDICAL

In spite of the floods and inundation, no epidemic was reported. The health of the people was on the whole satisfactory. No substitute has been appointed in place of the Sub Assistant Surgeon, Taungup, who was on leave for 3 months. In view of the military operations in Taungup township, a Medical Officer should be appointed as early as possible for the Taungup Hospital.

19. PUBLICITY

Nothing of importance to report.

20. POLITICAL

ANYAB DISTRICT

At the instigation of the Communists, and attempt was made to gather a large number of ignorant people at Krwede village on Akyab Island with a view to take a procession to Akyab, in order to put pressure on U Pyinnyathiha, the AFPFL leader of Araken, for the release of Kyaw Mya and other detenues in Akyab Jail.

It caused considerable alarm in Akyab and, in consultation with the AFPFL leaders, the meeting was prohibited under section 144 Cr.P.C.

On the 9th August, an Ex-Yebew Association was formed under the leadership of The Htwe Aung (an ex-detenu), and Ba Tun, son of the Tha Doe Aung of Akyab. About 260 ex-Yebaws have so far been enlisted. A leaflet in Burmese urging for unity of all castes and creed for the attainment of freedom was distributed. It also appealed to the members of ex-BIA, BDA and PBF to join this association.

KYAUKPYU DISTRICT

On return from Rangoon U Ba Saw, member of the Constituent Assembly Kyaukpyu, held a meeting at Kyaukpyu, on the 28th August, at which about 200 people attended. He gave a detailed account of what he did for Kyaukpyu when he was in Rangoon and said that he had moved the authorities concerned for the following: -

(1) Additional allotment of Rs.50,000 to relieve the distress in An and Kyaukpyu Townships in view of the shortage of rice.

(2) Construction of a metalled road from Kyaukpyu to Ramree.

(3) Maintenance of the road through An Pass.

(4) Provision of adequate staff of doctors, nurses and compounders in the hospitals at all the townships headquarters.

(5) Early construction of a new hospital building at Kyaukpyu.

(6) Appointment of Vernacular School teachers for every big village to give free education to the poor children.

(7) Bi-weekly steamer service between Rangoon and Kyaukpyu.

(8) Establishment of an Airport at Kyaukpyu.

(9) Opening of a college for Arakan Division.

10. Exemption of poor cultivators from payment of land revenue for 1945-46.

He explained to the audience that Burma was on the eve of independence and he appealed to them for unity by sinking the past differences and to give full support to the present Government which had arranged to send a delegation to England in October 1947 in order to demand independence for Burma on the basis of constitution framed by the Constituent Assembly.

On the 13th August, the flag which was flown at half-mast as a mark of mourning for the assassinated Ministers in front of the PYT HQ at Cheduba was pulled down at night and cut to pieces by some unknown people.

SANDOWAY DISTRICT

In commemoration of the completion of one month of the death of the late Hon'ble U Aung San and his colleagues, about 500 PYIs and Yemays of Gwa took out a precession, on the 19th August, and assembled at Kinyon monastery where a meeting was held. Thakin Than Pe and Boh Maung Maung of PYT, Thakin Han Pe, AFPFL, and Ma Khin Nyun and Ma Nay Yin (Yemays) delivered speeches urging all the political parties to unite and to support Thakin Nu's Ministry so as to achieve complete independence for Burma. The Red Guards of Gwa Township independence for Burma. The Red Guarde of Gwe Township under the leadership of Boh Lin Yon (a) Chit Pe gathered at Aleywe in order to take part in the procession, as invited by the Gwa PYT. Boh Lin Yon proposed that the Red Guards should be allowed to carry arms. The PYT rejected the proposal and the Red Guards dispersed without attending the celebration.

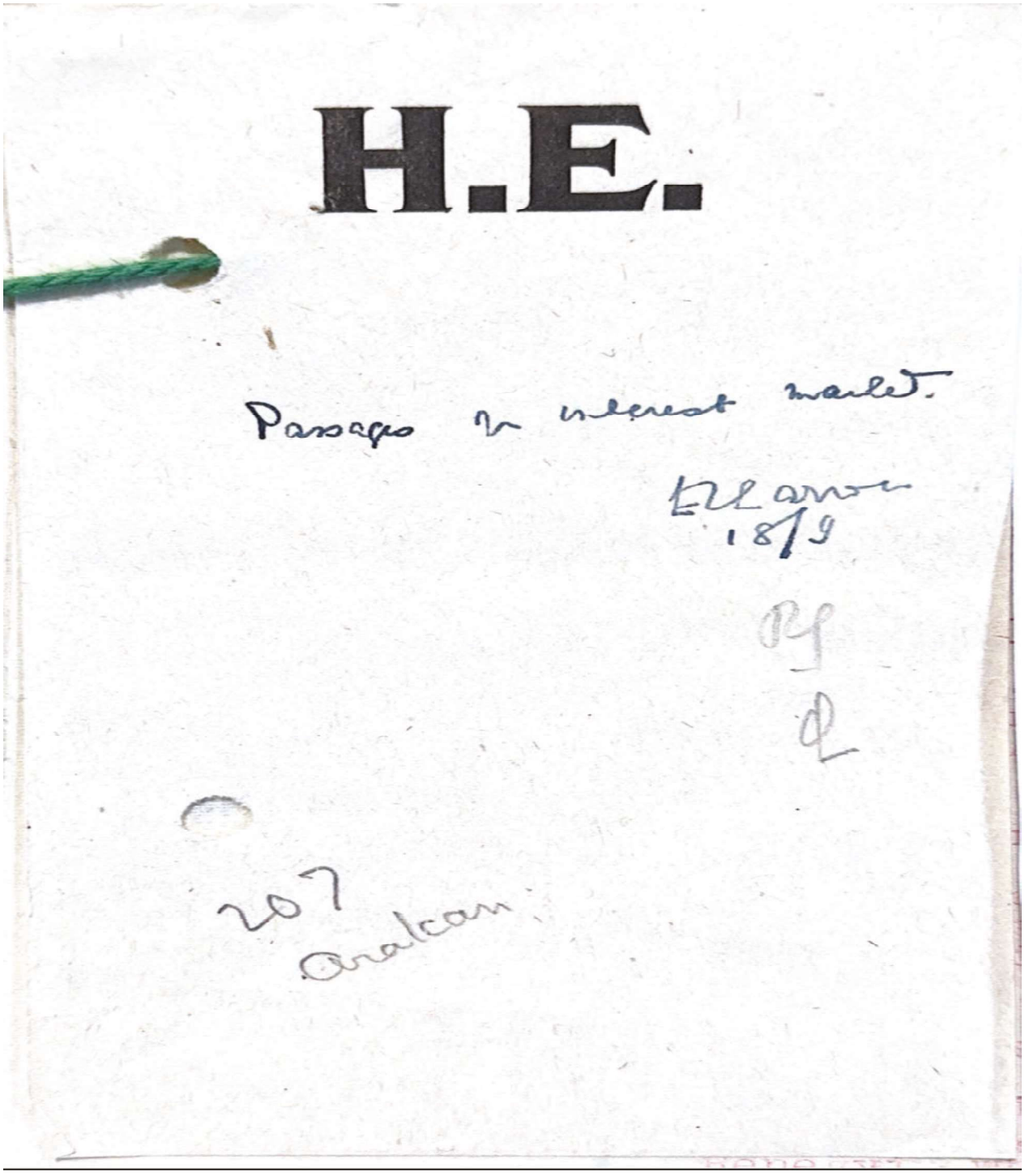
About 50 newly enlisted Red Guards of Gwa Township are reported to be attending a course of training in guerilla warfare under Boh Lin Yon at Aleywa. It was intended to hold a demonstration of guerilla tactics at the end of the training course.

The Red Guard leaders of Salu, Kyiganye and Thayetpingwin villages visited several villages in Salu and Taungmagyi circles and instructed the leaders of these villages to raise 25 men from each village to join the fighting force of the Red Guards. It is reported that the Red Guard leaders are collecting firearms in Akyab District for the new recruits.

(MAUNG KYAW)
Commissioner of Arakan.

Copy to: - (1) F.C. (L.& R.D.).
(2) DIG, CID.

The National Archives (Public Record Office), London. (FO 643/74, 207/GSO/47) "Monthly Reports of the Commissioner of Arakan Division, 1947".



for H.E's information
Thet 17/9
for Secretary, Home
Governor's Secretary.

CONFIDENTIAL.

GOVERNOR'S SECRETARY'S OFFICE
No. 619
Dt. 18/9

No. S. 431/433 /I-2/1.
Arakan Commissioner's Office,
AKYAB.
13th September 1947.

To,
The Chief Secretary to the Government of Burma,
Home Department.
(with 2 spare copies)

Subject:- Monthly Report of the Commissioner, Arakan Division, for August 1947.

1. MILITARY.

The 4th Burma Regiment and the Burma Armed Police Striking Force are in operation in Kyaukpyu and Sandoway Districts and the 1st Chin Rifles in Akyab District.

The disposition of the troops in Akyab District at the strategic points was disturbed on account of the necessity to station a platoon each of the Chin Rifles at Paletwa and Maungdaw in view of the situation arisen out of the murder of the SDO, Maungdaw.

The situation in Kyaukpyu District has improved considerably by the establishment of army posts at Kanhtaunggyi, Sanyin, Kraindaung and Koyanbyin in Myebon Township, which were the H.Qs of the pyaukkya leaders. Dalet, Ru, Thayettaung and Renegyi, which were dangerous for the executive officers to tour these areas for four years, have been occupied by the BAPSF, who are doing very good work. Lwan Tha Aung's gang has dwindled down in number and strength on account of the surrender of 41 of his followers to the BAPSF at Dalet.

Owing to bad weather and lack of sea-worthy craft, the Striking Force could not move beyond Kyeintali in Sandoway District. Troops and the police were ambushed by the Red Guards on three occasions and, on one occasion, Major Balmer, second in command of the 4th Burma Regiment, one sepoy and the serang of the motor boat were severely wounded and one sepoy was killed. One more company of the 4th Burma Regiment has been sent to Sandoway in order to raid Thadechaung in Sandoway Township, which is the H.Q of the armed Red Guards, and to despatch one platoon to Kyeintali and thereby relieve the detachment of the BAPSF to proceed by land to Gwa. The BAPSF stationed at Taungup are doing very well in cooperation with the police and the local PYT. Up to the end of the month, 36 Red Guards surrendered before the BAPSF together with all the arms in their possession.

The result of the military operations has been recorded in the minutes of the Divisional I.S. Committee meetings, a copy of which has been sent to the Chief Secretary.

The relation between civil and military is very cordial.

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U Tha Aung, retired myook, was appointed SDO, Maungdaw, with the approval of Government in place of U Tun U, who was murdered by six Muslims.

Owing to the acute shortage of officers, the Head Clerk of Chedoba Township was appointed T.O. in place of U Ba Gyaw who was seriously ill.

The most important event, which affects the administration of Akyab, was the brutal murder of U Tun U, SDO, Maungdaw, by six Muslims. In this connection the Deputy Commissioner has reported as follows:-

" The month witnessed a most daring and brutal murder of U Tun U, Subdivisional Officer, Maungdaw, by the Muslims. I have no doubt that this is a result of long fostered communal feeling by the Muslims. The assassins who committed the murder were suspected to be employed by the Muslim Police Officers who have been organising strong Muslim feeling and dominating the whole area. This is a direct affront and open challenge to the lawful authority of the Burma Government by the Muslim community of Buthidaung and Maungdaw Townships whose economic invasion of this country was fostered during the British regime. Unless this most distardly flouting of the Government is firmly and severely dealt with this alien community will try to annex this territory or instigate the Pakistan to annex it. There are about 200,000 Muslims in Buthidaung and Maungdaw Townships, thousands of whom are purely new comers from the starving millions of Bengal who followed the wake of the British reoccupation. The murderers, who can count on the support of just these two lakhs, obviously will not have the courage to resort to such a daring affront to Burma Government, unless they feel that their action will have also the moral support of their millions across the Naaf. At present there is little doubt that all these Muslims in the Maungdaw Subdivision are heavily armed. Unless sufficiently large forces of military are stationed all over this Subdivision, the risk of another communal slaughter will always remain great. The spark that this disloyal community may light may eventually lead to a war with Pakistan. Government of Burma will therefore have to take great care about this problem."

The DC Akyab is a Council, an Anglo-Burman Christ.

Necessary action is being taken with a view to impress upon the Muslim population that they are under the Government of Burma. One platoon of the Chin Rifles and the No.3 Western Range Police Flying Squad have been despatched to Maungdaw. The police and other Muslim officers suspected to be concerned in the murder have been transfered out of Maungdaw Subdivision. The DSP, who is now in Maungdaw, has been instructed to warn the Muslim PSI and the CPC, who have a large number of bad characters under their control, that they will be arrested under the P.O.P. Act should they fail to comply with the transfer orders issued. I shall visit Maungdaw on the 16th September with the DIG Police, Western Range, in order to study the reaction to the new regime set up there and to take effective measures for prevention of communal feeling. In view of the necessity to close the frontier at Maungdaw by strict enforcement of the Immigration Act and to prevent smuggling of rice and other commodities across the frontier, troops will have to be stationed there permanently and at Bawli Bazaar and Taungbro. This subject has been discussed with General Thomas, GOC, and

and I.C. Police, who visited Akyab on the 3rd September.

The situation in Akyab and Sandoway Districts is still bad owing to the large number of small gangs of armed dacoits and Red Guards scattered all over the district as the large gangs were broken up on account of the intensive campaign by the armed forces. About 150 headmen in Akyab District are still living away from their jurisdictions, whereas the headmen in Sandoway District refused to do anything which is likely to offend the Red Guards. The situation has been made more difficult owing to the necessity to serve three months notice of termination of their services. The future administration of these two districts will depend on the election of good headmen loyal to Government in power. I am glad election of headmen in this Division has been postponed until the end of the year. The consensus of opinion of the district officers is that, apart from the difficulty to hold the elections, people with strong anti-Government feeling will be elected, if the elections would take place in the present abnormal conditions, and thereby enable the reactionary elements and anti-Government organisations to do more mischief and embarass Government.

Except Myebon and An Townships, which are HQ of the important followers of U Seinda, the rest of Kyaukpyu District is quiet. The armed gangs led by (Bonpauk) Tha Gyaw, Hla Gyaw and Lwan Tha Aung have dwindled down in number and strength as the result of the surrender of their followers and occupation of the strategic points in these two townships by the 4th Burma Regiment and the Armed Police Striking Force. The decision not to withdraw the troops from Arakan for the present has relieved the anxiety of a large number of executive officers, who have been working sincerely in order to restore law and order and to suppress the unlawful activities of the anti-Government organisations.

3. TOWNS.

Nothing of importance to report.

4. RELIGIOUS.

Nothing of importance to report.

5. COMMUNAL.

There was communal tension between the Chins and Arakanese in Myebon Township consequent upon the attack on two Chin villages and whole-sale looting of the inhabitants by the pyaukkyas and dacoits and between the Muslims and Arakanese on account of the brutal murder of the Arakanese SDO at Maungdaw. The situation has eased owing to timely action taken for restoration of amicable relations between these communities and re-shuffling of the police and civil officers in Maungdaw Subdivision.

6. JUDICIAL.

Nothing of importance to report.

7. LAW AND ORDER.

AKYAB DISTRICT.

Figures of important crime are as follows:-

Nature of crime.		Month ending 15th July.	Month ending 15th August.
Dacoity	...	35	18
Robbery	...	7	14
Murder	...	5	7.

There was considerable decrease in dacoity owing to the surrender of four armed gangs. Most of the people in the rural areas are still afraid to report the crimes committed and the figures of reported cases cannot be taken as indicating the true state of affairs.

On the 2nd August, a combined military and civil police party, in an attempt to capture a gang of dacoits in Pauktaw Township, located their hiding place in a thick jungle. The dacoits fled on the approach of the armed forces. The hut used as the meeting place of the dacoits was destroyed by burning.

On the 3rd August, a pyaukkya surrendered at Minbya police station with one Jap rifle and three rounds of ammunition.

On the 4th August, San Hla Phaw's gang, consisting of ten members, surrendered at Kha Rathedaung police station with one Bren gun, one Tommy gun, five British rifles, five Jap rifles and 114 rounds of ammunition. Three more members followed suit with one Jap hand grenade, two Bren magazines and one Tommy gun magazine. The wife of one of the surrendered dacoits was murdered by the rival dacoit gang.

On the 5th August, a D tug carrying a party of troops and police was fired upon between Paledaung and Myingaseik. Two Chin sepoys sustained slight injuries.

On the 7th August, a combined military and civil police raided Nwatingok village in Rathedaung Township, which was the HQ of a dacoit gang. Seven armed dacoits retreated into the jungle after firing a few rounds. The rendezvous of the dacoits was burnt down.

On the 8th August, the military camp at Pyinyaung village was attacked by 20 dacoits. They retreated when the military returned fire.

The most important gangsters, such as Tha Gyaw, Hla Gyaw, Maung Tu, Boh Aung, Hari, Saw Rai Than and Sein Tun Aung still remain at large and the crime situation in Akyab District will give cause for anxiety until they are accounted for.

KYAUKPYU DISTRICT

There were 14 dacoity, 9 robbery and 6 murder.

It has been reported that Red Flag Communists from Gandoway District came over to Ramree Township and looted village defence guns, tax-tickets and revenue collection from five headmen. They are being hunted down by a detachment of the 4th Burma Regiment and the police.

On the 17th August, at about 10 p.m., ten Red Flag Communists armed with rifles attacked the house of the headman of Hone-Wa village, Ramree Township, and took away a licensed Jap rifle, land revenue tax-tickets and revenue collection of Rs.500/-.

On the 22nd August, unknown number of men armed with three Jap rifles and one revolver attacked the house of the headman of Kandawbyin and took away one unlicensed Jap rifle and the land revenue tax-tickets.

On the 23rd August, the headman of Chaungpya village-tract reported that his licensed rifle and land revenue tax-tickets were taken away by Red Flag Communists.

A combined police and military patrol party arrested two followers of Lwan Tha Aung and recovered one German rifle and 3634 rounds of .303 ammunition at the outskirts of Sanyin village, Kyebon Township.

On the 27th August, one man from Ramree Township and two men from Kyaukpyu Township, who had contact with notorious gangster Laung Wai of Ramree, were caught with 875 rounds of .303 and Sten gun ammunition by a Surveillance Head Constable as they were about to board the Arakan Flotilla launch at Kyaukpyu.

On the 28th August, police and local PYT (S.P.) raided Kanchokpyin village, Ramree Township, early on the morning, and arrested four pyaukkyas (three alive and one wounded) and captured two .303 rifles.

As the result of the efforts made by the D.S.P. and the Kyaukpyu police in order to recover ammunition left behind by the Army in Kyaukpyu Township, the following have been surrendered to the police.

.303 ammunition	...	178023
Tommy and Sten gun ammunition	...	14635
Jap machine gun ammunition	...	4630
Hand grenades	...	295
Phosphorus	...	77
Bombs	...	114
Anti-personal booby traps (in working order)	...	2
Two-inch mortar bombs	...	84

SANDOWAY DISTRICT.

Figures of important crime are as follows:-

Nature of crime.		Month ending 22nd July.	Month ending 22nd August.
Dacoity	...	18	6
Robbery	...	14	6
Murder	...	4	3

The situation in Sandoway District has deteriorated owing to the difficulty to despatch a detachment of the 4th Burma Regiment and the BAPSF to Kyeintali and Gwa for want of a sea-worthy craft, high floods and bad weather. In this connection the Deputy Commissioner has reported as follows:-

" The general situation in the district as regards law and order is worse than it was last month. I anticipate that it will further deteriorate before the situation begins to improve. At a secret meeting, the Red Guards passed a resolution to kidnap the Deputy Commissioner, Deputy Superintendent of Police and any other Government officer to be used as hostage for the release of the Yebaws now in custody in the Sandoway jail. Although the crime figures in this district are low, namely 6 dacoity, 6 robbery and 3 murder, it does not mean that the situation is peaceful. It only shows the iron control of the Red

Red Guards' hand on this district, because no one dares to report many cases of murder, dacoity, whipping, illegal confinement, etc. The Red Guards have set up a permanent system of parallel courts at Yabaingkadoe, Satthwa and Nyaungyaung in Gwa Township. Appeals lie to the Appellate Court at Kyaintali. They endeavoured to stage a hunger march of thousands of innocent villagers into Sandoway to demand free wunza from the Rice Project godowns. On receipt of this news, I issued orders under section 144 of the Criminal Procedure Code. 45 representatives from 25 village-tracts in Gwa Township under Red Guard leader Kywin Gyan (whom we have arrested on the 24th) came to the outskirts of Sandoway and sent three representatives to interview me. I informed them that their demand was absurd and it would take Rs.2 lakhs worth of paddy to feed their so-called destitutes who, I am reliably informed, are in no way starving. It is in fact only a political dodge to embarass the administration and I told the representatives that in agitating against Government they were harming themselves, because the present Government is their own Government. They then went away."

The fact that the Red Guards dominated the district is amply proved by the following instances.

On one occasion, five Red Guards arrested two Police Constables and took away the police papers in their possession relating to the looting of arms by the Red Guards. They were warned not to meddle themselves in matters in which the Red Guards were concerned.

On another occasion, a police party of Gwa Police Station was warned by 12 armed Red Guards that no Government servants were to carry arms or to come into their villages and that they would be attacked if they would come armed. As the police party was released, the Red Guards shouted that they were rebels and that no army or police must come into their area.

A party of Red Guards arrested two Process-Servers at Singaung in Sandoway Township and subsequently released them with a warning not to serve any notice or summon. All the Process-Servers are now afraid to go out of Sandoway Town.

On the 14th August, three PYTs were arrested by the Red Guards and they have not been heard of since then.

A party of PYTs who came to Taungup to attend a meeting sponsored by local AFPFL was ambushed on the way and two PYTs were wounded.

On the 17th August, a police party returning in a truck from Kyaukyin in Sandoway Township was ambushed by the Red Guards. One Police Constable was killed and one Sub-Inspector and two Guides were wounded.

One platoon of Burma Regiment and a detachment of the armed police under Major Balmer, second in command of the 4th Burma Regiment, and the D.C. patrolled Thade area, which is the stronghold of the Red Guards in Sandoway Township, from the 19th to 21st August. In the course of the search for Red Guards they seized 1122 rounds of .303 ammunition, one hand-grenade, one bayonet, one DBBL gun, daggers and many

many important documents. On returning to Sandoway in a UB, they were ambushed in the Pyaukhaung chaung. About 70 Red Guards fired at the party with LMG, Sten guns and rifles from the hills on both sides of the chaung. The Red Guards also tried to fire a two-inch mortar, but fortunately the bombs failed to explode. One sepoy was killed and Major Balmer, three other sepoys and the serang of the UB were severely wounded. The Red Guards ran away when the hills were attacked by our armed forces.

One additional company of the 4th Burma Regiment has been despatched to Sandoway so as to enable a platoon of troops to be stationed at Kyeintali. The unit of the BAPSF which has reached Kyeintali by the land route has been instructed to proceed to Sattima and Gwa on arrival of the 4th Burma Regiment at Kyeintali. I shall proceed to Sandoway in the first week of October, if the situation does not improve by the end of September, in order to direct the operations personally as I did successfully last March. At present, the operations have been handicapped for want of a sea-worthy craft and a suitable number of motor trucks in good working order, and I have requested the Transport and Communications Department for approval to the maintenance of the trucks now in commission which are being used both by the civil and military officers.

8. JAILS.

On the 8th August, 145 under-trials in Akyab lock-up went on hunger strike and demanded better treatment by provision of a blanket for each under-trial and permission to smoke an hour a day. The D.S.P. settled the matter and the hunger strike was called off.

The accommodation in Akyab lock-up is congested and the D.C. has instructed the D.S.P. to transfer some of the detenus to the lock-ups at Kyauktaw and Myohaung, which were empty.

Owing to the instigation of Kyaw Mya, the Communist leader, about 100 prisoners and detenus in Akyab jail went on hunger strike on the 13th August. All of them, except 14 convicts, have called off the strike.

On the 12th August, 32 detenus in Sandoway jail also went on hunger strike and demanded that they should be tried in court. The D.C. and the D.S.P. visited the jail, on the 16th August, and explained the case against each of them. They called off the hunger strike the same evening. It is understood several telegrams were sent to Rangoon by the local Communist party and AFPFL requesting for general amnesty on the ground that the condition of these hunger strikers was serious. It was only an attempt to coerce the Government to release them on ground of health, as evidenced by the fact that they called off the strike soon after they were informed that they will not be released under any circumstances.

In accordance with the order of Government necessary precaution has been taken to guard the jails properly.

9. COMMUNICATIONS.

Owing to the difficulty to install a wireless set at Gwa in Sandoway District, the I.G. Police has been requested to supply the Striking Force with

with a wireless set. The Telecommunications Department has done nothing although the D.C., Akyab, has requested the Chief Engineer and the Officer in charge, Telecommunications, Akyab, to install wireless sets at Rathedaung, Buthidaung, Maungdaw, Ponnagyun and Pauktaw. The same remarks apply to our proposals for installation of a wireless set each at Cheduba, Ramree and An in Kyaukpyu District, which are practically cut off during the rainy season.

10. FINANCE AND ACCOUNTS.

Nothing of importance to report.

11. REVENUE.

AKYAB DISTRICT.

	Demand.	Collection.	Remission.	Outstanding
Land revenue (1945-46).	13,18,582/8/	10,18,081/7/	6,072/8/	289,428/14/
" " (1946-47).	15,93,562	6,78,412	1,251/12/	828,899/ 4/
Taungya " (1946-47).	3,987	2,092/8/	34	1,860/8/

Rs.543 out of the outstanding land revenue for 1945-46 and Rs.74,276/12/- out of the land revenue for 1946-47 were collected during the month, which must be considered satisfactory in view of the disturbed condition of the district. Owing to the flood a considerable sum of money which should have been collected as land revenue was spent on re-planting the damaged areas.

KYAUKPYU DISTRICT.

	Demand.	Collection.	Remission.	Outstanding.
Land revenue (1945-46).	275,910	101,857	19,358	94,695
" " (1946-47).	280,561	116,403	124	164,034

Except in Ramree and An, the collection of land revenue is very satisfactory, in view of the strong agitation for non-payment of taxes by the followers of U Seinda. There is very little hope of getting a substantial portion of the outstanding for 1945-46.

SANDOWAY DISTRICT.

No land revenue was collected during the month. The Red Guards were very active and have been threatening the people not to pay taxes. The people in Sandoway District are least affected by the war and strong measures are being taken to make the people pay the taxes due to Government.

12. EXCISE.

Nothing of importance to report.

13. SUPPLIES AND INDUSTRY.

The distribution of supplies improved considerably since the re-organisation of the Civil Supplies Department. The formation of CONCOS has been handicapped for want of the sanctioned staff of Cooperative Officers. I have brought this matter to the notice of the Secretary, Agriculture and Rural Economy Department.

14. RELIEF AND WELFARE. The Welfare staff was very busy helping the people in distress on account of the flood. About 800 bags of rice were taken to the villages and the rice was distributed to the people in the affected areas. The distribution at the very doors of the destitutes, gave general satisfaction and they thanked the Government for the measures taken promptly. One lakh of dhani byits and 10,000 bamboos are being collected for distribution to the people, who lost their houses. The welfare officer has left with a boat-load of about 300 bags of rice to Seneti village in Buthidaung township, where the people were reported to be starving.

15. LABOUR. Nothing of importance to report.

16. AGRICULTURE. The devestating flood which inundated the basin of the Yochaung, Kalachaung, Thayechaung, Rendhaung, and the Myochaung in Akyab district completely destroyed over 40,000 acres of paddy plants. It threw the people into confusion and desperation. As the result of the hard work and close co-operation between the township officers, the officers of Agricultural and Relief and Welfare departments, and the leaders of various political organizations and representatives of the villagers, the whole of the flood effected areas have been replanted. The additional allotment of two lakhs of rupees was distributed within a few days, which is a record in distribution of Agricultural loans in the history of Arakan. In fact, the officers worked up to mid-night. On the whole, the monsoon continues to be favourable and there is hope of a good outturn of paddy.

The Agricultural conditions in Kyaukpyu and Sandoway districts are satisfactory.

17. FOREST. Nothing of importance to report.

18. MEDICAL. In spite of the floods and inundation, no epidemic was reported. The health of the people was on the whole satisfactory. No substitute has been appointed in place of the Sub Assistant Surgeon, Taungup, who was on leave for 3 months. In view of the military operations in Taungup township, a medical Officer should be appointed as early as possible for the Taungup Hospital.

19. PUBLICITY. Nothing of importance to report.

20. POLITICAL. AKYAB DISTRICT.

At the instigation of the Communists, an attempt was made to gather a large number of ignorant people at Kyweda village on Akyab Island with a view to take a procession to Akyab, in order to put pressure on U Pyinnyathiha, the AFPFL leader of Arakan, for the release of Kyaw Mya and other detenues in Akyab Jail.

It caused considerable alarm in Akyab and, in consultation with the AFPFL leaders, the meeting was prohibited under section 144 Cr.P.C.

On the 8th August, an Ex-Yehew

On the 9th August, an Ex-Yebaw Association was formed under the leadership of Tha Ntun Aung (an ex-detenu), and Ba Tun, son of Tha Doe Aung of Akyab. About 260 ex-Yebaws have so far been enlisted. A leaflet in Burmese urging for unity of all castes and creed for the attainment of freedom was distributed. It also appealed to the members of ex-BIA, BDA and PBF to join this association.

KYAUKPYU DISTRICT.

On return from Rangoon U Ba Saw, member of the Constituent Assembly, Kyaukpyu, held a meeting at Kyaukpyu, on the 28th August, at which about 200 people attended. He gave a detailed account of what he did for Kyaukpyu when he was in Rangoon and said that he had moved the authorities concerned for the following:-

(1) Additional allotment of Rs.50,000 to relieve the distress in An and Kyaukpyu Townships in view of the shortage of rice.

(2) Construction of a metalled road from Kyaukpyu to Ramree.

(3) Maintenance of the road through An Pass.

(4) Provision of adequate staff of doctors, nurses and compounders in the hospitals at all the townships headquarters.

(5) Early construction of a new hospital building at Kyaukpyu.

(6) Appointment of Vernacular School teachers for every big village to give free education to the poor children.

(7) Bi-weekly steamer service between Rangoon and Kyaukpyu.

(8) Establishment of an Air port at Kyaukpyu.

(9) Opening of a college for Arakan Division.

(10) Exemption of poor cultivators from payment of land revenue for 1945-46.

He explained to the audience that Burma was on the eve of independence and he appealed to them for unity by sinking the past differences and to give full support to the present Government which had arranged to send a delegation to England in October 1947 in order to demand independence for Burma on the basis of constitution framed by the Constituent Assembly.

On the 13th August, the flag which was flown at half mast as a mark of mourning for the assassinated Ministers in front of the PYT HQ at Cheduba was pulled down at night and cut to pieces by some unknown people.

SANDOWAY DISTRICT.

In commemoration of the completion of one month of the death of the late Hon'ble U Aung San and his colleagues, about 500 PYTs and Yemays of Gwa took out a procession, on the 19th August, and assembled at Kinyon monastery where a meeting was held. Thakin Than Pe and Boh Maung Maung of PYT, Thakin Han Po, AFPFL, and Ma Khin Nyun and Ma May Yin (Yemays) delivered speeches urging all the political parties to unite and to support Thakin Nu's Ministery so as to achieve complete independence.

independence for Burma. The Red Guards of Gwa Township under the leadership of Boh Lin Yon (a) Chit Pe gathered at Aleywa in order to take part in the procession, as invited by the Gwa PYT. Boh Lin Yon proposed that the Red Guards should be allowed to carry arms. The PYT rejected the proposal and the Red Guards dispersed without attending the celebration.

About 50 newly enlisted Red Guards of Gwa Township are reported to be attending a course of training in guerilla warfare under Boh Lin Yon at Aleywa. It was intended to hold a demonstration of guerilla tactics at the end of the training course.

The Red Guard leaders of Salu, Kyiganye and Thayetpingwin villages visited several villages in Salu and Taungmagyi circles and instructed the leaders of these villages to raise 25 men from each village to join the fighting force of the Red Guards. It is reported that the Red Guard leaders are collecting firearms in Akyab District for the new recruits.

Maung Kyaw 13/9.

(MAUNG KYAW)
Commissioner of Arakan.

Copy to:- (1) F.C. (L.& R.D.).
(2) DIG, CID.

DOCUMENTS OF THE UNITED NATIONS AND OF UNITED NATIONS BODIES AND STATEMENTS AT SUCH BODIES

Annex 111

United Nations Treaty Collection, Depositary, Status of Treaties, Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948, status as at 2 December 2024

English version available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4

French version available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&clang=_fr

CHAPTER IV

HUMAN RIGHTS

1. CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

Paris, 9 December 1948[1]

ENTRY INTO FORCE: 12 January 1951, in accordance with article XIII.

REGISTRATION: 12 January 1951, No. 1021.

STATUS: Signatories: 41. Parties: 153.

TEXT: United Nations, *Treaty Series*, vol. 78, p. 277.

Participant[2]	*Signature*	*Accession(a), Succession(d), Ratification*
Afghanistan		22 Mar 1956 a
Albania		12 May 1955 a
Algeria		31 Oct 1963 a
Andorra		22 Sep 2006 a
Antigua and Barbuda		25 Oct 1988 d
Argentina[3]		5 Jun 1956 a
Armenia		23 Jun 1993 a
Australia	11 Dec 1948	8 Jul 1949
Austria		19 Mar 1958 a
Azerbaijan		16 Aug 1996 a
Bahamas		5 Aug 1975 d
Bahrain		27 Mar 1990 a
Bangladesh		5 Oct 1998 a
Barbados		14 Jan 1980 a
Belarus	16 Dec 1949	11 Aug 1954
Belgium	12 Dec 1949	5 Sep 1951
Belize		10 Mar 1998 a
Benin		2 Nov 2017 a
Bolivia (Plurinational State of)	11 Dec 1948	14 Jun 2005
Bosnia and Herzegovina[2,4]		29 Dec 1992 d
Brazil	11 Dec 1948	15 Apr 1952
Bulgaria		21 Jul 1950 a
Burkina Faso		14 Sep 1965 a
Burundi		6 Jan 1997 a
Cabo Verde		10 Oct 2011 a
Cambodia		14 Oct 1950 a
Canada	28 Nov 1949	3 Sep 1952
Chile	11 Dec 1948	3 Jun 1953
China[5,6,7]	20 Jul 1949	18 Apr 1983
Colombia	12 Aug 1949	27 Oct 1959
Comoros		27 Sep 2004 a
Costa Rica		14 Oct 1950 a
Côte d'Ivoire		18 Dec 1995 a
Croatia[2]		12 Oct 1992 d
Cuba[8]	28 Dec 1949	4 Mar 1953
Cyprus[9]		29 Mar 1982 a
Czech Republic[10]		22 Feb 1993 d
Democratic People's Republic of Korea		31 Jan 1989 a
Democratic Republic of the Congo		31 May 1962 d
Denmark	28 Sep 1949	15 Jun 1951
Dominica		13 May 2019 a
Dominican Republic	11 Dec 1948	
Ecuador	11 Dec 1948	21 Dec 1949
Egypt	12 Dec 1948	8 Feb 1952
El Salvador	27 Apr 1949	28 Sep 1950
Estonia		21 Oct 1991 a
Ethiopia	11 Dec 1948	1 Jul 1949
Fiji		11 Jan 1973 d
Finland		18 Dec 1959 a
France	11 Dec 1948	14 Oct 1950
Gabon		21 Jan 1983 a
Gambia		29 Dec 1978 a
Georgia		11 Oct 1993 a
Germany[11,12,13]		24 Nov 1954 a

Participant[2]	*Signature*	*Accession(a), Succession(d), Ratification*
Ghana		24 Dec 1958 a
Greece	29 Dec 1949	8 Dec 1954
Guatemala	22 Jun 1949	13 Jan 1950
Guinea		7 Sep 2000 a
Guinea-Bissau		24 Sep 2013 a
Haiti	11 Dec 1948	14 Oct 1950
Honduras	22 Apr 1949	5 Mar 1952
Hungary		7 Jan 1952 a
Iceland	14 May 1949	29 Aug 1949
India	29 Nov 1949	27 Aug 1959
Iran (Islamic Republic of)	8 Dec 1949	14 Aug 1956
Iraq		20 Jan 1959 a
Ireland		22 Jun 1976 a
Israel	17 Aug 1949	9 Mar 1950
Italy		4 Jun 1952 a
Jamaica		23 Sep 1968 a
Jordan		3 Apr 1950 a
Kazakhstan		26 Aug 1998 a
Kuwait		7 Mar 1995 a
Kyrgyzstan		5 Sep 1997 a
Lao People's Democratic Republic		8 Dec 1950 a
Latvia		14 Apr 1992 a
Lebanon	30 Dec 1949	17 Dec 1953
Lesotho		29 Nov 1974 a
Liberia	11 Dec 1948	20 Jun 1950
Libya		16 May 1989 a
Liechtenstein		24 Mar 1994 a
Lithuania		1 Feb 1996 a
Luxembourg		7 Oct 1981 a
Malawi		14 Jul 2017 a
Malaysia		20 Dec 1994 a
Maldives		24 Apr 1984 a
Mali		16 Jul 1974 a
Malta		6 Jun 2014 a
Mauritius		8 Jul 2019 a
Mexico	14 Dec 1948	22 Jul 1952
Monaco		30 Mar 1950 a
Mongolia		5 Jan 1967 a
Montenegro[14]		23 Oct 2006 d
Morocco		24 Jan 1958 a
Mozambique		18 Apr 1983 a
Myanmar	30 Dec 1949	14 Mar 1956
Namibia		28 Nov 1994 a
Nepal		17 Jan 1969 a
Netherlands (Kingdom of the)		20 Jun 1966 a
New Zealand[15]	25 Nov 1949	28 Dec 1978
Nicaragua		29 Jan 1952 a
Nigeria		27 Jul 2009 a
North Macedonia[2]		18 Jan 1994 d
Norway	11 Dec 1948	22 Jul 1949
Pakistan	11 Dec 1948	12 Oct 1957
Panama	11 Dec 1948	11 Jan 1950
Papua New Guinea		27 Jan 1982 a
Paraguay	11 Dec 1948	3 Oct 2001
Peru	11 Dec 1948	24 Feb 1960
Philippines	11 Dec 1948	7 Jul 1950
Poland		14 Nov 1950 a
Portugal[7]		9 Feb 1999 a
Republic of Korea		14 Oct 1950 a
Republic of Moldova		26 Jan 1993 a
Romania		2 Nov 1950 a
Russian Federation	16 Dec 1949	3 May 1954
Rwanda		16 Apr 1975 a
San Marino		8 Nov 2013 a
Saudi Arabia		13 Jul 1950 a
Senegal		4 Aug 1983 a
Serbia[4,16]		12 Mar 2001 a
Seychelles		5 May 1992 a
Singapore		18 Aug 1995 a
Slovakia[10]		28 May 1993 d
Slovenia[2]		6 Jul 1992 d
South Africa		10 Dec 1998 a
Spain		13 Sep 1968 a
Sri Lanka		12 Oct 1950 a
St. Vincent and the Grenadines		9 Nov 1981 a
State of Palestine		2 Apr 2014 a
Sudan		13 Oct 2003 a
Sweden	30 Dec 1949	27 May 1952
Switzerland		7 Sep 2000 a
Syrian Arab Republic		25 Jun 1955 a
Tajikistan		3 Nov 2015 a
Togo		24 May 1984 a
Tonga		16 Feb 1972 a
Trinidad and Tobago		13 Dec 2002 a
Tunisia		29 Nov 1956 a

Participant[2]	*Signature*	*Accession(a), Succession(d), Ratification*
Türkiye		31 Jul 1950 a
Turkmenistan		26 Dec 2018 a
Uganda		14 Nov 1995 a
Ukraine	16 Dec 1949	15 Nov 1954
United Arab Emirates		11 Nov 2005 a
United Kingdom of Great Britain and Northern Ireland		30 Jan 1970 a
United Republic of Tanzania		5 Apr 1984 a
United States of America	11 Dec 1948	25 Nov 1988
Uruguay	11 Dec 1948	11 Jul 1967
Uzbekistan		9 Sep 1999 a
Venezuela (Bolivarian Republic of)		12 Jul 1960 a
Viet Nam[17,18]		9 Jun 1981 a
Yemen[19]		6 Apr 1989 a
Zambia		20 Apr 2022 a
Zimbabwe		13 May 1991 a

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession. For objections thereto and territorial applications see hereinafter.)

ALBANIA[20]

...

As regards article XII: The People's Republic of Albania declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

ALGERIA

The Democratic and Popular Republic of Algeria does not consider itself bound by article IX of the Convention, which confers on the International Court of Justice jurisdiction in all disputes relating to the said Convention.

The Democratic and Popular Republic of Algeria declares that no provision of article VI of the said Convention shall be interpreted as depriving its tribunals of jurisdiction in cases of genocide or other acts enumerated in article III which have been committed in its territory or as conferring such jurisdiction on foreign tribunals.

International tribunals may, as an exceptional measure, be recognized as having jurisdiction, in cases in which the Algerian Government has given its express approval.

The Democratic and Popular Republic of Algeria declares that it does not accept the terms of article XII of the Convention and considers that all the provisions of the said Convention should apply to Non-Self-Governing Territories, including Trust Territories.

ARGENTINA

Ad article IX: The Argentine Government reserves the right not to submit to the procedure laid down in this article any dispute relating directly or indirectly to the territories referred to in its reservation to article XII.

Ad article XII: If any other Contracting Party extends the application of the Convention to territories under the sovereignty of the Argentine Republic, this extension shall in no way affect the rights of the Republic.

BAHRAIN[21,22]

"With reference to article IX of the Convention the Government of the State of Bahrain declares that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the express consent of all the parties to the dispute is required in each case."

BANGLADESH

"Article IX: For the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all parties to the dispute will be required in each case."

BELARUS[23]

The Byelorussian SSR declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to non-self-governing territories, including trust territories.

BULGARIA[24]

As regards article XII: The People's Republic of Bulgaria declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

CHINA

1. The ratification to the said Convention by the Taiwan local authorities on 19 July 1951 in the name of China is illegal and therefore null and void.

2. The People's Republic of China does not consider itself bound by article IX of the said Convention.

CZECH REPUBLIC[10]

FINLAND[25]

HUNGARY[26]

The Hungarian People's Republic reserves its rights with regard to the provisions of article XII which do not define the obligations of countries having colonies with regard to questions of colonial exploitation and to acts which might be described as genocide.

INDIA

"With reference to article IX of the Convention, the Government of India declares that, for the submission of any dispute in terms of this article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case."

MALAYSIA[27]

"That with reference to article IX of the Convention, before any dispute to which Malaysia is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of Malaysia is required in each case."

"That the pledge to grant extradition in accordance with a state's laws and treaties in force found in article VII extends only to acts which are criminal under the law of both the requesting and the requested state."

MONGOLIA[28]

The Government of the Mongolian People's Republic declares that it is not in a position to agree with article XII of the Convention and considers that the provisions of the said article should be extended to non-self-governing territories, including trust territories.

The Government of the Mongolian People's Republic deems it appropriate to draw attention to the discriminatory character of article XI of the Convention, under the terms of which a number of States are precluded from acceding to the Convention and declares that the Convention deals with matters which affect the interests of all States and it should, therefore, be open for accession by all States.

MONTENEGRO[14]

"The Federal Republic of Yugoslavia does not consider itself bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and, therefore, before any dispute to which the Federal Republic of Yugoslavia is a party may be validly submitted to the jurisdiction of the International Court of Justice under this Article, the specific and explicit consent of the FRY is required in each case."

MOROCCO

With reference to article VI, the Government of His Majesty the King considers that Moroccan courts and tribunals alone have jurisdiction with respect to acts of genocide committed within the territory of the Kingdom of Morocco.

The competence of international courts may be admitted exceptionally in cases with respect to which the Moroccan Government has given its specific agreement.

With reference to article IX, the Moroccan Government states that no dispute relating to the interpretation, application or fulfilment of the present Convention can be brought before the International Court of Justice, without the prior agreement of the parties to the dispute.

MYANMAR

"(1) With reference to article VI, the Union of Burma makes the reservation that nothing contained in the said Article shall be construed as depriving the Courts and Tribunals of the Union of jurisdiction or as giving foreign Courts and tribunals jurisdiction over any cases of genocide or any of the other acts enumerated in article III committed within the Union territory.

"(2) With reference to article VIII, the Union of Burma makes the reservation that the said article shall not apply to the Union."

PHILIPPINES

"1. With reference to article IV of the Convention, the Philippine Government cannot sanction any situation which would subject its Head of State, who is not a ruler, to conditions less favorable than those accorded other Heads of State, whether constitutionally responsible rulers or not. The Philippine Government does not consider said article, therefore, as overriding the existing immunities from judicial processes guaranteed certain public officials by the Constitution of the Philippines.

"2. With reference to article VII of the Convention, the Philippine Government does not undertake to give effect to said article until the Congress of the Philippines has enacted the necessary legislation defining and punishing the crime of genocide, which legislation, under the Constitution of the Philippines, cannot have any retroactive effect.

"3. With reference to articles VI and IX of the Convention, the Philippine Government takes the position that nothing contained in said articles shall be construed as depriving Philippine courts of jurisdiction over all cases of genocide committed within Philippine territory save only in those cases where the Philippine Government consents to have the decision of the Philippine courts reviewed by either of the international tribunals referred to in said articles. With further reference to article IX of the Convention, the Philippine Government does not consider said article to extend the concept of State responsibility beyond that recognized by the generally accepted principles of international law."

POLAND[29]

As regards article XII: Poland does not accept the provisions of this article, considering that the Convention should apply to Non-Self-Governing Territories, including Trust Territories.

ROMANIA[30]

As regards article XII: The People's Republic of Romania declares that it is not in agreement with article XII of the Convention, and considers that all the provisions of the Convention should apply to the Non-Self-Governing Territories, including the Trust Territories.

RUSSIAN FEDERATION[23]

The Union of Soviet Socialist Republics declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

RWANDA[31]

SERBIA[16,32]

"The Federal Republic of Yugoslavia does not consider itself bound by Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide and, therefore, before any dispute to which the Federal Republic of Yugoslavia is a party may be validly submitted to the jurisdiction of the International Court of Justice under this Article, the specific and explicit consent of the FRY is required in each case."

SINGAPORE[27]

"That with reference to article IX of the Convention, before any dispute to which the Republic of Singapore is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the

specific consent of the Republic of Singapore is required in each case."

SLOVAKIA[10]

SPAIN[33]

UKRAINE[23]

The Ukrainian SSR declares that it is not in agreement with article XII of the Convention and considers that all the provisions of the Convention should extend to Non-Self-Governing Territories, including Trust Territories.

UNITED ARAB EMIRATES

The Government of the State of the United Arab Emirates, having considered the aforementioned Convention and approved the contents thereof, formally declares its accession to the Convention and makes a reservation with respect to article 9 thereof concerning the submission of disputes arising between the Contracting Parties relating to the interpretation, application or fulfilment of this Convention, to the International Court of Justice, at the request of any of the parties to the dispute.

UNITED STATES OF AMERICA[11]

"(1) That with reference to article IX of the Convention, be fore any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

(2) That nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States."

"(1) That the term `intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such' appearing in article II means the specific intent to destroy, in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in article II.

(2) That the term `mental harm' in article II (b) means permanent impairment of mental faculties through drugs, torture or similar techniques.

(3) That the pledge to grant extradition in accordance with a state's laws and treaties in force found in article VII extends only to acts which are criminal under the laws of both the requesting and the requested state and nothing in article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state.

(4) That acts in the course of armed conflicts committed without the specific intent required by article II are not sufficient to constitute genocide as defined by this Convention.

(5) That with regard to the reference to an international penal tribunal in article VI of the Convention, the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate."

VENEZUELA (BOLIVARIAN REPUBLIC OF)

With reference to article VI, notice is given that any proceedings to which Venezuela may be a party before an international penal tribunal would be invalid without Venezuela's prior express acceptance of the jurisdiction of such international tribunal.

With reference to article VII, notice is given that the laws in force in Venezuela do not permit the extradition of Venezuelan nationals.

With reference to article IX, the reservation is made that the submission of a dispute to the International Court of Justice shall be regarded as valid only when it takes place with Venezuela's approval, signified by the express conclusion of a prior agreement in each case.

VIET NAM

1. The Socialist Republic of Viet Nam does not consider itself bound by article IX of the Convention which provides the jurisdiction of the International Court of Justice in solving disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention at the request of any of the parties to disputes. The Socialist Republic of Viet Nam is of the view that, regarding the jurisdiction of the International Court of Justice in solving disputes referred to in article IX of the Convention, the consent of the parties to the disputes except the criminals is diametrically necessary for the submission of a given dispute to the International Court of Justice for decision.

2. The Socialist Republic of Viet Nam does not accept article XII of the Convention and considers that all provisions of the Convention should also extend to Non-Self-Governing Territories, including Trust Territories.

3. The Socialist Republic of Viet Nam considers that article XI is of a discriminatory nature, depriving a number of States of the opportunity to become parties to the Convention, and holds that the Convention should be open for accession by all States.

YEMEN[19]

In acceding to this Convention, the People's Democratic Republic of Yemen does not consider itself bound by article IX of the Convention, which provides that disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the Convention shall be submitted to the International Court of Justice at the request of any of the parties to the dispute. It declares that the competence of the International Court of Justice with respect to disputes concerning the interpretation, application or fulfilment of the Convention shall in each case be subject to the express consent of all parties to the dispute.

Objections
(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

AUSTRALIA

"The Australian Government does not accept any of the reservations contained in the instrument of accession of the People's Republic of Bulgaria, or in the instrument of ratification of the Republic of the Philippines.

"The Australian Government does not accept any of the reservations made at the time of signature of the Convention by the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics."

"The Australian Government does not accept the reservations contained in the instruments of accession of the Governments of Poland and Romania."

BELGIUM

The Government of Belgium does not accept the reservations made by Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics.

BRAZIL[34,35]

The Government of Brazil objects to the reservations made to the Convention by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Philippines, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics. The Brazilian Government considers the said reservations as incompatible with the object and purpose of the Convention.

The position taken by the Government of Brazil is founded on the Advisory Opinion of the International Court of Justice of 28 May 1951 and on the resolution adopted by the sixth session of the General Assembly on 12 January 1952, on reservations to multilateral conventions.

The Brazilian Government reserves the right to draw any such legal consequences as it may deem fit from its formal objection to the above-mentioned reservations.

CHINA[34]

CUBA[8]

DENMARK

"In the view of the Government of Denmark this reservation is subject to general principle of treaty interpretation according to which a party may not invoke the provisions of its internal law as justification for failure to perform a treaty."

ECUADOR

The Government of is not in agreement with the reservations made to article IX and XII of the Convention by the Governments of the Byelorussian Soviet Socialist Republic, Czechoslovakia, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics and, therefore, they do not apply to Ecuador which accepted without any modifications the integral text of the Convention.

[Same communication, mutatis mutandis, in respect of the reservations made by Bulgaria.]

The Government of Ecuador does not accept the reservations made by the Governments of Poland and Romania to articles IX and XII of the Convention.

ESTONIA

"The Estonian Government objects to this reservation on the grounds that it creates uncertainty, as to the extent of the obligations the Government of the United States of America is prepared to assume with regard to the Convention. According to article 27 of the Vienna Convention on the Law of Treaties, no party may invoke the provisions of its domestic law as justification for failure to perform a treaty."

FINLAND

"In the view of the Government of Finland this reservation is subject to the general principle of treaty interpretation according to which a party may not invoke the provisions of its internal law as justification for failure to perform a treaty."

GREECE

We further declare that we have not accepted and do not accept any reservation which has already been made or which may hereafter be made by the countries signatory to this instrument or by countries which have acceded or may hereafter accede thereto.

The Government of the Hellenic Republic cannot accept the first reservation entered by the United States of America upon ratifying the Agreement on the Prevention and Punishment of the Crime of Genocide, for it considers such a reservation to be in compatible with the Convention.

In respect of the second reservation formulated by the United States of America:

[Same objection mutatis mutandis, as the one made by Denmark.]

IRELAND

"The Government of Ireland is unable to accept the second reservation made by the United States of America on the occasion of its ratification of the [said] Convention on the grounds that as a generally accepted rule of international law a party to an international agreement may not, by invoking the terms of its internal law, purport to override the provisions of the Agreement."

ITALY

The Government of the Republic of Italy objects to the second reservation entered by the United States of America. It creates uncertainty as to the extent of the obligations which the Government of the United States of America is prepared to assume with regard to the Convention."

MEXICO

The Government of Mexico believes that the reservation made by the United States Government to article IX of the aforesaid Convention should be considered invalid because it is not in keeping with the object and purpose of the Convention, nor with the principle governing the interpretation of treaties whereby no State can invoke provisions of its domestic law as a reason for not complying with a treaty.

If the aforementioned reservation were applied, it would give rise to a situation of uncertainty as to the scope of the obligations which the United States Government would assume with respect to the Convention.

Mexico's objection to the reservation in question should not be interpreted as preventing the entry into force of the 1948 Convention between the [Mexican] Government and the United States Government.

NETHERLANDS (KINGDOM OF THE)

"The Government of the Kingdom of the Netherlands declares that it considers the reservations made by Albania, Algeria, Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, India, Morocco, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics in respect of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature at Paris on 9 December 1948, to be incompatible with the object and purpose of the Convention. The Government of the Kingdom of the Netherlands therefore does not deem any State which has made or which will make such reservation a party to the Convention."

"As concerns the first reservation, the Government of the Kingdom of the Netherlands recalls its declaration, made on 20 June 1966 on the occasion of the accession of the Kingdom of the Netherlands to the Convention [...] stating that in its opinion the reservations in respect of article IX of the Convention, made at that time by a number of states, were incompatible with the object and purpose of the Convention, and that the Government of the Kingdom of the Netherlands did not consider states making such reservations parties to the Convention. Accordingly, the Government of the Kingdom of the Netherlands does not consider the United States of America a party to the Convention. Similarly, the Government of the Kingdom of the Netherlands does not consider parties to the Convention other states which have made such reservations, i.e., in addition to the states mentioned in the aforementioned declaration, the People's Republic of China, Democratic Yemen, the German Democratic Republic, the Mongolian People's Republic, the Philippines, Rwanda, Spain, Venezuela, and Viet Nam, on the other hand, the Government of the Kingdom of the Netherlands does consider parties to theConvention those states that have since withdrawn their reservations, i.e., the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic, and the Ukrainian Soviet Socialist Republic.

As the Convention may come into force between the Kingdom of the Netherlands and the United States of America as a result of the latter withdrawing its reservation in respect of article IX, the Government of the Kingdom of the Netherlands deems it useful to express the following position on the second reservation of the United States of America:

The Government of the Kingdom of the Netherlands objects to this reservation on the ground that it creates uncertainty as to the extent of the obligations the Government of the United States of America is prepared to assume with regard to the Convention. Moreover, any failure by the United States of America to act upon the obligations contained in the Convention on the ground that such action would be prohibited by the constitution of the United States would be contrary to the generally accepted rule of international law, as laid down in article 27 of the Vienna Convention on the law of treaties (Vienna, 23 May 1969)".

"The Government of the Kingdom of the Netherlands recalls its declaration made on 20 June 1966 on the occasion of the accession [to the said Convention].

[See declaration made under " ***Netherlands*** *"]*

Accordingly, the Government of the Netherlands declares that it considers the reservations made by Malaysia and Singapore in respect of article IX of the Convention incompatible with the object and purpose of the Convention. The Government of the Kingdom of the Netherlands does not consider Malaysia and Singapore Parties to the Convention.

On the other hand, the Government of the Kingdom of the Netherlands does consider Parties to the Convention those States that have since withdrawn their reservations in respect of article IX of the Convention, i.e., Hungary, Bulgaria and Mongolia."

NORWAY

"The Norwegian Government does not accept the reservations made to the Convention by the Government of the Philippines at the time of ratification."

"In the view of the Government of Norway this reservation is subject to the general principle of treaty interpretation according to which a party may not invoke the provisions of its internal law as justification for failure to perform a treaty."

SPAIN

Spain interprets the reservation entered by the United States of America to the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948 [...] to mean that legislation or other action by the United States of America will continue to be in accordance with the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

SRI LANKA

"The Government of Ceylon does not accept the reservations made by Romania to the Convention."

SWEDEN

"The Government of Sweden is of the view that a State party to the Convention may not invoke the provisions of its national legislation, including the Constitution, to justify that it does not fulfil its obligations under the Convention and therefore objects to the reservation.

This objection does not constitute an obstacle to the entry into force of the Convention between Sweden and the United States of America."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

"The Government of the United Kingdom do not accept the reservations to articles IV, VII, VIII, IX or XII of the Convention made by Albania, Algeria, Argentina, Bulgaria, Burma, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, India, Mongolia, Morocco, the Philippines, Poland, Romania, Spain, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics or Venezuela."

" The Government of the United Kingdom of Great Britain and Northern Ireland have consistently stated that they are unable to accept reservations in respect of article IX of the said Convention; in their view this is not the kind of reservation which intending parties to the Convention have the right to make.

Accordingly, the Government of the United Kingdom do not accept the reservation entered by the Republic of Rwanda against article IX of the Convention. They also wish to place on record that they take the same view of the similar reservation made by the German Democratic Republic as notified by the circular letter [...] of 25 April 1973."

"The Government of the United Kingdom have [...] consistently stated that they are unable to accept reservations to [article IX]. Likewise, in conformity with the attitude adopted by them in previous cases, the Government of the United Kingdom do not accept the reservation entered by Viet Nam relating to article XII."

"The Government of the United Kingdom of Great Britain and Northern Ireland have consistently stated that they are unable to accept reservations in respect of article IX of the said Convention; in their view this is not the kind of reservation which intending parties to the Convention hve the right to make.

Accordingly the Government of the United Kingdom of Great Britain and Northern Ireland do not accept the reservation entered by the People's Democratic Republic of Yemen against article IX of the Convention."

"The Government of the United Kingdom have consistently stated that they are unable to accept reservations to article IX. Accordingly, in conformity with the attitude adopted by them in previous cases, the Government of the United Kingdom do not accept the first reservation entered by the United States of America.

The Government of the United Kingdom object to the second reservation entered by the United States of

America. It creates uncertainty as to the extent of the obligations which the Government of the United States of America is prepared to assume with regard to the Convention."

"The Government of the United Kingdom of Great Britain and Northern Ireland have consistently stated that they are unable to accept reservations to article IX. In their view, these are not the kind of reservations which intending parties to the Convention have the right to make.

Accordingly, the Government of the United Kingdom do not accept the reservations entered by the Government of Singapore and Malaysia to article IX of the Convention."

Territorial Application

Participant	*Date of receipt of the notification*	*Territories*
Australia	8 Jul 1949	All Overseas Territories of Australia
United Kingdom of Great Britain and Northern Ireland[3,5]	2 Jun 1970	Bahamas, Bermuda, British Virgin Islands, Channel Islands, Dominica, Falkland Islands (Malvinas) and Dependencies, Fiji, Gibraltar, Grenada, Hong Kong, Isle of Man, Pitcairn Island, St. Helena and Dependencies, St. Lucia, Seychelles, St. Vincent and Turks and Caicos Islands
	2 Jun 1970	Tonga

Notes:

[1] Resolution 260 (III), *Official Records of the General Assembly, Third Session* , Part I (A/810), p. 174.

[2] The former Yugoslavia had signed and ratified the Convention on 11 December 1948 and 29 August 1950, respectively. See also note 1 under "Bosnia and Herzegovina", "Croatia", "former Yugoslavia", "Slovenia", "The Former Yugoslav Republic of Macedonia" and "Yugoslavia" in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[3] On 3 October 1983, the Secretary-General received from the Government of Argentina the following objection:

[The Government of Argentina makes a] formal objection to the declaration of territorial extension issued by the United Kingdom with regard to the Malvinas Islands (and dependencies), which that country is illegally occupying and refers to as the "Falkland Islands". The Argentine Republic rejects and considers null and void the [said declaration] of territorial extension.

With reference to the above-mentioned objection the Secretary-General received, on 28 February 1985, from the Government of the United Kingdom of Great Britain and Northern Ireland the following declaration:

"The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to their right, by notification to the Depositary under the relevant provisions of the above-mentioned Convention, to extend the application of the Convention in question to the Falkland Islands or to the Falkland Islands Dependencies, as the case may be.

For this reason alone, the Government of the United Kingdom are unable to regard the Argentine [communication] under reference as having any legal effect."

[4] The following communication, received by the Secretary-General on 15 June 1993, was transmitted prior to Yugoslavia's admission to membership in the United Nations by General Assembly resolution A/55/12 on 1 November 2000, and its accession to the Convention, deposited with the Secretary-General on 12 March 2001:

"Considering the fact that the replacement of sovereignty on the part of the territory of the Socialist Federal Republic of Yugoslavia previously comprising the Republic of Bosnia and Herzegovina was carried out contrary to the rules of international law, the Government of the Federal Republic of Yugoslavia herewith states that it does not consider the so-called Republic of Bosnia and Herzegovina a party to the Convention on the Prevention and Punishment of the Crime of Genocide, but does consider that the so-called Republic of Bosnia and Herzegovina is bound by the obligation to respect the norms on preventing and punishing the crime of genocide in accordance with general international law irrespective of the Convention on the Prevention and Punishment of the Crime of Genocide.

See also note 2 in this chapter and note 1 under "former Yugoslavia" in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[5] On 6 and 10 June 1997, the Secretary-General received communications concerning the status of Hong Kong from the Governments of the United Kingdom and China (see also note 2 under "China" and note 2 under "United Kingdom of Great Britain and Northern Ireland" regarding Hong Kong in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information")). Upon resuming the exercise of sovereignty over Hong Kong, China notified the Secretary-General that the Convention with the reservation made by China will also apply to the Hong Kong Special Administrative Region.

[6] Ratified on behalf of the Republic of China on 19 July 1951. See note 1 under “China” in the “Historical Information” (click on the tab "Status of Treaties" and then on "Historical Information").

[7] On 16 September 1999, the Government of Portugal informed the Secretary-General that the Convention would apply to Macao. Subsequently, the Secretary-General received communications regarding the status of Macao from Portugal and China (see note 3 under “China” and note 1 under “Portgual” in the “Historical Information” section (click on the tab "Status of Treaties" and then on "Historical Information")). Upon resuming the exercise of sovereignty over Macao, China notified the Secretary-General that the Convention with the reservation made by China will also apply to the Macao Special Administrative Region.

[8] By a notification received by the Secretary-General on 29 January 1982, the Government of Cuba withdrew the declaration made on its behalf upon ratification of the said Convention with respect to the reservations to articles IX and XII by Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics.

[9] On 18 May 1998, the Government of Cyprus notified the Secretary-General of the following:

“The Government of the Republic of Cyprus has taken note of the reservations made by a number of countries when acceding to the [Convention] and wishes to state that in its view these are not the kind of reservations which intending parties to the Convention have the right to make.

Accordingly, the Government of the Republic of Cyprus does not accept any reservations entered by any Government with regard to any of the Articles of the Convention.”

[10] Czechoslovakia had signed and ratified the Convention on 28 December 1949 and 21 December 1950, respectively, with a reservation. Subsequently, by a notification received on 26 April 1991, the Government of Czechoslovakia notified the Secretary-General of its decision to withdraw the reservation to article IX made upon signature and confirmed upon ratification. For the text of the reservation, see United Nations, *Treaty Series* , vol. 78, p. 303. See also note 1 under “Czech Republic” and note 1 under “Slovakia” in the “Historical Information” section (click on the tab "Status of Treaties" and then on "Historical Information").

[11] On 11 January 1990, the Secretary-General received from the Government of the Federal Republic of Germany the following declaration:

"The Government of the Federal Republic of Germany has taken note of the declarations made under the heading "Reservations" by the Government of the United States of America upon ratification of the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948. The Government of the Federal Republic of Germany interprets paragraph (2) of the said declarations as a reference to article V of the Convention and therefore as not in any way affecting the obligations of the United States of America as a State Party to the Convention.".

[12] See note 1 under “Germany” regarding Berlin (West) in the “Historical Information” (click on the tab "Status of Treaties" and then on "Historical Information").

[13] The German Democratic Republic had acceded to the Convention with reservation and declaration on 27 March 1973. For the text of the reservation and the declarations see United Nations, *Treaty Series* , vol. 861, p. 200. See also note 2 under “Germany” in the “Historical Information” section in the front matter of this volume.

[14] See note 1 under "Montenegro" in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[15] See note 1 under "New Zealand" regarding Tokelau in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[16] The Secretary-General received communications from the following States on the dates indicated hereinafter regarding the accession of Yugoslavia to the Convention:

Croatia (18 May 2001):

"The Government of the Republic of Croatia objects to the deposition of the instrument of accession of the Federal Republic of Yugoslavia to the Convention on the Prevention and Punishment of the Crime of Genocide, due to the fact that the Federal Republic of Yugoslavia is already bound by the Convention since its emergence as one of the five equal successor states to the former Socialist Federal Republic of Yugoslavia.

This fact was confirmed by the Federal Republic of Yugoslavia in its Declaration of 27 April 1992, as communicated to the Secretary-General (UN doc. A/46/915). Notwithstanding the political reasoning behind it, in its 1992 Declaration the Federal Republic of Yugoslavia stated that it "shall strictly abide by all the commitments that the former Socialist Federal Republic of Yugoslavia assumed internationally".

In this regard the Republic of Croatia notes in particular the decision of the International Court of Justice in its Judgement of 11 July 1996 that the Federal Republic of Yugoslavia "was bound by provisions of the [Genocide] Convention on the date of the filing of [the Application by Bosnia and Herzegovina], namely on 20 March 1993" (ICJ Reports 1996, p. 595, at para. 17).

The Government of the Republic of Croatia further objects to the reservation made by the Federal Republic of Yugoslavia in respect of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, and considers it to be incompatible with the object and purpose of the Convention. The Government of the Republic of Croatia considers the Convention on the Prevention and Punishment of the Crime of Genocide to be fully in force and applicable between the Republic of Croatia and the Federal Republic of Yugoslavia, including Article IX.

The Government of the Republi of Croatia deems that neither the purported way of becoming a party to the Genocide Convention *ex nunc* by the Federal Republic of Yugoslavia,

nor its purported reservation, have any legal effect regarding the jurisdiction of the International Court of Justice with respect to the pending proceedings initiated before the International Court of Justice by the Republic of Croatia against the Federal Republic of Yugoslavia pursuant to the Genocide Convention."

Bosnia-Herzegovina (27 December 2001):

On 21 March 2001 the Secretary-General of the United Nations confirmed to the Permanent Representative of Yugoslavia to the United Nations the receipt of a 'Notification of Accession to the Convention on the Prevention and Punishment of the Crime of Genocide (1948). The note of the Secretary -General carries reference as: LA 41 TR/221/1(4-1).

The Presidency of Bosnia and Herzegovina objects to the deposition of this instrument of accession.

On 29 June 2001, Bosnia and Herzegovina, the Republic of Croatia, the Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia signed an "Agreement on Succession Issues" in which these States, among other things, declare that they are "in sovereign equality the five successor States to the former Socialist Federal Republic of Yugoslavia". A copy of the Agreement is enclosed. *[Copy not reproduced herein.]* For this reason, there can be no question of "accession", but rather there is an issue of succession. This, in itself, implies that the Federal Republic of Yugoslavia has effectively succeeded the former Socialist Federal Republic of Yugoslavia as of 27 April 1992 (the date of the proclamation of the FRY) as a Party to the Genocide Convention.

Apart from that, the Federal Republic of Yugoslavia upon its proclamation on 27 April 1992 declared - and communicated this to the Secretary-General that it would "strictly abide by all the commitments that the Socialist Federal Republic of Yugoslavia assumed internationally"(UN Doc. A/46/915).

For these two reasons it is not possible for the FRY to effectively lay down a reservation with regards to part of the Genocide Convention (i.e. Article IX of the Convention) several years after 27 April 1992, the day on which FRY became bound to the Genocide Convention in its entirety. Bosnia and Herzegovina refers to Articles 2 (1) (d) and 19 of the 1969 Vienna Convention on the Law of Treaties, which explicitly states that a reservation may only be formulated "when signing, ratifying, accepting, approving or acceding to a treaty".

The Presidency of Bosnia and Herzegovina therefore deems the so-called "Notification of Accession to the Convention on the Prevention and Punishment of the Crime of Genocide (1948)" submitted by the Government of the Federal Republic of Yugoslavia to be null and void. Moreover, the International Court of Justice declared in its Judgement of 11 July 1996, "Yugoslavia was bound by the provisions of the Convention" at least at the date of the filing of the Application in the case introduced by Bosnia and Herzegovina on 20 March 1993/ICJ Rep. 1996, p.610, para. 17). The Federal Republic of Yugoslavia continues to be bound under the same conditions, that is without any reservation."

[17] The Secretary-General received on 9 November 1981 from the Government of the Democratic Republic of Kampuchea the following objection with regard to the accession by Viet Nam:

The Government of Democratic Kampuchea, as a party to the Convention on the Prevention and Punishment of the Crime of Genocide, considers that the signing of that Convention by the Government of the Socialist Republic of Viet Nam has no legal force, because it is no more than a cynical, macabre charade intended to camouflage the foul crimes of genocide committed by the 250,000 soldiers of the Vietnamese invasion army in Kampuchea. It is an odious insult to the memory of the more than 2,500,000 Kampucheans who have been massacred by these same Vietnamese armed forces using conventional weapons, chemical weapons and the weapon of famine, created deliberately by them for the purpose of eliminating all national resistance at its source.

It is also a gross insult to hundreds of thousands of Laotians who have been massacred or compelled to take refuge abroad since the occupation of Laos by the Socialist Republic of Viet Nam, to the Hmong national minority in Laos, exterminated by Vietnamese conventional and chemical weapons and, finally, to over a million Vietnamese "boat people" who died at sea or sought refuge abroad in their flight to escape the repression carried out in Viet Nam by the Government of the Socialist Republic of Viet Nam.

This shameless accession by the Socialist Republic of Viet Nam violates and discredits the noble principles and ideals of the United Nations and jeopardizes the prestige and moral authority of our world Organization. It represents an arrogant challenge to the international community, which is well aware of these crimes of genocide committed by the Vietnamese army in Kampuchea, has constantly denounced and condemned them since 25 December 1978, the date on which the Vietnamese invasion of Kampuchea began, and demands that these Vietnamese crimes of genocideght to an end by the total withdrawal of the Vietnamese forces from Kampuchea and the restoration of the inalienable right of the people of Kampuchea to decide its own destiny without any foreign interference, as provided in United Nations resolutions 34/22, 35/6 and 36/5.

[18] Accession on behalf of the Republic of Viet-Nam on 11 August 1950 (See C.N.134.1950). (For the text of objections to some of the reservations made upon the said accession, see publication, *Multilateral Treaties for which the Secretary-General acts as Depositary* (ST/LEG/SER.D/13, p. 91). See also note 1 under "Viet Nam" in the "Historical Information" section Accession on behalf of the Republic of Viet-Nam.

[19] The Yemen Arab Republic had acceded to the Convention on 6 April 1989. See also note 1 under "Yemen" in the "Historical Information" section (click on the tab "Status of Treaties" and then on "Historical Information").

[20] On 19 July 1999, the Government of Albania informed the Secretary-General that it had decided to withdraw its reservation regarding article IX made upon accession. For the text of the reservation, see United Nations, *Treaty Series* , vol. 210, p. 332.

[21] On 25 June 1990, the Secretary-General received from the Government of Israel the following objection:

"The Government of the State of Israel has noted that the instrument of accession of Bahrain to the [said] Convention contains a declaration in respect of Israel.

In the view of the Government of the State of Israel, such declaration, which is explicitly of a political character, is incompatible with the purpose and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Bahrain under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Bahrain an attitude of complete reciprocity".

[22] On 8 July 2021, the Government of Bahrain notified the Secretary-General of its withdrawal of the following reservation made upon accession:

"[T]he accession by the State of Bahrain to the said Convention shall in no way constitute recognition of Israel or be a cause for the establishment of any relations of any kind therewith."

[23] In communications received on 8 March, 19 and 20 April 1989, respectively, the Governments of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic notified the Secretary-General that they had decided to withdraw the reservation relating to article IX. For the texts of the reservations, see United Nations, *Treaty Series* , vol. 190, p. 381, vol.196, p. 345 and vol. 201, p. 368, respectively.

[24] On 24 June 1992, the Government of Bulgaria notified the Secretary-General its decision to withdraw the reservation to article IX of the Convention, made upon accession. For the text of the reservation, see United Nations, *Treaty Series* , vol. 78, p. 318.

[25] On 5 January 1998, the Government of Finland notified the Secretary-General that it had decided to withdraw its reservation made upon accession to the Convention. For the text of the reservation, see United Nations, *Treaty Series* , vol. 346, p. 324.

[26] In a communication received on 8 December 1989, the Government of Hungary notified the Secretary-General that it had decided to withdraw the reservation relating to article IX made upon accession. For the text of the reservation, see United Nations, *Treaty Series* , vol. 118, p. 306.

[27] In this regard, on 14 October 1996, the Secretary-General received from the Government of Norway, the following communication:

"... In [the view of the Government of Norway], reservations in respect of article IX of the Convention are incompatible with the object and purpose of the said Convention. Accordingly, the Government of Norway does not accept the reservations entered by the Governments of Singapore and Malaysia to article IX of the Convention."

[28] In a communication received on 19 July 1990, the Government of Mongolia notified the Secretary-General of its decision to withdraw the reservation relating to article IX made upon accession. For the text of the reservation see United Nations, *Treaty Series* , vol. 587, p. 326.

[29] On 16 October 1997, the Government of Poland notified the Secretary-General that it had decided to withdraw its reservation with regard to article IX of the Convention made upon accession. For the text of the reservation see United Nations, *Treaty Series* , vol. 78, p. 277.

[30] On 2 April 1997, the Government of Romania informed the Secretary-General that it had decided to withdraw its reservation with regard to article IX of the Convention. For the text of the reservation, see United Nations, *Treaty Series* , vol. 78, p. 314.

[31] In a communication received on 15 December 2008, the Government of Rwanda notified the Secretary-General that it had decided to withdraw the reservation relating to article IX made upon accession to the Convention. The text of the reservation reads as follows:

The Rwandese Republic does not consider itself as bound by article IX of the Convention.

[32] With regard to the reservation made by the Government of Yugoslavia upon accession, the Secretary-General received from the following State, a communication on the date indicated hereinafter:

Sweden (2 April 2002):

"The Government of Sweden has taken note of the Secretary-General's circular notification 164.2001.TREATIES-.1 of 15 March 2001, stating the intent of the Federal Republic of Yugoslavia to accede, with a reservation, to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The Government of Sweden regards the Federal Republic of Yugoslavia as one successor state to the Socialist Federal Republic of Yugoslavia and, as such, a Party to the Convention from the date of the entering into force of the Convention for the Socialist Federal Republic of Yugoslavia. The Government of Sweden hereby communicates that it considers the said reservation as having been made too late, according to article 19 of the 1969 Vienna Convention on the Law of Treaties, and thus null and void."

[33] On 24 September 2009, the Government of Spain informed the Secretary-General that it had decided to withdraw the reservation in respect of the whole article IX (Jurisdiction of the International Court of Justice) made upon accession to the Convention.

[34] For the Advisory Opinion of the International Court of Justice of 28 May 1951, see *I.C.J., Report 1951* , p. 15.

[35] For the resolution adopted on 12 January 1952 by the sixth session of the General Assembly concerning reservations to multilateral conventions, see Resolution 598 (VI); *Official Records of the General Assembly, Sixth Session, Supplement No. 20 (A/2119)* , p. 84.

Annex 112

UN Commission on Human Rights, Report submitted by Mr. Angelo Vidal d'Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986, UN Doc. E/CN.4/1993/62, 6 January 1993

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Forty-ninth session
Item 22 of the provisional agenda

IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report submitted by Mr. Angelo Vidal d'Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986

GE.93-10109 (E)

The Rohingyas do not exist in Myanmar either historically, politically or legally. Nor do they in any way represent any segment of the population in Myanmar including those professing the Islamic faith. The so-called 'Rohingyas' is an invention of insurgent terrorist organizations like the Rohingya Solidarity Organization (RSO) and the Arakan Rohingya Islamic Front (ARIF). Both organizations are alien to Myanmar in form and content and are largely supported and patronized from abroad.

As I have stated earlier, Myanmar saw the illegal entry of people of Bengali stock after the first Anglo-Myanmar war in 1824. At the end of the Second World War, plenty of arms and ammunition came into the hands of the people in that area. When the euphoria generated by the creation of Pakistan spread over Buthidaung and Maungdaw districts in Rakhine State, it gave birth to a political movement known as 'Mujahid Movement' led by one Abdul Kassim from Maungdaw township. Its demand was that Buthidaung and Maungdaw areas (situated in Rakhine State) to be designated as a Muslim State to be amalgamated with East Pakistan, now Bangladesh. The so-called Rohingyas are descendants of this alien terrorist insurgent movement. The said RSO and ARIF are the two main organizations responsible for the terrorist activities inciting the people of Islamic faith to cross over to the other side.

Now about the allegations against the Myanmar Armed Forces (the Tatmadaw).

The Myanmar army is the National Defence Force that in its growth underwent a metamorphosis as a Burmese Independent Army (BIA), the Burma Defence Army (DBA) and the Patriotic Burmese Forces (PBF) which had its beginnings in the early 1940s. In fighting or striving for national independence the Tatmadaw fought hand in hand together with the people, a struggle in which all the indigenous national races participated. The Myanmar army was born out of the national struggle for independence and follows the tradition of serving the people's interest loyally and faithfully. It is a carefully built and organized force that has been nurtured to defend the national interest. The Tatmadaw is a methodically and systematically organized institution made up of highly trained and disciplined personnel. Each member is pledged to conduct oneself in conformity with a prescribed code of ethics and is enjoined to respect the cultural traditions and customs of the local people. This training and tradition is fiercely maintained and observed by every member. Any misbehaviour or misconduct by a member is not tolerated or condoned. In view of these qualities, the grotesque allegations made against the Tatmadaw are totally false.

I feel that I have adequately covered and rebutted the allegations made against the Myanmar armed forces.

With regard to the allegations relating to individuals contained in the Annex attached to your letter, I should like to say that the allegations are based on fabricated and fraudulent evidence and are therefore mendacious."

47. With regard to the very specific allegations which the Special Rapporteur sent to the Government of Myanmar, he has noted that its reply was limited to specifying the principles of religious liberty which are said to be respected in this country and to describing the important role played by the Army of

Myanmar in the political, social and security context. The Special Rapporteur is, nevertheless, of the opinion that the concrete cases concerning the exercise of the freedom of religion by the members of the Muslim and Christian faiths merits an investigation that would identify the persons, locations and situations concerned, which has not been carried out. The Special Rapporteur believes that the fact that the acts in question have been attributed to terrorist groups does not relieve the Government of its responsibility to conduct an inquiry.

Pakistan

48. In a communication of 30 October 1992 addressed to the Government of Pakistan, the following information was transmitted by the Special Rapporteur:

"Information concerning Christians

According to the information received, members of religious minorities in Pakistan are said to have felt increasingly vulnerable since the passing of the Enforcement of Sharia (Islamic law) Act 1991 which has entailed on 29 July 1991 an amendment to Section 295C of the Pakistan Penal Code concerning the offence of defiling the name of the Prophet Mohammad (Gustakh-e-Rasool). Section 295C was added to the Pakistan Penal Code through the Criminal Law Amendment Act 1986 in order to provide life imprisonment or the death penalty for the criminal offence of defiling the name of the Prophet. By removing the alternative punishment of life imprisonment, the amendment to Section 295C of the Pakistan Penal Code makes the death penalty the mandatory punishment for this offence. It has also been alleged that since the second half of 1991, Islamic law has been invoked with greater frequency against Pakistani citizens of Christian faith although the 1973 Constitution stipulates that it should not be applied to non-Muslim religious minorities. It has further been alleged that commenting on or writing against the Enforcement of Sharia Act 1991 and the amendment of Section 295C of the Pakistan Penal Code may, in the present circumstances, be liable to prosecution under these very laws.

According to the information received by the Special Rapporteur, a number of Christians have already been charged under Section 295C of the Pakistan Penal Code. Professional enmity or rivalry in business have been cited as a frequent cause for Christians to be charged and imprisoned under Section 295C, and it is alleged to have compounded their sense of insecurity and fear of intimidation and harassment. Cases of Christian children working as domestic servants who were forcibly converted to the Muslim faith are said to have occurred as well. A nine-year old boy employed in a workshop owned by a Muslim is also said to have been converted to Islam by force. In addition, the Special Rapporteur was informed that a decision has been reached by the authorities to have the religion of all citizens indicated on their identification cards.

The following specific incidents involving Christians have been brought to the attention of the Special Rapporteur:

Naimat Ahmer, 45, a Christian schoolteacher and well-known author, was killed on 6 January 1992 in Faisalabad, near Lahore in Punjab province, because he had been accused of defiling the name of the Prophet Mohammad on

Annex 112*bis*

International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), adopted on 3 August 2001, *Yearbook of the International Law Commission 2001*, vol. II, Part Two, as corrected

English version available at:

https://legal.un.org/ilc/publications/yearbooks/english/ilc_2001_v2_p2.pdf

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A/CN.4/SER.A/2001/Add.1 (Part 2)

YEARBOOK OF THE INTERNATIONAL LAW COMMISSION

2001

Volume II
Part Two

Report of the Commission to the General Assembly on the work of its fifty-third session

UNITED NATIONS
New York and Geneva, 2007

in part.[423] In the absence of any specific provision, however, international law attributes to the responsible State new obligations, and in particular the obligation to make reparation for the harmful consequences flowing from that act. The close link between the breach of an international obligation and its immediate legal consequence in the obligation of reparation was recognized in article 36, paragraph 2, of the PCIJ Statute, which was carried over without change as Article 36, paragraph 2, of the ICJ Statute. In accordance with article 36, paragraph 2, States parties to the Statute may recognize as compulsory the Court's jurisdiction, *inter alia*, in all legal disputes concerning:

(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;

(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

Part One of the articles sets out the general legal rules applicable to the question identified in subparagraph (*c*), while Part Two does the same for subparagraph (*d*).

(3) Part Two consists of three chapters. Chapter I sets out certain general principles and specifies more precisely the scope of Part Two. Chapter II focuses on the forms of reparation (restitution, compensation, satisfaction) and the relations between them. Chapter III deals with the special situation which arises in case of a serious breach of an obligation arising under a peremptory norm of general international law, and specifies certain legal consequences of such breaches, both for the responsible State and for other States.

CHAPTER I

GENERAL PRINCIPLES

Commentary

(1) Chapter I of Part Two comprises six articles, which define in general terms the legal consequences of an internationally wrongful act of a State. Individual breaches of international law can vary across a wide spectrum from the comparatively trivial or minor up to cases which imperil the survival of communities and peoples, the territorial integrity and political independence of States and the environment of whole regions. This may be true whether the obligations in question are owed to one other State or to some or all States or to the international community as a whole. But over and above the gravity or effects of individual cases, the rules and institutions of State responsibility are significant for the maintenance of respect for international law and for the achievement of the goals which States advance through law-making at the international level.

(2) Within chapter I, article 28 is an introductory article, affirming the principle that legal consequences are entailed whenever there is an internationally wrongful act of a State. Article 29 indicates that these consequences are without prejudice to, and do not supplant, the continued obligation of the responsible State to perform the obligation breached. This point is carried further by article 30, which deals with the obligation of cessation and assurances or guarantees of non-repetition. Article 31 sets out the general obligation of reparation for injury suffered in consequence of a breach of international law by a State. Article 32 makes clear that the responsible State may not rely on its internal law to avoid the obligations of cessation and reparation arising under Part Two. Finally, article 33 specifies the scope of the Part, both in terms of the States to which obligations are owed and also in terms of certain legal consequences which, because they accrue directly to persons or entities other than States, are not covered by Parts Two or Three of the articles.

Article 28. Legal consequences of an internationally wrongful act

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part.

Commentary

(1) Article 28 serves an introductory function for Part Two and is expository in character. It links the provisions of Part One which define when the international responsibility of a State arises with the provisions of Part Two which set out the legal consequences which responsibility for an internationally wrongful act involves.

(2) The core legal consequences of an internationally wrongful act set out in Part Two are the obligations of the responsible State to cease the wrongful conduct (art. 30) and to make full reparation for the injury caused by the internationally wrongful act (art. 31). Where the internationally wrongful act constitutes a serious breach by the State of an obligation arising under a peremptory norm of general international law, the breach may entail further consequences both for the responsible State and for other States. In particular, all States in such cases have obligations to cooperate to bring the breach to an end, not to recognize as lawful the situation created by the breach and not to render aid or assistance to the responsible State in maintaining the situation so created (arts. 40–41).

(3) Article 28 does not exclude the possibility that an internationally wrongful act may involve legal consequences in the relations between the State responsible for that act and persons or entities other than States. This follows from article 1, which covers all international obligations *of* the State and not only those owed *to* other States. Thus, State responsibility extends, for example, to human rights violations and other breaches of international law where the primary beneficiary of the obligation breached is not a State. However, while Part One applies to all the cases in which an internationally wrongful act may be committed by a State, Part Two has a more limited scope. It does not apply to obligations of reparation to the extent

[423] On the *lex specialis* principle in relation to State responsibility, see article 55 and commentary.

that these arise towards or are invoked by a person or entity other than a State. In other words, the provisions of Part Two are without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State, and article 33 makes this clear.

Article 29. Continued duty of performance

The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached.

Commentary

(1) Where a State commits a breach of an international obligation, questions as to the restoration and future of the legal relationship thereby affected are central. Apart from the question of reparation, two immediate issues arise, namely, the effect of the responsible State's conduct on the obligation which has been breached, and cessation of the breach if it is continuing. The former question is dealt with by article 29, the latter by article 30.

(2) Article 29 states the general principle that the legal consequences of an internationally wrongful act do not affect the continued duty of the State to perform the obligation it has breached. As a result of the internationally wrongful act, a new set of legal relations is established between the responsible State and the State or States to whom the international obligation is owed. But this does not mean that the pre-existing legal relation established by the primary obligation disappears. Even if the responsible State complies with its obligations under Part Two to cease the wrongful conduct and to make full reparation for the injury caused, it is not relieved thereby of the duty to perform the obligation breached. The continuing obligation to perform an international obligation, notwithstanding a breach, underlies the concept of a continuing wrongful act (see article 14) and the obligation of cessation (see subparagraph (*a*) of article 30).

(3) It is true that in some situations the ultimate effect of a breach of an obligation may be to put an end to the obligation itself. For example, a State injured by a material breach of a bilateral treaty may elect to terminate the treaty.[424] But as the relevant provisions of the 1969 Vienna Convention make clear, the mere fact of a breach and even of a repudiation of a treaty does not terminate the treaty.[425] It is a matter for the injured State to react to the breach to the extent permitted by the Convention. The injured State may have no interest in terminating the treaty as distinct from calling for its continued performance. Where a treaty is duly terminated for breach, the termination does not affect legal relationships which have accrued under the treaty prior to its termination, including the obligation to make reparation for any breach.[426] A breach of an obligation under general international law is even less likely to affect the underlying obligation, and indeed will never do so *as such*. By contrast, the secondary legal relation of State responsibility arises on the occurrence of a breach and without any requirement of invocation by the injured State.

(4) Article 29 does not need to deal with such contingencies. All it provides is that the legal consequences of an internationally wrongful act within the field of State responsibility do not affect any continuing duty to comply with the obligation which has been breached. Whether and to what extent that obligation subsists despite the breach is a matter not regulated by the law of State responsibility but by the rules concerning the relevant primary obligation.

Article 30. Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

(*a*) to cease that act, if it is continuing;

(*b*) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

Commentary

(1) Article 30 deals with two separate but linked issues raised by the breach of an international obligation: the cessation of the wrongful conduct and the offer of assurances and guarantees of non-repetition by the responsible State if circumstances so require. Both are aspects of the restoration and repair of the legal relationship affected by the breach. Cessation is, as it were, the negative aspect of future performance, concerned with securing an end to continuing wrongful conduct, whereas assurances and guarantees serve a preventive function and may be described as a positive reinforcement of future performance. The continuation in force of the underlying obligation is a necessary assumption of both, since if the obligation has ceased following its breach, the question of cessation does not arise and no assurances and guarantees can be relevant.[427]

(2) Subparagraph (*a*) of article 30 deals with the obligation of the State responsible for the internationally wrongful act to cease the wrongful conduct. In accordance with article 2, the word "act" covers both acts and omissions. Cessation is thus relevant to all wrongful acts extending in time "regardless of whether the conduct of a State is

[424] See footnote 422 above.

[425] Indeed, in the *Gabčíkovo-Nagymaros Project* case, ICJ held that continuing material breaches by both parties did not have the effect of terminating the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System (see footnote 27 above), p. 68, para. 114.

[426] See, e.g., *"Rainbow Warrior"* (footnote 46 above), p. 266, citing Lord McNair (dissenting) in *Ambatielos, Preliminary Objection, I.C.J. Reports 1952*, p. 28, at p. 63. On that particular point the Court itself agreed, *ibid.*, p. 45. In the *Gabčíkovo-Nagymaros Project* case, Hungary accepted that the legal consequences of its termination of the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System on account of the breach by Czechoslovakia were prospective only, and did not affect the accrued rights of either party (see footnote 27 above), pp. 73–74, paras. 125–127. The Court held that the Treaty was still in force, and therefore did not address the question.

[427] 1969 Vienna Convention, art. 70, para. 1.

taken.[447] But assurances and guarantees of non-repetition will not always be appropriate, even if demanded. Much will depend on the circumstances of the case, including the nature of the obligation and of the breach. The rather exceptional character of the measures is indicated by the words "if circumstances so require" at the end of subparagraph (*b*). The obligation of the responsible State with respect to assurances and guarantees of non-repetition is formulated in flexible terms in order to prevent the kinds of abusive or excessive claims which characterized some demands for assurances and guarantees by States in the past.

Article 31. Reparation

1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.

Commentary

(1) The obligation to make full reparation is the second general obligation of the responsible State consequent upon the commission of an internationally wrongful act. The general principle of the consequences of the commission of an internationally wrongful act was stated by PCIJ in the *Factory at Chorzów* case:

> It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application.[448]

In this passage, which has been cited and applied on many occasions,[449] the Court was using the term "reparation" in its most general sense. It was rejecting a Polish argument that jurisdiction to interpret and apply a treaty did not entail jurisdiction to deal with disputes over the form and quantum of reparation to be made. By that stage of the dispute, Germany was no longer seeking for its national the return of the factory in question or of the property seized with it.

(2) In a subsequent phase of the same case, the Court went on to specify in more detail the content of the obligation of reparation. It said:

> The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.[450]

In the first sentence, the Court gave a general definition of reparation, emphasizing that its function was the re-establishment of the situation affected by the breach.[451] In the second sentence, it dealt with that aspect of reparation encompassed by "compensation" for an unlawful act—that is, restitution or its value, and in addition damages for loss sustained as a result of the wrongful act.

(3) The obligation placed on the responsible State by article 31 is to make "full reparation" in the *Factory at Chorzów* sense. In other words, the responsible State must endeavour to "wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"[452] through the provision of one or more of the forms of reparation set out in chapter II of this part.

(4) The general obligation of reparation is formulated in article 31 as the immediate corollary of a State's responsibility, i.e. as an obligation of the responsible State resulting from the breach, rather than as a right of an injured State or States. This formulation avoids the difficulties that might arise where the same obligation is owed simultaneously to several, many or all States, only a few of which are specially affected by the breach. But quite apart from the questions raised when there is more than one State entitled to invoke responsibility,[453] the general obligation of reparation arises automatically upon commission of an internationally wrongful act and is not, as such, contingent upon a demand or protest by any State, even if the form which reparation should take in the circumstances may depend on the response of the injured State or States.

(5) The responsible State's obligation to make full reparation relates to the "injury caused by the internationally wrongful act". The notion of "injury", defined in *paragraph 2*, is to be understood as including any damage caused by that act. In particular, in accordance with paragraph 2, "injury" includes any material or moral damage caused thereby. This formulation is intended both as inclusive, covering both material and moral damage broadly understood, and as limitative, excluding merely abstract concerns or general interests of a State which is individu-

to the British Naval Commanders to molest no German merchantmen in places not in the vicinity of the seat of war", Martens, *op. cit.* (footnote 441 above), vol. XXIX, p. 456 at p. 486.

[447] In the *Trail Smelter* case (see footnote 253 above), the arbitral tribunal specified measures to be adopted by the Trail Smelter, including measures designed to "prevent future significant fumigations in the United States" (p. 1934). Requests to modify or repeal legislation are frequently made by international bodies. See, e.g., the decisions of the Human Rights Committee: *Torres Ramirez* v. *Uruguay*, decision of 23 July 1980, *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40* (A/35/40), p. 126, para. 19; *Lanza* v. *Uruguay*, decision of 3 April 1980, *ibid.*, p. 119, para. 17; and *Dermit Barbato* v. *Uruguay*, decision of 21 October 1982, *ibid.*, *Thirty-eighth Session, Supplement No. 40* (A/38/40), p. 133, para. 11.

[448] *Factory at Chorzów, Jurisdiction* (see footnote 34 above).

[449] Cf. the ICJ reference to this decision in *LaGrand, Judgment* (footnote 119 above), p. 485, para. 48.

[450] *Factory at Chorzów, Merits* (see footnote 34 above), p. 47.

[451] Cf. P.-M. Dupuy, "Le fait générateur de la responsabilité internationale des États", *Collected Courses ... 1984–V* (Dordrecht, Martinus Nijhoff, 1986), vol. 188, p. 9, at p. 94, who uses the term *restauration*.

[452] *Factory at Chorzów, Merits* (see footnote 34 above), p. 47.

[453] For the States entitled to invoke responsibility, see articles 42 and 48 and commentaries. For the situation where there is a plurality of injured States, see article 46 and commentary.

ally unaffected by the breach.[454] "Material" damage here refers to damage to property or other interests of the State and its nationals which is assessable in financial terms. "Moral" damage includes such items as individual pain and suffering, loss of loved ones or personal affront associated with an intrusion on one's home or private life. Questions of reparation for such forms of damage are dealt with in more detail in chapter II of this Part.[455]

(6) The question whether damage to a protected interest is a necessary element of an internationally wrongful act has already been discussed.[456] There is in general no such requirement; rather this is a matter which is determined by the relevant primary rule. In some cases, the gist of a wrong is the causing of actual harm to another State. In some cases what matters is the failure to take necessary precautions to prevent harm even if in the event no harm occurs. In some cases there is an outright commitment to perform a specified act, e.g. to incorporate uniform rules into internal law. In each case the primary obligation will determine what is required. Hence, article 12 defines a breach of an international obligation as a failure to conform with an obligation.

(7) As a corollary there is no general requirement, over and above any requirements laid down by the relevant primary obligation, that a State should have suffered material harm or damage before it can seek reparation for a breach. The existence of actual damage will be highly relevant to the form and quantum of reparation. But there is no general requirement of material harm or damage for a State to be entitled to seek some form of reparation. In the *"Rainbow Warrior"* arbitration it was initially argued that "in the theory of international responsibility, damage is necessary to provide a basis for liability to make reparation", but the parties subsequently agreed that:

> Unlawful action against non-material interests, such as acts affecting the honor, dignity or prestige of a State, entitle the victim State to receive adequate reparation, even if those acts have not resulted in a pecuniary or material loss for the claimant State.[457]

The tribunal held that the breach by France had "provoked indignation and public outrage in New Zealand and caused a new, additional non-material damage ... of a moral, political and legal nature, resulting from the affront to the dignity and prestige not only of New Zealand as such, but of its highest judicial and executive authorities as well".[458]

(8) Where two States have agreed to engage in particular conduct, the failure by one State to perform the obligation necessarily concerns the other. A promise has been broken and the right of the other State to performance correspondingly infringed. For the secondary rules of State responsibility to intervene at this stage and to prescribe that there is no responsibility because no identifiable harm or damage has occurred would be unwarranted. If the parties had wished to commit themselves to that formulation of the obligation they could have done so. In many cases, the damage that may follow from a breach (e.g. harm to a fishery from fishing in the closed season, harm to the environment by emissions exceeding the prescribed limit, abstraction from a river of more than the permitted amount) may be distant, contingent or uncertain. Nonetheless, States may enter into immediate and unconditional commitments in their mutual long-term interest in such fields. Accordingly, article 31 defines "injury" in a broad and inclusive way, leaving it to the primary obligations to specify what is required in each case.

(9) Paragraph 2 addresses a further issue, namely the question of a causal link between the internationally wrongful act and the injury. It is only "[i]njury ... caused by the internationally wrongful act of a State" for which full reparation must be made. This phrase is used to make clear that the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act.

(10) The allocation of injury or loss to a wrongful act is, in principle, a legal and not only a historical or causal process. Various terms are used to describe the link which must exist between the wrongful act and the injury in order for the obligation of reparation to arise. For example, reference may be made to losses "attributable to [the wrongful] act as a proximate cause",[459] or to damage which is "too indirect, remote, and uncertain to be appraised",[460] or to "any direct loss, damage including environmental damage and the depletion of natural resources or injury to foreign Governments, nationals and corporations as a result of" the wrongful act.[461] Thus, causality in fact is a necessary

[454] Although not individually injured, such States may be entitled to invoke responsibility in respect of breaches of certain classes of obligation in the general interest, pursuant to article 48. Generally on notions of injury and damage, see B. Bollecker-Stern, *Le préjudice dans la théorie de la responsabilité internationale* (Paris, Pedone, 1973); B. Graefrath, "Responsibility and damages caused: relationship between responsibility and damages", *Collected Courses ... 1984–II* (The Hague, Nijhoff, 1985), vol. 185, p. 95; A. Tanzi, "Is damage a distinct condition for the existence of an internationally wrongful act?", Spinedi and Simma, eds., *op. cit.* (footnote 175 above), p. 1; and Brownlie, *System of the Law of Nations* ... (footnote 92 above), pp. 53–88.

[455] See especially article 36 and commentary.

[456] See paragraph (9) of the commentary to article 2.

[457] *"Rainbow Warrior"* (see footnote 46 above), pp. 266–267, paras. 107 and 109.

[458] *Ibid.*, p. 267, para. 110.

[459] See United States-German Mixed Claims Commission, *Administrative Decision No. II*, UNRIAA, vol. VII (Sales No. 1956.V.5), p. 23, at p. 30 (1923). See also *Dix* (footnote 178 above), p. 121, and the Canadian statement of claim following the disintegration of the *Cosmos 954* Soviet nuclear-powered satellite over its territory in 1978, ILM, vol. 18 (1979), p. 907, para. 23.

[460] See the *Trail Smelter* arbitration (footnote 253 above), p. 1931. See also A. Hauriou, "Les dommages indirects dans les arbitrages internationaux", RGDIP, vol. 31 (1924), p. 209, citing the *"Alabama"* arbitration as the most striking application of the rule excluding "indirect" damage (footnote 87 above).

[461] Security Council resolution 687 (1991) of 3 April 1991, para. 16. This was a resolution adopted with reference to Chapter VII of the Charter of the United Nations, but it is expressed to reflect Iraq's liability "under international law ... as a result of its unlawful invasion and occupation of Kuwait". UNCC and its Governing Council have provided some guidance on the interpretation of the requirements of directness and causation under paragraph 16. See, e.g., Recommendations made by the panel of Commissioners concerning individual claims for serious personal injury or death (category "B" claims), report of 14 April 1994 (S/AC.26/1994/1), approved by the Governing Council in its decision 20 of 26 May 1994 (S/AC.26/Dec.20 (1994)); Report and recommendations made by the panel of Commissioners appointed to review the Well Blowout Control Claim (the "WBC claim"), of 15 November 1996 (S/AC.26/1996/5/Annex), paras. 66–86, approved by the Governing

but not a sufficient condition for reparation. There is a further element, associated with the exclusion of injury that is too "remote" or "consequential" to be the subject of reparation. In some cases, the criterion of "directness" may be used,[462] in others "foreseeability"[463] or "proximity".[464] But other factors may also be relevant: for example, whether State organs deliberately caused the harm in question, or whether the harm caused was within the ambit of the rule which was breached, having regard to the purpose of that rule.[465] In other words, the requirement of a causal link is not necessarily the same in relation to every breach of an international obligation. In international as in national law, the question of remoteness of damage "is not a part of the law which can be satisfactorily solved by search for a single verbal formula".[466] The notion of a sufficient causal link which is not too remote is embodied in the general requirement in article 31 that the injury should be in consequence of the wrongful act, but without the addition of any particular qualifying phrase.

(11) A further element affecting the scope of reparation is the question of mitigation of damage. Even the wholly innocent victim of wrongful conduct is expected to act reasonably when confronted by the injury. Although often expressed in terms of a "duty to mitigate", this is not a legal obligation which itself gives rise to responsibility. It is rather that a failure to mitigate by the injured party may preclude recovery to that extent.[467] The point was clearly made in this sense by ICJ in the *Gabčíkovo-Nagymaros Project* case:

> Slovakia also maintained that it was acting under a duty to mitigate damages when it carried out Variant C. It stated that "It is a general principle of international law that a party injured by the non-performance of another contract party must seek to mitigate the damage he has sustained".
>
> It would follow from such a principle that an injured State which has failed to take the necessary measures to limit the damage sustained would not be entitled to claim compensation for that damage which could have been avoided. While this principle might thus provide a basis for the calculation of damages, it could not, on the other hand, justify an otherwise wrongful act.[468]

(12) Often two separate factors combine to cause damage. In the *United States Diplomatic and Consular Staff in Tehran* case,[469] the initial seizure of the hostages by militant students (not at that time acting as organs or agents of the State) was attributable to the combination of the students' own independent action and the failure of the Iranian authorities to take necessary steps to protect the embassy. In the *Corfu Channel* case,[470] the damage to the British ships was caused both by the action of a third State in laying the mines and the action of Albania in failing to warn of their presence. Although, in such cases, the injury in question was effectively caused by a combination of factors, only one of which is to be ascribed to the responsible State, international practice and the decisions of international tribunals do not support the reduction or attenuation of reparation for concurrent causes,[471] except in cases of contributory fault.[472] In the *Corfu Channel* case, for example, the United Kingdom recovered the full amount of its claim against Albania based on the latter's wrongful failure to warn of the mines even though Albania had not itself laid the mines.[473] Such a result should follow *a fortiori* in cases where the concurrent cause is not the act of another State (which might be held separately responsible) but of private individuals, or some natural event such as a flood. In the *United States Diplomatic and Consular Staff in Tehran* case, the Islamic Republic of Iran was held to be fully responsible for the detention of the hostages from the moment of its failure to protect them.[474]

(13) It is true that cases can occur where an identifiable element of injury can properly be allocated to one of several concurrently operating causes alone. But unless some part of the injury can be shown to be severable in causal terms from that attributed to the responsible State, the latter is held responsible for all the consequences, not being too remote, of its wrongful conduct. Indeed, in the *Zafiro* claim the tribunal went further and in effect placed the

Council in its decision 40 of 17 December 1996 (S/AC.26/Dec.40 (1996)).

[462] As in Security Council resolution 687 (1991), para. 16.

[463] See, e.g., the *"Naulilaa"* case (footnote 337 above), p. 1031.

[464] For comparative reviews of issues of causation and remoteness, see, e.g., H. L. A. Hart and A. M. Honoré, *Causation in the Law*, 2nd ed. (Oxford, Clarendon Press, 1985); A. M. Honoré, "Causation and remoteness of damage", *International Encyclopedia of Comparative Law*, A. Tunc, ed. (Tübingen, Mohr/The Hague, Martinus Nijhoff, 1983), vol. XI, part I, chap. 7; Zweigert and Kötz, *op. cit.* (footnote 251 above), pp. 601–627, in particular pp. 609 et seq.; and B. S. Markesinis, *The German Law of Obligations: Volume II The Law of Torts: A Comparative Introduction*, 3rd ed. (Oxford, Clarendon Press, 1997), pp. 95–108, with many references to the literature.

[465] See, e.g., the decision of the Iran-United States Claims Tribunal in *The Islamic Republic of Iran* v. *The United States of America*, cases A15 (IV) and A24, Award No. 590–A15 (IV)/A24–FT, 28 December 1998, *World Trade and Arbitration Materials*, vol. 11, No. 2 (1999), p. 45.

[466] P. S. Atiyah, *An Introduction to the Law of Contract*, 5th ed. (Oxford, Clarendon Press, 1995), p. 466.

[467] In the WBC claim, a UNCC panel noted that "under the general principles of international law relating to mitigation of damages … the Claimant was not only permitted but indeed obligated to take reasonable steps to … mitigate the loss, damage or injury being caused" report of 15 November 1996 (S/AC.26/1996/5/Annex) (see footnote 461 above), para. 54.

[468] *Gabčíkovo-Nagymaros Project* (see footnote 27 above), p. 55, para. 80.

[469] *United States Diplomatic and Consular Staff in Tehran* (see footnote 59 above), pp. 29–32.

[470] *Corfu Channel*, *Merits* (see footnote 35 above), pp. 17–18 and 22–23.

[471] This approach is consistent with the way in which these issues are generally dealt with in national law. "It is the very general rule that if a tortfeasor's behaviour is held to be a cause of the victim's harm, the tortfeasor is liable to pay for all of the harm so caused, notwithstanding that there was a concurrent cause of that harm and that another is responsible for that cause … In other words, the liability of a tortfeasor is not affected *vis-à-vis* the victim by the consideration that another is concurrently liable.": T. Weir, "Complex liabilities", A. Tunc, ed., *op. cit.* (footnote 464 above), part 2, chap. 12, p. 43. The United States relied on this comparative law experience in its pleadings in the *Aerial Incident of 27 July 1955* case when it said, referring to Article 38, paragraph 1 (*c*) and (*d*), of the ICJ Statute, that "in all civilized countries the rule is substantially the same. An aggrieved plaintiff may sue any or all joint tortfeasors, jointly or severally, although he may collect from them, or any one or more of them, only the full amount of his damage" (Memorial of 2 December 1958 (see footnote 363 above), p. 229).

[472] See article 39 and commentary.

[473] See *Corfu Channel, Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 244, at p. 250.

[474] *United States Diplomatic and Consular Staff in Tehran* (see footnote 59 above), pp. 31–33.

onus on the responsible State to show what proportion of the damage was *not* attributable to its conduct. It said:

> We think it clear that not all of the damage was done by the Chinese crew of the *Zafiro*. The evidence indicates that an unascertainable part was done by Filipino insurgents, and makes it likely that some part was done by the Chinese employees of the company. But we do not consider that the burden is on Great Britain to prove exactly what items of damage are chargeable to the *Zafiro*. As the Chinese crew of the *Zafiro* are shown to have participated to a substantial extent and the part chargeable to unknown wrongdoers can not be identified, we are constrained to hold the United States liable for the whole.
>
> In view, however, of our finding that a considerable, though unascertainable, part of the damage is not chargeable to the Chinese crew of the *Zafiro*, we hold that interest on the claims should not be allowed.[475]

(14) Concerns are sometimes expressed that a general principle of reparation of all loss flowing from a breach might lead to reparation which is out of all proportion to the gravity of the breach. However, the notion of "proportionality" applies differently to the different forms of reparation.[476] It is addressed, as appropriate, in the individual articles in chapter II dealing with the forms of reparation.

Article 32. Irrelevance of internal law

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this Part.

Commentary

(1) Article 3 concerns the role of internal law in the characterization of an act as wrongful. Article 32 makes clear the irrelevance of a State's internal law to compliance with the obligations of cessation and reparation. It provides that a State which has committed an internationally wrongful act may not invoke its internal law as a justification for failure to comply with its obligations under this part. Between them, articles 3 and 32 give effect for the purposes of State responsibility to the general principle that a State may not rely on its internal law as a justification for its failure to comply with its international obligations.[477] Although practical difficulties may arise for a State organ confronted with an obstacle to compliance posed by the rules of the internal legal system under which it is bound to operate, the State is not entitled to oppose its internal law or practice as a legal barrier to the fulfilment of an international obligation arising under Part Two.

(2) Article 32 is modelled on article 27 of the 1969 Vienna Convention, which provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This general principle is equally applicable to the international obligations deriving from the rules of State responsibility set out in Part Two. The principle may be qualified by the relevant primary rule, or by a *lex specialis*, such as article 50 of the European Convention on Human Rights, which provides for just satisfaction in lieu of full reparation "if the internal law of the High Contracting Party concerned allows only partial reparation to be made".[478]

(3) The principle that a responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations arising out of the commission of an internationally wrongful act is supported both by State practice and international decisions. For example, the dispute between Japan and the United States in 1906 over California's discriminatory education policies was resolved by the revision of the Californian legislation.[479] In the incident concerning article 61, paragraph 2, of the Weimar Constitution (Constitution of the Reich of 11 August 1919), a constitutional amendment was provided for in order to ensure the discharge of the obligation deriving from article 80 of the Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles).[480] In the *Peter Pázmány University* case, PCIJ specified that the property to be returned should be "freed from any measure of transfer, compulsory administration, or sequestration".[481] In short, international law does not recognize that the obligations of a responsible State under Part Two are subject to the State's internal legal system nor does it allow internal law to count as an excuse for non-performance of the obligations of cessation and reparation.

Article 33. Scope of international obligations set out in this Part

1. The obligations of the responsible State set out in this Part may be owed to another State, to several States, or to the international community as a whole, depending in particular on the character and content of the international obligation and on the circumstances of the breach.

2. This Part is without prejudice to any right, arising from the international responsibility of a State, which may accrue directly to any person or entity other than a State.

Commentary

(1) Article 33 concludes the provisions of chapter I of Part Two by clarifying the scope and effect of the international obligations covered by the Part. In particular, *paragraph 1* makes it clear that identifying the State or States towards which the responsible State's obligations in Part Two exist depends both on the primary rule establishing

[475] The *Zafiro* case (see footnote 154 above), pp. 164–165.

[476] See articles 35 (*b*), 37, paragraph 3, and 39 and commentaries.

[477] See paragraphs (2) to (4) of the commentary to article 3.

[478] Article 41 of the Convention, as amended by Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby. Other examples include article 32 of the Revised General Act for the Pacific Settlement of International Disputes and article 30 of the European Convention for the Peaceful Settlement of Disputes.

[479] See R. L. Buell, "The development of the anti-Japanese agitation in the United States", *Political Science Quarterly*, vol. 37 (1922), pp. 620 et seq.

[480] See *British and Foreign State Papers, 1919* (London, HM Stationery Office, 1922), vol. 112, p. 1094.

[481] *Appeal from a Judgment of the Hungaro/Czechoslovak Mixed Arbitral Tribunal (The Peter Pázmány University), Judgment, 1933, P.C.I.J., Series A/B, No. 61*, p. 208, at p. 249.

the obligation that was breached and on the circumstances of the breach. For example, pollution of the sea, if it is massive and widespread, may affect the international community as a whole or the coastal States of a region; in other circumstances it might only affect a single neighbouring State. Evidently, the gravity of the breach may also affect the scope of the obligations of cessation and reparation.

(2) In accordance with paragraph 1, the responsible State's obligations in a given case may exist towards another State, several States or the international community as a whole. The reference to several States includes the case in which a breach affects all the other parties to a treaty or to a legal regime established under customary international law. For instance, when an obligation can be defined as an "integral" obligation, the breach by a State necessarily affects all the other parties to the treaty.[482]

(3) When an obligation of reparation exists towards a State, reparation does not necessarily accrue to that State's benefit. For instance, a State's responsibility for the breach of an obligation under a treaty concerning the protection of human rights may exist towards all the other parties to the treaty, but the individuals concerned should be regarded as the ultimate beneficiaries and in that sense as the holders of the relevant rights. Individual rights under international law may also arise outside the framework of human rights.[483] The range of possibilities is demonstrated from the ICJ judgment in the *LaGrand* case, where the Court held that article 36 of the Vienna Convention on Consular Relations "creates individual rights, which, by virtue of Article I of the Optional Protocol, may be invoked in this Court by the national State of the detained person".[484]

(4) Such possibilities underlie the need for *paragraph 2* of article 33. Part Two deals with the secondary obligations of States in relation to cessation and reparation, and those obligations may be owed, *inter alia*, to one or several States or to the international community as a whole. In cases where the primary obligation is owed to a non-State entity, it may be that some procedure is available whereby that entity can invoke the responsibility on its own account and without the intermediation of any State. This is true, for example, under human rights treaties which provide a right of petition to a court or some other body for individuals affected. It is also true in the case of rights under bilateral or regional investment protection agreements. Part Three is concerned with the invocation of responsibility by other States, whether they are to be considered "injured States" under article 42, or other interested States under article 48, or whether they may be exercising specific rights to invoke responsibility under some special rule (art. 55). The articles do not deal with the possibility of the invocation of responsibility by persons or entities other than States, and paragraph 2 makes this clear. It will be a matter for the particular primary rule to determine whether and to what extent persons or entities other than States are entitled to invoke responsibility on their own account. Paragraph 2 merely recognizes the possibility: hence the phrase "which may accrue directly to any person or entity other than a State".

[482] See further article 42 (*b*) (ii) and commentary.

[483] Cf. *Jurisdiction of the Courts of Danzig* (footnote 82 above), pp. 17–21.

[484] *LaGrand, Judgment* (see footnote 119 above), para. 77. In the circumstances the Court did not find it necessary to decide whether the individual rights had "assumed the character of a human right" (para. 78).

CHAPTER II

REPARATION FOR INJURY

Commentary

Chapter II deals with the forms of reparation for injury, spelling out in further detail the general principle stated in article 31, and in particular seeking to establish more clearly the relations between the different forms of reparation, viz. restitution, compensation and satisfaction, as well as the role of interest and the question of taking into account any contribution to the injury which may have been made by the victim.

Article 34. Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Commentary

(1) Article 34 introduces chapter II by setting out the forms of reparation which separately or in combination will discharge the obligation to make full reparation for the injury caused by the internationally wrongful act. Since the notion of "injury" and the necessary causal link between the wrongful act and the injury are defined in the statement of the general obligation to make full reparation in article 31,[485] article 34 need do no more than refer to "[f]ull reparation for the injury caused".

(2) In the *Factory at Chorzów* case, the injury was a material one and PCIJ dealt only with two forms of reparation, restitution and compensation.[486] In certain cases, satisfaction may be called for as an additional form of reparation. Thus, full reparation may take the form of restitution, compensation and satisfaction, as required by the circumstances. Article 34 also makes it clear that full reparation may only be achieved in particular cases by the combination of different forms of reparation. For example, re-establishment of the situation which existed before the breach may not be sufficient for full reparation because the wrongful act has caused additional material damage (e.g. injury flowing from the loss of the use of property wrongfully seized). Wiping out all the consequences of the wrongful act may thus require some or all forms of reparation to be provided, depending on the type and extent of the injury that has been caused.

[485] See paragraphs (4) to (14) of the commentary to article 31.

[486] *Factory at Chorzów, Merits* (see footnote 34 above), p. 47.

(3) The primary obligation breached may also play an important role with respect to the form and extent of reparation. In particular, in cases of restitution not involving the return of persons, property or territory of the injured State, the notion of reverting to the *status quo ante* has to be applied having regard to the respective rights and competences of the States concerned. This may be the case, for example, where what is involved is a procedural obligation conditioning the exercise of the substantive powers of a State. Restitution in such cases should not give the injured State more than it would have been entitled to if the obligation had been performed.[487]

(4) The provision of each of the forms of reparation described in article 34 is subject to the conditions laid down in the articles which follow it in chapter II. This limitation is indicated by the phrase "in accordance with the provisions of this chapter". It may also be affected by any valid election that may be made by the injured State as between different forms of reparation. For example, in most circumstances the injured State is entitled to elect to receive compensation rather than restitution. This element of choice is reflected in article 43.

(5) Concerns have sometimes been expressed that the principle of full reparation may lead to disproportionate and even crippling requirements so far as the responsible State is concerned. The issue is whether the principle of proportionality should be articulated as an aspect of the obligation to make full reparation. In these articles, proportionality is addressed in the context of each form of reparation, taking into account its specific character. Thus, restitution is excluded if it would involve a burden out of all proportion to the benefit gained by the injured State or other party.[488] Compensation is limited to damage actually suffered as a result of the internationally wrongful act, and excludes damage which is indirect or remote.[489] Satisfaction must "not be out of proportion to the injury".[490] Thus, each of the forms of reparation takes such considerations into account.

(6) The forms of reparation dealt with in chapter II represent ways of giving effect to the underlying obligation of reparation set out in article 31. There are not, as it were, separate secondary obligations of restitution, compensation and satisfaction. Some flexibility is shown in practice in terms of the appropriateness of requiring one form of reparation rather than another, subject to the requirement of full reparation for the breach in accordance with article 31.[491] To the extent that one form of reparation is dispensed with or is unavailable in the circumstances, others, especially compensation, will be correspondingly more important.

Article 35. Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

(*a*) is not materially impossible;

(*b*) does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Commentary

(1) In accordance with article 34, restitution is the first of the forms of reparation available to a State injured by an internationally wrongful act. Restitution involves the re-establishment as far as possible of the situation which existed prior to the commission of the internationally wrongful act, to the extent that any changes that have occurred in that situation may be traced to that act. In its simplest form, this involves such conduct as the release of persons wrongly detained or the return of property wrongly seized. In other cases, restitution may be a more complex act.

(2) The concept of restitution is not uniformly defined. According to one definition, restitution consists in re-establishing the *status quo ante*, i.e. the situation that existed prior to the occurrence of the wrongful act. Under another definition, restitution is the establishment or re-establishment of the situation that would have existed if the wrongful act had not been committed. The former definition is the narrower one; it does not extend to the compensation which may be due to the injured party for loss suffered, for example for loss of the use of goods wrongfully detained but subsequently returned. The latter definition absorbs into the concept of restitution other elements of full reparation and tends to conflate restitution as a form of reparation and the underlying obligation of reparation itself. Article 35 adopts the narrower definition which has the advantage of focusing on the assessment of a factual situation and of not requiring a hypothetical inquiry into what the situation would have been if the wrongful act had not been committed. Restitution in this narrow sense may of course have to be completed by compensation in order to ensure full reparation for the damage caused, as article 36 makes clear.

(3) Nonetheless, because restitution most closely conforms to the general principle that the responsible State is bound to wipe out the legal and material consequences of its wrongful act by re-establishing the situation that would exist if that act had not been committed, it comes first among the forms of reparation. The primacy of restitution was confirmed by PCIJ in the *Factory at Chorzów*

[487] Thus, in the judgment in the *LaGrand* case (see footnote 119 above), ICJ indicated that a breach of the notification requirement in article 36 of the Vienna Convention on Consular Relations, leading to a severe penalty or prolonged detention, would require reconsideration of the fairness of the conviction "by taking account of the violation of the rights set forth in the Convention" (p. 514, para. 125). This would be a form of restitution which took into account the limited character of the rights in issue.

[488] See article 35 (*b*) and commentary.

[489] See article 31 and commentary.

[490] See article 37, paragraph 3, and commentary.

[491] For example, the *Mélanie Lachenal* case (UNRIAA, vol. XIII (Sales No. 64.V.3), p. 117, at pp. 130–131 (1954)), where compensation was accepted in lieu of restitution originally decided upon, the Franco-Italian Conciliation Commission having agreed that restitution would require difficult internal procedures. See also paragraph (4) of the commentary to article 35.

Article 42. Invocation of responsibility by an injured State

A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

(*a*) that State individually; or

(*b*) a group of States including that State, or the international community as a whole, and the breach of the obligation:

(i) specially affects that State; or

(ii) is of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

Commentary

(1) Article 42 provides that the implementation of State responsibility is in the first place an entitlement of the "injured State". It defines this term in a relatively narrow way, drawing a distinction between injury to an individual State or possibly a small number of States and the legal interests of several or all States in certain obligations established in the collective interest. The latter are dealt with in article 48.

(2) This chapter is expressed in terms of the invocation by a State of the responsibility of another State. For this purpose, invocation should be understood as taking measures of a relatively formal character, for example, the raising or presentation of a claim against another State or the commencement of proceedings before an international court or tribunal. A State does not invoke the responsibility of another State merely because it criticizes that State for a breach and calls for observance of the obligation, or even reserves its rights or protests. For the purpose of these articles, protest as such is not an invocation of responsibility; it has a variety of forms and purposes and is not limited to cases involving State responsibility. There is in general no requirement that a State which wishes to protest against a breach of international law by another State or remind it of its international responsibilities in respect of a treaty or other obligation by which they are both bound should establish any specific title or interest to do so. Such informal diplomatic contacts do not amount to the invocation of responsibility unless and until they involve specific claims by the State concerned, such as for compensation for a breach affecting it, or specific action such as the filing of an application before a competent international tribunal,[666] or even the taking of countermeasures. In order to take such steps, i.e. to invoke responsibility in the sense of the articles, some more specific entitlement is needed. In particular, for a State to invoke responsibility on its own account it should have a specific right to do so, e.g. a right of action specifically conferred by a treaty,[667] or it must be considered an injured State. The purpose of article 42 is to define this latter category.

(3) A State which is injured in the sense of article 42 is entitled to resort to all means of redress contemplated in the articles. It can invoke the appropriate responsibility pursuant to Part Two. It may also—as is clear from the opening phrase of article 49—resort to countermeasures in accordance with the rules laid down in chapter II of this Part. The situation of an injured State should be distinguished from that of any other State which may be entitled to invoke responsibility, e.g. under article 48 which deals with the entitlement to invoke responsibility in some shared general interest. This distinction is clarified by the opening phrase of article 42, "A State is entitled as an injured State to invoke the responsibility".

(4) The definition in article 42 is closely modelled on article 60 of the 1969 Vienna Convention, although the scope and purpose of the two provisions are different. Article 42 is concerned with any breach of an international obligation of whatever character, whereas article 60 is concerned with breach of treaties. Moreover, article 60 is concerned exclusively with the right of a State party to a treaty to invoke a material breach of that treaty by another party as grounds for its suspension or termination. It is not concerned with the question of responsibility for breach of the treaty.[668] This is why article 60 is restricted to "material" breaches of treaties. Only a material breach justifies termination or suspension of the treaty, whereas in the context of State responsibility any breach of a treaty gives rise to responsibility irrespective of its gravity. Despite these differences, the analogy with article 60 is justified. Article 60 seeks to identify the States parties to a treaty which are entitled to respond individually and in their own right to a material breach by terminating or suspending it. In the case of a bilateral treaty, the right can only be that of the other State party, but in the case of a multilateral treaty article 60, paragraph 2, does not allow every other State to terminate or suspend the treaty for material breach. The other State must be specially affected by the breach, or at least individually affected in that the breach necessarily undermines or destroys the basis for its own further performance of the treaty.

(5) In parallel with the cases envisaged in article 60 of the 1969 Vienna Convention, three cases are identified in article 42. In the first case, in order to invoke the responsibility of another State as an injured State, a State must have an individual right to the performance of an obligation, in the way that a State party to a bilateral treaty has *vis-à-vis* the other State party (subparagraph (*a*)). Secondly, a State may be specially affected by the breach of an obligation to which it is a party, even though it cannot be said that the obligation is owed to it individually (subparagraph (*b*) (i)). Thirdly, it may be the case that performance of the obligation by the responsible State is a necessary condition of its performance by all the other States (subparagraph (*b*) (ii)); this is the so-called "integral" or "inter-

[666] An analogous distinction is drawn by article 27, paragraph 2, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which distinguishes between the bringing of an international claim in the field of diplomatic protection and "informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute".

[667] In relation to article 42, such a treaty right could be considered a *lex specialis*: see article 55 and commentary.

[668] Cf. the 1969 Vienna Convention, art. 73.

dependent" obligation.[669] In each of these cases, the possible suspension or termination of the obligation or of its performance by the injured State may be of little value to it as a remedy. Its primary interest may be in the restoration of the legal relationship by cessation and reparation.

(6) Pursuant to *subparagraph* (a) of article 42, a State is "injured" if the obligation breached was owed to it individually. The expression "individually" indicates that in the circumstances, performance of the obligation was owed to that State. This will necessarily be true of an obligation arising under a bilateral treaty between the two States parties to it, but it will also be true in other cases, e.g. of a unilateral commitment made by one State to another. It may be the case under a rule of general international law: thus, for example, rules concerning the non-navigational uses of an international river which may give rise to individual obligations as between one riparian State and another. Or it may be true under a multilateral treaty where particular performance is incumbent under the treaty as between one State party and another. For example, the obligation of the receiving State under article 22 of the Vienna Convention on Diplomatic Relations to protect the premises of a mission is owed to the sending State. Such cases are to be contrasted with situations where performance of the obligation is owed generally to the parties to the treaty at the same time and is not differentiated or individualized. It will be a matter for the interpretation and application of the primary rule to determine into which of the categories an obligation comes. The following discussion is illustrative only.

(7) An obvious example of cases coming within the scope of subparagraph (*a*) is a bilateral treaty relationship. If one State violates an obligation the performance of which is owed specifically to another State, the latter is an "injured State" in the sense of article 42. Other examples include binding unilateral acts by which one State assumes an obligation *vis-à-vis* another State; or the case of a treaty establishing obligations owed to a third State not party to the treaty.[670] If it is established that the beneficiaries of the promise or the stipulation in favour of a third State were intended to acquire actual rights to performance of the obligation in question, they will be injured by its breach. Another example is a binding judgement of an international court or tribunal imposing obligations on one State party to the litigation for the benefit of the other party.[671]

(8) In addition, subparagraph (*a*) is intended to cover cases where the performance of an obligation under a multilateral treaty or customary international law is owed to one particular State. The scope of subparagraph (*a*) in this respect is different from that of article 60, paragraph 1, of the 1969 Vienna Convention, which relies on the formal criterion of bilateral as compared with multilateral treaties. But although a multilateral treaty will characteristically establish a framework of rules applicable to all the States parties, in certain cases its performance in a given situation involves a relationship of a bilateral character between two parties. Multilateral treaties of this kind have often been referred to as giving rise to " 'bundles' of bilateral relations".[672]

(9) The identification of one particular State as injured by a breach of an obligation under the Vienna Convention on Diplomatic Relations does not exclude that all States parties may have an interest of a general character in compliance with international law and in the continuation of international institutions and arrangements which have been built up over the years. In the *United States Diplomatic and Consular Staff in Tehran* case, after referring to the "fundamentally unlawful character" of the Islamic Republic of Iran's conduct in participating in the detention of the diplomatic and consular personnel, the Court drew:

> the attention of the entire international community, of which Iran itself has been a member since time immemorial, to the irreparable harm that may be caused by events of the kind now before the Court. Such events cannot fail to undermine the edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected.[673]

(10) Although discussion of multilateral obligations has generally focused on those arising under multilateral treaties, similar considerations apply to obligations under rules of customary international law. For example, the rules of general international law governing the diplomatic or consular relations between States establish bilateral relations between particular receiving and sending States, and violations of these obligations by a particular receiving State injure the sending State to which performance was owed in the specific case.

(11) *Subparagraph* (b) deals with injury arising from violations of collective obligations, i.e. obligations that apply between more than two States and whose performance in the given case is not owed to one State individually, but to a group of States or even the international community as a whole. The violation of these obligations only injures any particular State if additional requirements are met. In using the expression "group of States", article 42, subparagraph (*b*), does not imply that the group has any separate existence or that it has separate legal personality. Rather, the term is intended to refer to a group of States, consisting of all or a considerable number of States in the world or in a given region, which have combined to achieve some collective purpose and which may be

[669] The notion of "integral" obligations was developed by Fitzmaurice as Special Rapporteur on the Law of Treaties: see *Yearbook ... 1957*, vol. II, p. 54. The term has sometimes given rise to confusion, being used to refer to human rights or environmental obligations which are not owed on an "all or nothing" basis. The term "interdependent obligations" may be more appropriate.

[670] Cf. the 1969 Vienna Convention, art. 36.

[671] See, e.g., Article 59 of the Statute of ICJ.

[672] See, e.g., K. Sachariew, "State responsibility for multilateral treaty violations: identifying the 'injured State' and its legal status", *Netherlands International Law Review*, vol. 35, No. 3 (1988), p. 273, at pp. 277–278; B. Simma, "Bilateralism and community interest in the law of State responsibility", *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne*, Y. Dinstein, ed. (Dordrecht, Martinus Nijhoff, 1989), p. 821, at p. 823; C. Annacker, "The legal régime of *erga omnes* obligations in international law", *Austrian Journal of Public and International Law*, vol. 46, No. 2 (1994), p. 131, at p. 136; and D. N. Hutchinson, "Solidarity and breaches of multilateral treaties", BYBIL, *1988*, vol. 59, p. 151, at pp. 154–155.

[673] *United States Diplomatic and Consular Staff in Tehran* (see footnote 59 above), pp. 41–43, paras. 89 and 92.

considered for that purpose as making up a community of States of a functional character.

(12) *Subparagraph* (b) (i) stipulates that a State is injured if it is "specially affected" by the violation of a collective obligation. The term "specially affected" is taken from article 60, paragraph (2) (*b*), of the 1969 Vienna Convention. Even in cases where the legal effects of an internationally wrongful act extend by implication to the whole group of States bound by the obligation or to the international community as a whole, the wrongful act may have particular adverse effects on one State or on a small number of States. For example a case of pollution of the high seas in breach of article 194 of the United Nations Convention on the Law of the Sea may particularly impact on one or several States whose beaches may be polluted by toxic residues or whose coastal fisheries may be closed. In that case, independently of any general interest of the States parties to the Convention in the preservation of the marine environment, those coastal States parties should be considered as injured by the breach. Like article 60, paragraph (2) (*b*), of the 1969 Vienna Convention, subparagraph (*b*) (i) does not define the nature or extent of the special impact that a State must have sustained in order to be considered "injured". This will have to be assessed on a case-by-case basis, having regard to the object and purpose of the primary obligation breached and the facts of each case. For a State to be considered injured, it must be affected by the breach in a way which distinguishes it from the generality of other States to which the obligation is owed.

(13) In contrast, *subparagraph* (b) (ii) deals with a special category of obligations, the breach of which must be considered as affecting *per se* every other State to which the obligation is owed. Article 60, paragraph 2 (*c*), of the 1969 Vienna Convention recognizes an analogous category of treaties, viz. those "of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations". Examples include a disarmament treaty,[674] a nuclear-free zone treaty, or any other treaty where each party's performance is effectively conditioned upon and requires the performance of each of the others. Under article 60, paragraph 2 (*c*), any State party to such a treaty may terminate or suspend it in its relations not merely with the responsible State but generally in its relations with all the other parties.

(14) Essentially, the same considerations apply to obligations of this character for the purposes of State responsibility. The other States parties may have no interest in the termination or suspension of such obligations as distinct from continued performance, and they must all be considered as individually entitled to react to a breach. This is so whether or not any one of them is particularly affected; indeed they may all be equally affected, and none may have suffered quantifiable damage for the purposes of article 36. They may nonetheless have a strong interest in cessation and in other aspects of reparation, in particular restitution. For example, if one State party to the Antarctic Treaty claims sovereignty over an unclaimed area of Antarctica contrary to article 4 of that Treaty, the other States parties should be considered as injured thereby and as entitled to seek cessation, restitution (in the form of the annulment of the claim) and assurances of non-repetition in accordance with Part Two.

(15) The articles deal with obligations arising under international law from whatever source and are not confined to treaty obligations. In practice, interdependent obligations covered by subparagraph (*b*) (ii) will usually arise under treaties establishing particular regimes. Even under such treaties it may not be the case that just any breach of the obligation has the effect of undermining the performance of all the other States involved, and it is desirable that this subparagraph be narrow in its scope. Accordingly, a State is only considered injured under subparagraph (*b*) (ii) if the breach is of such a character as radically to affect the enjoyment of the rights or the performance of the obligations of all the other States to which the obligation is owed.

Article 43. Notice of claim by an injured State

1. An injured State which invokes the responsibility of another State shall give notice of its claim to that State.

2. The injured State may specify in particular:

(*a*) the conduct that the responsible State should take in order to cease the wrongful act, if it is continuing;

(*b*) what form reparation should take in accordance with the provisions of Part Two.

Commentary

(1) Article 43 concerns the modalities to be observed by an injured State in invoking the responsibility of another State. The article applies to the injured State as defined in article 42, but States invoking responsibility under article 48 must also comply with its requirements.[675]

(2) Although State responsibility arises by operation of law on the commission of an internationally wrongful act by a State, in practice it is necessary for an injured State and/or other interested State(s) to respond, if they wish to seek cessation or reparation. Responses can take a variety of forms, from an unofficial and confidential reminder of the need to fulfil the obligation through formal protest, consultations, etc. Moreover, the failure of an injured State which has notice of a breach to respond may have legal consequences, including even the eventual loss of the right to invoke responsibility by waiver or acquiescence: this is dealt with in article 45.

(3) Article 43 requires an injured State which wishes to invoke the responsibility of another State to give notice of its claim to that State. It is analogous to article 65 of the 1969 Vienna Convention. Notice under article 43 need not

[674] The example given in the commentary of the Commission to what became article 60: *Yearbook ... 1966*, vol. II, p. 255, document A/6309/Rev.1, para. (8).

[675] See article 48, paragraph (3), and commentary.

be in writing, nor is it a condition for the operation of the obligation to provide reparation. Moreover, the requirement of notification of the claim does not imply that the normal consequence of the non-performance of an international obligation is the lodging of a statement of claim. Nonetheless, an injured or interested State is entitled to respond to the breach and the first step should be to call the attention of the responsible State to the situation, and to call on it to take appropriate steps to cease the breach and to provide redress.

(4) It is not the function of the articles to specify in detail the form which an invocation of responsibility should take. In practice, claims of responsibility are raised at different levels of government, depending on their seriousness and on the general relations between the States concerned. In the *Certain Phosphate Lands in Nauru* case, Australia argued that Nauru's claim was inadmissible because it had "not been submitted within a reasonable time".[676] The Court referred to the fact that the claim had been raised, and not settled, prior to Nauru's independence in 1968, and to press reports that the claim had been mentioned by the new President of Nauru in his independence day speech, as well as, inferentially, in subsequent correspondence and discussions with Australian Ministers. However, the Court also noted that:

> It was only on 6 October 1983 that the President of Nauru wrote to the Prime Minister of Australia requesting him to "seek a sympathetic reconsideration of Nauru's position".[677]

The Court summarized the communications between the parties as follows:

> The Court ... takes note of the fact that Nauru was officially informed, at the latest by letter of 4 February 1969, of the position of Australia on the subject of rehabilitation of the phosphate lands worked out before 1 July 1967. Nauru took issue with that position in writing only on 6 October 1983. In the meantime, however, as stated by Nauru and not contradicted by Australia, the question had on two occasions been raised by the President of Nauru with the competent Australian authorities. The Court considers that, given the nature of relations between Australia and Nauru, as well as the steps thus taken, Nauru's Application was not rendered inadmissible by passage of time.[678]

In the circumstances, it was sufficient that the respondent State was aware of the claim as a result of communications from the claimant, even if the evidence of those communications took the form of press reports of speeches or meetings rather than of formal diplomatic correspondence.

(5) When giving notice of a claim, an injured or interested State will normally specify what conduct in its view is required of the responsible State by way of cessation of any continuing wrongful act, and what form any reparation should take. Thus, *paragraph 2* (a) provides that the injured State may indicate to the responsible State what should be done in order to cease the wrongful act, if it is continuing. This indication is not, as such, binding on the responsible State. The injured State can only require the responsible State to comply with its obligations, and the legal consequences of an internationally wrongful act are not for the injured State to stipulate or define. But it may be helpful to the responsible State to know what would satisfy the injured State; this may facilitate the resolution of the dispute.

(6) *Paragraph 2* (b) deals with the question of the election of the form of reparation by the injured State. In general, an injured State is entitled to elect as between the available forms of reparation. Thus, it may prefer compensation to the possibility of restitution, as Germany did in the *Factory at Chorzów* case,[679] or as Finland eventually chose to do in its settlement of the *Passage through the Great Belt* case.[680] Or it may content itself with declaratory relief, generally or in relation to a particular aspect of its claim. On the other hand, there are cases where a State may not, as it were, pocket compensation and walk away from an unresolved situation, for example one involving the life or liberty of individuals or the entitlement of a people to their territory or to self-determination. In particular, insofar as there are continuing obligations the performance of which are not simply matters for the two States concerned, those States may not be able to resolve the situation by a settlement, just as an injured State may not be able on its own to absolve the responsible State from its continuing obligations to a larger group of States or to the international community as a whole.

(7) In the light of these limitations on the capacity of the injured State to elect the preferred form of reparation, article 43 does not set forth the right of election in an absolute form. Instead, it provides guidance to an injured State as to what sort of information it may include in its notification of the claim or in subsequent communications.

Article 44. Admissibility of claims

The responsibility of a State may not be invoked if:

(*a*) the claim is not brought in accordance with any applicable rule relating to the nationality of claims;

(*b*) the claim is one to which the rule of exhaustion of local remedies applies and any available and effective local remedy has not been exhausted.

Commentary

(1) The present articles are not concerned with questions of the jurisdiction of international courts and tribunals, or in general with the conditions for the admissibility of cases brought before such courts or tribunals. Rather, they define the conditions for establishing the international responsibility of a State and for the invocation of

[676] *Certain Phosphate Lands in Nauru, Preliminary Objections* (see footnote 230 above), p. 253, para. 31.

[677] *Ibid.*, p. 254, para. 35.

[678] *Ibid.*, pp. 254–255, para. 36.

[679] As PCIJ noted in the *Factory at Chorzów, Jurisdiction* (see footnote 34 above), by that stage of the dispute, Germany was no longer seeking on behalf of the German companies concerned the return of the factory in question or of its contents (p. 17).

[680] In the *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 12, ICJ did not accept Denmark's argument as to the impossibility of restitution if, on the merits, it was found that the construction of the bridge across the Great Belt would result in a violation of Denmark's international obligations. For the terms of the eventual settlement, see M. Koskenniemi, "L'affaire du passage par le Grand-Belt", *Annuaire français de droit international*, vol. 38 (1992), p. 905, at p. 940.

that responsibility by another State or States. Thus, it is not the function of the articles to deal with such questions as the requirement for exhausting other means of peaceful settlement before commencing proceedings, or such doctrines as litispendence or election as they may affect the jurisdiction of one international tribunal *vis-à-vis* another.[681] By contrast, certain questions which would be classified as questions of admissibility when raised before an international court are of a more fundamental character. They are conditions for invoking the responsibility of a State in the first place. Two such matters are dealt with in article 44: the requirements of nationality of claims and exhaustion of local remedies.

(2) *Subparagraph* (a) provides that the responsibility of a State may not be invoked other than in accordance with any applicable rule relating to the nationality of claims. As PCIJ said in the *Mavrommatis Palestine Concessions* case:

> It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels.[682]

Subparagraph (*a*) does not attempt a detailed elaboration of the nationality of claims rule or of the exceptions to it. Rather, it makes it clear that the nationality of claims rule is not only relevant to questions of jurisdiction or the admissibility of claims before judicial bodies, but is also a general condition for the invocation of responsibility in those cases where it is applicable.[683]

(3) *Subparagraph* (b) provides that when the claim is one to which the rule of exhaustion of local remedies applies, the claim is inadmissible if any available and effective local remedy has not been exhausted. The paragraph is formulated in general terms in order to cover any case to which the exhaustion of local remedies rule applies, whether under treaty or general international law, and in spheres not necessarily limited to diplomatic protection.

(4) The local remedies rule was described by a Chamber of the Court in the *ELSI* case as "an important principle of customary international law".[684] In the context of a claim brought on behalf of a corporation of the claimant State, the Chamber defined the rule succinctly in the following terms:

> for an international claim [sc. on behalf of individual nationals or corporations] to be admissible, it is sufficient if the essence of the claim has been brought before the competent tribunals and pursued as far as permitted by local law and procedures, and without success.[685]

The Chamber thus treated the exhaustion of local remedies as being distinct, in principle, from "the merits of the case".[686]

(5) Only those local remedies which are "available and effective" have to be exhausted before invoking the responsibility of a State. The mere existence on paper of remedies under the internal law of a State does not impose a requirement to make use of those remedies in every case. In particular, there is no requirement to use a remedy which offers no possibility of redressing the situation, for instance, where it is clear from the outset that the law which the local court would have to apply can lead only to the rejection of any appeal. Beyond this, article 44, subparagraph (*b*), does not attempt to spell out comprehensively the scope and content of the exhaustion of local remedies rule, leaving this to the applicable rules of international law.[687]

Article 45. Loss of the right to invoke responsibility

The responsibility of a State may not be invoked if:

(*a*) the injured State has validly waived the claim;

(*b*) the injured State is to be considered as having, by reason of its conduct, validly acquiesced in the lapse of the claim.

Commentary

(1) Article 45 is analogous to article 45 of the 1969 Vienna Convention concerning loss of the right to invoke a ground for invalidating or terminating a treaty. The article deals with two situations in which the right of an injured State or other States concerned to invoke the responsibility of a wrongdoing State may be lost: waiver and acquiescence in the lapse of the claim. In this regard, the position of an injured State as referred to in article 42 and other States concerned with a breach needs to be distinguished. A valid waiver or settlement of the responsibility dispute

[681] For discussion of the range of considerations affecting jurisdiction and admissibility of international claims before courts, see G. Abi-Saab, *Les exceptions préliminaires dans la procédure de la Cour internationale* (Paris, Pedone, 1967); Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice* (Cambridge, Grotius, 1986), vol. 2, pp. 427–575; and S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, 3rd ed. (The Hague, Martinus Nijhoff, 1997), vol. II, *Jurisdiction*.

[682] *Mavrommatis* (see footnote 236 above), p. 12.

[683] Questions of nationality of claims will be dealt with in detail in the work of the Commission on diplomatic protection. See first report of the Special Rapporteur for the topic "Diplomatic protection" in *Yearbook ... 2000*, vol. II (Part One), document A/CN.4/506 and Add.1.

[684] *ELSI* (see footnote 85 above), p. 42, para. 50. See also *Interhandel, Preliminary Objections, I.C.J. Reports 1959*, p. 6, at p. 27. On the exhaustion of local remedies rule generally, see, e.g., C. F. Amerasinghe, *Local Remedies in International Law* (Cambridge, Grotius, 1990); J. Chappez, *La règle de l'épuisement des voies de recours internes* (Paris, Pedone, 1972); K. Doehring, "Local remedies, exhaustion of", *Encyclopedia of Public International Law*, R. Bernhardt, ed. (footnote 409 above), vol. 3, pp. 238–242; and G. Perrin, "La naissance de la responsabilité internationale et l'épuisement des voies de recours internes dans le projet d'articles de la Commission du droit international", *Festschrift für Rudolf Bindschedler* (Bern, Stämpfli, 1980), p. 271. On the exhaustion of local remedies rule in relation to violations of human rights obligations, see, e.g., A. A. Cançado Trindade, *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its Rationale in the International Protection of Individual Rights* (Cambridge University Press, 1983); and E. Wyler, *L'illicite et la condition des personnes privées* (Paris, Pedone, 1995), pp. 65–89.

[685] *ELSI* (see footnote 85 above), p. 46, para. 59.

[686] *Ibid.*, p. 48, para. 63.

[687] The topic will be dealt with in detail in the work of the Commission on diplomatic protection. See second report of the Special Rapporteur on diplomatic protection in *Yearbook ... 2001*, vol. II (Part One), document A/CN.4/514.

Annex 113

Speech by H.E. Judge Rosalyn Higgins, President of the International Court of Justice, to the Sixth Committee of the General Assembly, 2 November 2007

Available at:

https://www.icj-cij.org/sites/default/files/press-releases/3/14123.pdf

SPEECH BY H.E. JUDGE ROSALYN HIGGINS,
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,

TO THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY

2 November 2007

Mr. Chairman,

Distinguished Delegates,

I am delighted to address your Committee today for the second time as President of the International Court of Justice. I congratulate His Excellency Ambassador Alexei Tulbure on his election as Chairman of the Committee for the Sixty-second Session of the General Assembly.

The Sixth Committee's work on the development and codification of international law is of the highest importance and relevance to the International Court of Justice. We closely follow the Committee's activities.

Since you have perhaps heard my speech to the General Assembly, I will not go over the very same ground with you. I thought rather I would share with you today, as I did last year, some thoughts on a legal issue of interest. I have chosen the topic of the judicial determination of relevant facts.

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There is much current work being done on the topic of evidence issues in international courts and tribunals generally. Several articles have appeared, conferences are being held, books are under preparation. It may be helpful if I explain some issues relating to this so far as the ICJ is concerned.

A couple of preliminary remarks:

Occasionally, the Court finds itself faced with issues of pure law. This was so, for example, in the *Genocide Revision* case *(Bosnia and Herzegovina* v. *Yugoslavia)* and the *Arrest Warrant* case *(Democratic Republic of the Congo* v. *Belgium*). Rather more frequently, the Court is faced with the need to determine facts and law: that is true in virtually every case concerning title to territory. And, with increasing frequency, the Court needs to make very heavy findings of fact, these being critical for the legal issues in dispute.

Findings of fact for a *criminal* court will necessarily entail different procedures from those in a civil court. The ICTY, ICTR and the ICC investigate and prosecute persons accused of serious international crimes. They have detailed pre-trial, trial and appeal procedures for determining individual criminal responsibility. By contrast, the ICJ is a court for determining international law, as it applies to States.

How the judicial determination of facts is done

Any practitioner knows that there are "facts" and "facts". Some classical "legal facts" are said by the parties to flow from the documentation they have produced before us. For example, a certain exchange of correspondence or statements in Parliament may be claimed to show that there was a binding arrangement between States X and Y. This of course requires us to examine all such documentation in meticulous detail. This very often arises in territorial dispute cases, where the two sides have different versions of the history of the relations between them. In the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar* v. *Bahrain)*, for example, we had to determine what exactly had been agreed by whom and in what circumstances. Did the Ruler of Qatar consent to have the question of the Hawar Islands decided by the British Government in an exchange of letters in 1939? Was Janan Island part of the Hawar Island group according to the letters between the British Political Agent in Bahrain to the Rulers of Qatar and Bahrain? In order to answer such questions, the Court examined all the relevant correspondence and archival documents.

In territorial dispute cases, an understanding of the colonial past is invariably necessary. Often, one or both parties will rely on the *uti possidetis juris* principle as the basis of sovereignty over the territory in dispute. As the Chamber of the Court explained in the *Burkina Faso/Mali* case, "the essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved"[1]. States invoking the *uti possidetis* principle before us may have on their teams, as relevant, counsel from Germany (for Namibia in the *Kasikili/Sedudu Island* case), France (for Chad in *Libya/Chad*), and Britain (for both parties in *Qatar* v. *Bahrain*). In the *Nicaragua* v. *Honduras* case — the Judgment of which was delivered three weeks ago — the "legal fact" of how maritime matters were handled by the Spanish Crown was pleaded by Spanish counsel on the teams of both parties.

The Statute and Rules of Court distinguish between "experts" and "witnesses". Persons called by the parties as "experts" have to make a special declaration before making any statement (Article 64 of the Rules) and are examined by counsel under the control of the President (Article 65 of the Rules). But, in practice, we find that persons with a particular "expert" knowledge are included as *part of* the teams rather than called as "experts" under these aforementioned provisions. The task of proving historical facts, for example, is usually done as part of the (written and oral) pleadings of the team. It is not presented as "expert testimony" as such and there is therefore no cross-examination. The "expert" lawyer in each team will rather respond to the claimed "evidence of history" of the other in his own submissions. This person is treated by the Rules of Court as "counsel" rather than as "expert".

We see the same phenomenon of "expert as team member" with respect to a different kind of evidence/proof, not in relation to history or legal facts, but *technical* in nature. One such instance was the expert opinion advanced as to the impact of river meanders on the identification of the main channel in the *Botswana/Namibia* case. We heard experts on both sides in this case — as team members, not as experts called by the Parties under Articles 57 and 63 of the Rules. After examining evidence put forward as to depth, width, flow, visibility, bed profile configuration, and navigability, the Court concluded that the northern channel of the River Chobe around Kasikili/Sedudu Island must be regarded as its main channel.

On major technical questions, often there will be detailed expert reports annexed to the pleadings for our scrutiny. One only has to look at the case file for the *Gabčíkovo-Nagymaros* case to see this in action. It will be a matter for the team concerned whether they then include that expert in their delegation or whether they leave any oral submissions as to that evidence to counsel. Different choices were made on this by Nicaragua and Honduras in the recent case concerning maritime delimitation. On the question whether there was evidence that the King of Spain

[1] *Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, I.C.J. Reports 1986*, p. 566, para. 23.

attributed maritime spaces to one or other of the provinces of the Captaincy-General of Guatemala, Honduras annexed expert reports to its Rejoinder whereas Nicaragua's counsel analysed historical material during the oral hearings. Parties may even ask the Court to appoint an expert whose report will be officially annexed to the Judgment. In the *Gulf of Maine* case, Canada and the United States requested the Chamber in their Special Agreement to appoint a technical expert nominated jointly by them to assist the Court with, *inter alia*, preparing the description of the maritime boundary and the charts on which its course would be indicated[2]. The Court duly appointed the expert and his Technical Report was annexed to the Judgment.

Expert evidence seems now largely to be assimilated within the submissions of a legal team, but very occasionally *witness* evidence, namely personal testimony as to facts, is still called. The Statute of the Court contains several provisions concerning witnesses: Article 43 (5) provides that witnesses and experts may be part of the oral proceedings; Article 48 permits the Court to "make all arrangements connected with the taking of evidence"; and Article 51 states that during the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down in the Rules. The Rules, in turn, contain provisions on how parties give notice of their intention to call witnesses, the declarations to be made by a witness or expert, interpretation, and so on.

Only ten cases at the International Court have involved the live testimony of witnesses or experts, and there was a gap of 14 years between the last case in which witnesses were called and the *Bosnia and Herzegovina* v. *Serbia and Montenegro* case[3]. There were early suggestions that the parties (or one of the parties) in the *Bosnia* v. *Serbia* case would want to call *hundreds* of witnesses. This obviously presented problematic issues for the Court, including: how to organize the cross-examination of the witnesses, how to secure the confidentiality of the testimony during the hearings, what type of translation to provide for the witnesses and for the Court, the impact of the length of proceedings, the consequences for the overall throughput of the Court, equality between the parties, and witness protection measures. None of it was insoluble and the Court had provisional plans in place — but in the event, the witness lists of both parties became entirely manageable in number. The Applicant called two experts, and the Respondent called six witnesses and one witness-expert. The category of "witness-expert" is not actually mentioned in the Statute or the Rules, but was recognised in the *Corfu Channel* case and subsequently used in the *Temple of Preah Vihear* case and *South-West Africa* cases. The term refers to a person who can testify both as to knowledge of facts, and also give an opinion on matters upon which he or she has expertise. In the *Bosnia* v. *Serbia* case, the witnesses and experts were examined and cross-examined in court. We heard testimony as to the structure of the military organizations, the relationship between the army of Republika Srpska and the Yugoslav army, the destruction of cultural heritage, and estimations of the war casualties.

There are exceptional instances of historical testimony which no one would *wish* to challenge. The testimony of the Mayors of Hiroshima and Nagasaki in the advisory proceedings on the *Legality of the Threat or Use of Nuclear Weapons* bore witness to the devastating damage and human misery that befell those cities and their citizens. We were asked to receive the Mayors as experts. The Court suggested that, although not pleading any point of law, they should be included within the delegation of Japan. Not only was this sensible in the particular circumstances of these Mayors; but it also for the time being put to one side another complex issue: can the usual

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[2] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), I.C.J. Reports 1984*, p. 265.

[3] *Corfu Channel (United Kingdom* v. *Albania)* case 1949; *Temple of Preah Vihear (Cambodia v. Thailand)* 1962; *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa)* 1966; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* 1982; *Gulf of Maine (Canada/United States of America)* 1984; *Continental Shelf (Libyan Arab Jamahiriya/Malta)* 1985; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* 1986; *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy)* 1989; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* 1992; *Application of the Genocide Convention (Bosnia Herzegovina* v. *Serbia and Montenegro)* 2006.

procedures regarding witnesses applicable in contentious cases be applied also in advisory proceedings?

Aside from the witnesses and experts called by the parties, the Court can *itself* call witnesses under Article 62 of the Rules, appoint experts under Article 50 of the Statute, and arrange for an enquiry or expert opinion under Article 67 of the Rules of Court. There has never been a case where witnesses appeared having been called by the Court itself, but it is a possibility that is constantly in its view. There have been two cases where Court-appointed experts have been used: once by the Permanent Court in the *Chorzów Factory* case, and once by the ICJ in the *Corfu Channel* case. In the latter case, the Court appointed a commission of experts under Article67 of the Rules to make an independent study of facts in dispute between the Parties, which were necessary for the Court to make its decision on the merits. Later, the Court requested from the commission an expert evaluation of the damage sustained by the Applicant in order to assess the quantum of compensation to be paid. In recent years there has been no reliance on such measures. Reviewing evidence presented on technical matters is generally part and parcel of the job of the judge.

Article 66 of the Rules of Court (added in 1978) introduced the possibility of "visits *in situ*" by the Court, either *proprio motu* or at the request of its party. It was originally intended that these visits would be to collect evidence, but on the one occasion a visit has been undertaken, it was rather for information purposes. In the *Gabčíkovo-Nagymaros* case, Slovakia invited the Court to visit the site on the Danube River where the system of locks to which the case related were located. Hungary agreed to the proposal and the Court visited a number of sites along the Danube River, taking note of the technical explanations given by the representatives designated by the Parties.

The question of the burden of proof

The Court has always said that a party alleging a fact bears the burden to prove it. Sometimes each party will bear that burden, albeit in relation to different claims made. The Court explained in the *Guinea* v. *Congo* case, which concerned diplomatic protection, that it is incumbent on the applicant to prove that local remedies were indeed exhausted or to establish that exceptional circumstances relieved the allegedly injured person whom the applicant seeks to protect of the obligation to exhaust available local remedies. It was for the respondent to convince the Court that there were effective remedies in its domestic legal system that were not exhausted[4].

The question of the standard of proof

The Court's prime objective as to standard of proof appears to have been to retain a freedom in evaluating the evidence, relying on the facts and circumstances of each case[5]. The Court made some observations on the standard of proof in the *Corfu Channel* case of 1949 where it simultaneously rejected evidence "falling short of conclusive evidence" and referred to the need for a "degree of certainty"[6]. But the Court has since then been reluctant to specify the standard of proof, even for a particular case. In the *Oil Platforms* case, the Court did not explain the standard of proof to be met; it satisfied itself with saying that it did not have to decide "on the basis of a balance of evidence" by whom the missile that struck the *Sea Isle City* was fired. It simply noted that the United States had not discharged the necessary burden of proof because "the evidence available [was] insufficient, without specifying by which criteria sufficiency/insufficiency was

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[4] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections*, Judgment of 24 May 2007, para. 44.

[5] Kazazi, *Burden of Proof and Related Issues: A Study of Evidence before International Tribunals*, 1996, p. 323.

[6] *Corfu Channel (United Kingdom of Great Britain and Northern Ireland* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 17.

being tested[7]. Part of this reluctance to be specific is caused by the gap between the explicit standard-setting approach of the common law and the *"intime conviction du juge"* familiar under civil law; the ICJ naturally has judges from both of these traditions on its Bench.

When dealing with genocide claims in the recent *Bosnia and Herzegovina* v. *Serbia and Montenegro* case, the Parties wanted to know whether the criminal standard of proof was applicable. The Applicant argued that the matter before the Court was not one of criminal law and that the appropriate standard was therefore the balance of probabilities, inasmuch as what was alleged was breach of treaty obligations. The Respondent, on the other hand, contended that a charge of such exceptional gravity against a State required "a proper degree of certainty" and the standard should leave no room for reasonable doubt[8].

In the circumstances of this case, the Court *did* find it necessary to specify a standard of proof to be met. It stated:

> "The Court has long recognized that claims against a State involving charges of exceptional gravity must be proved by evidence that is fully conclusive (cf. *Corfu Channel (United Kingdom* v. *Albania), Judgment, I.C.J. Reports 1949*, p. 17). The Court requires that it be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established. The same standard applies to the proof of attribution for such acts."[9]

There have been some curious comments by observers as to this being a "higher" or "lower" standard than "beyond reasonable doubt". It is simply a *comparable* standard, but employing terminology more appropriate to a civil, international law case.

Value as proof

By contrast to its general reluctance to specify a standard of proof, the Court has been, over a series of cases, systematically establishing what types of evidence it has or has not found weighty. The evidence it has had occasion to remark on has naturally depended upon the particular case.

In the *Congo* v. *Uganda* case, the Court was faced with a very complex set of facts and vast amount of documentation provided by both Parties. It undertook a detailed evaluation of the evidence, examining the origin, authenticity and reliability of each source in addition to its substantive content. The Court stated that it would treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It would prefer contemporaneous evidence from persons with direct knowledge and give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them[10].

The Court gave substantial weight to the Report of the Judicial Commission set up by the Ugandan Government and headed by Justice David Porter ("the Porter Report"). The Court noted

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[7] See *Oil Platforms (Islamic Republic of Iran* v. *United States of America), I.C.J. Reports 2003;* separate opinion of Judge Higgins, p. 234.

[8] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, Judgment of 26 February 2007, para. 208.

[9] *Ibid*, para. 209.

[10] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 201, para. 61.

> "that evidence obtained by examination of persons directly involved, and who were subsequently cross-examined by judges skilled in examination and experienced in assessing large amounts of factual information, some of it of a technical nature, merits special attention"[11].

The Court further observed that, since its publication, there had been no challenge to the credibility of the Porter Report, which had been accepted by both Parties. This so-called "Porter Test" has since played its part in the case brought by Bosnia and Herzegovina against Serbia and Montenegro, where the Court held that the fact-finding process of the International Criminal Tribunal for the former Yugoslavia (ICTY) fell within this "Porter" formulation[12].

In the same way as the *Congo* v. *Uganda* case, *Bosnia* v. *Serbia* was a fact-intensive case for the Court. The oral hearings lasted for two and half months, witnesses were examined and cross-examined, and thousands of pages of documentary evidence were submitted. A substantial portion of the Judgment is devoted to analysing this evidence and making detailed findings as to whether alleged atrocities occurred and, if so, whether the perpetrators possessed the specific genocidal intent. We made our own determinations of fact based on the evidence before us, but we also greatly benefited from the findings of fact that had been made by the ICTY when it was dealing with accused individuals. We distinguished between decisions taken at various stages of the ICTY processes. For example, as a general proposition the inclusion of charges in an indictment cannot be given weight, nor can judgments on motions for acquittal made by the defence at the end of the prosecution's case. By contrast, the Court found that it should in principle accept as "highly persuasive" relevant findings of fact made by the ICTY at trial, unless of course they had been upset on appeal.

Our most recent Judgment on the merits in the *Nicaragua* v. *Honduras* case addressed the specific evidentiary issue of affidavits. This arose because Honduras had produced sworn statements by a number of fishermen attesting to their belief that the 15th parallel represented and continued to represent the maritime boundary between Honduras and Nicaragua. The Court noted that witness statements produced in the form of affidavits should be treated with caution:

> "In assessing such affidavits the Court must take into account a number of factors. These would include whether they were made by State officials or by private persons not interested in the outcome of the proceedings and whether a particular affidavit attests to the existence of facts or represents only an opinion as regards certain events. The Court notes that in some cases evidence which is contemporaneous with the period concerned may be of special value. Affidavits sworn later by a State official for purposes of litigation as to earlier facts will carry less weight than affidavits sworn at the time when the relevant facts occurred. In other circumstances, where there would have been no reason for private persons to offer testimony earlier, affidavits prepared even for the purposes of litigation will be scrutinized by the Court both to see whether what has been testified to has been influenced by those taking the deposition and for the utility of what is said. Thus, the Court will not find it inappropriate as such to receive affidavits produced for the purposes of a litigation if they attest to personal knowledge of facts by a particular individual. The Court will also take into account a witness's capacity to attest to certain facts, for example, a statement of a competent governmental official with

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[11] *Ibid.*

[12] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, Judgment of 26 February 2007, para. 214.

regard to the boundary lines may have greater weight than sworn statements of a private person."[13]

These criteria are designed to provide guidance to future parties who seek to produce affidavits before the Court.

Mr. Chairman,

Distinguished Delegates,

Recent cases such as *Congo* v. *Uganda* and *Bosnia* v. *Serbia* have been particularly fact-heavy, with hundreds of pieces of evidence annexed to the written pleadings of the parties. And the *Malaysia/Singapore* case, in which hearings will open next week, involves around 4,000 pages of annexes. The judicial determination of relevant facts will be an ever more important task for the Court.

I may add that this task explains the continuing need for each judge to have a law clerk. The ICJ remains *alone* among senior international courts in not having such assistance in the marshalling and collating and checking of evidence.

I will not repeat my speech to the General Assembly, but I do ask that you take special note of what I said there regarding resolution 61/262. You will understand that the Statute of the Court governs us, that we have to sit in equality, and that we cannot have judges on the same Bench receiving different salaries. Nor should the ICJ stand alone as the only judicial body bearing the negative impact of this resolution at the present time. Throughout the United Nations rule of law issues are on the agenda. There is a real rule of law issue right here, and we will appreciate your following matters. What the Court seeks now to do is to find a solution to these problems and we have some concrete proposals contained in the document which will be annexed to the Secretary-General's forthcoming Report on "Conditions of Service and Compensation for Officials other than Secretariat Officials".

On behalf of all the Members of the International Court of Justice, I express my best wishes to the Committee for the success of its work this session.

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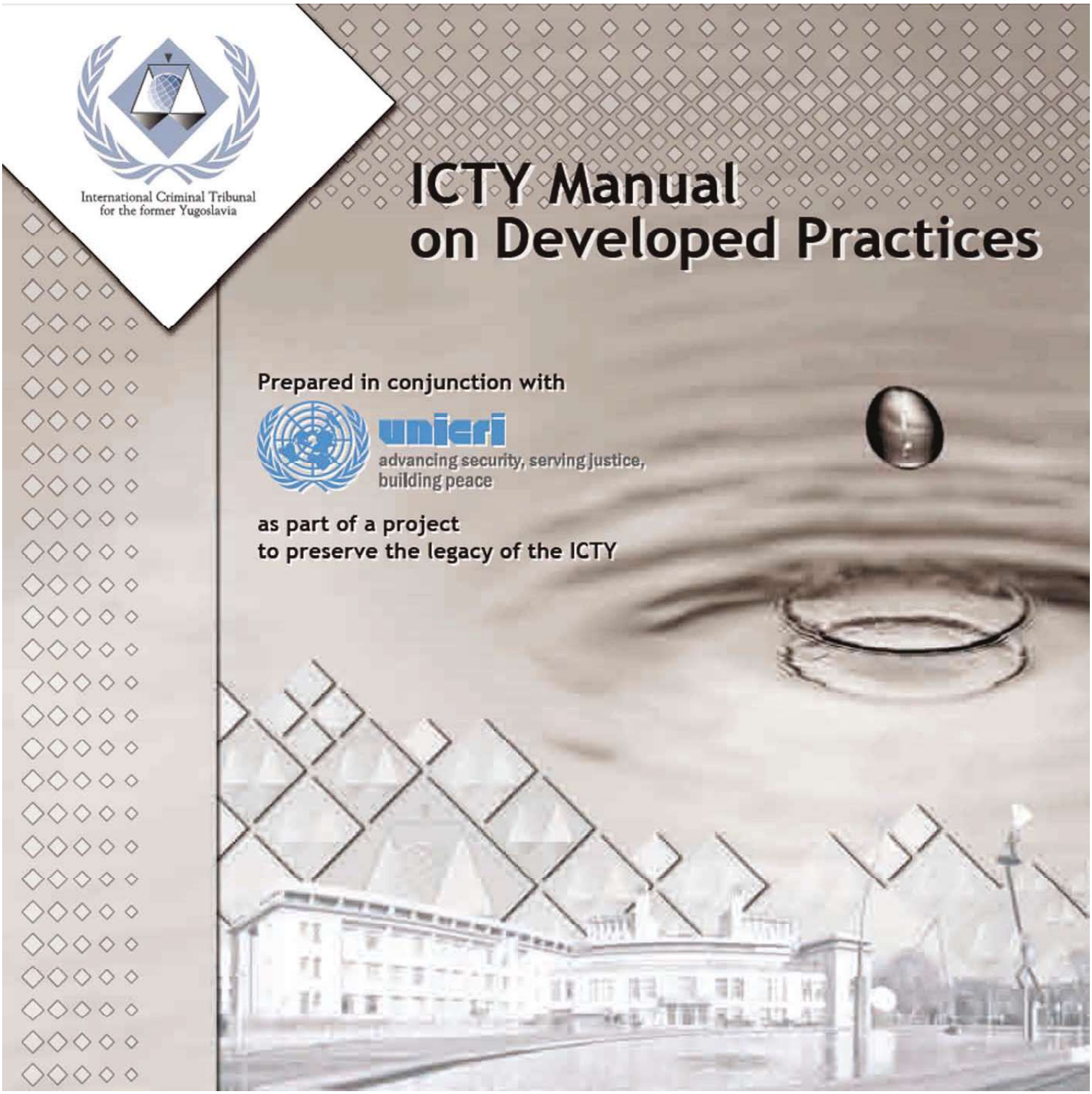
[13] *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)*, Judgment of 8 October 2007, para. 244.

Annex 114

ICTY Manual on Developed Practices (UNICRI Publisher, 2009) (extract)

Available at:

https://www.icty.org/x/file/About/Reports%20and%20Publications/manual_developed_practices/icty_manual_on_developed_practices.pdf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investigators have only limited access to crime scenes and witnesses, it is important to begin the process of collecting evidence as soon as possible. At this early stage, investigators will have unique opportunities to gather and preserve evidence at crime scenes, and these opportunities should be seized wherever possible.

23. Many humanitarian institutions, and other agencies, may also be operating on the ground during or immediately after an armed conflict, and their personnel may offer suggestions or advice about who are responsible for crimes and should be prosecuted. The parties to an armed conflict may also make claims about crimes committed by their enemies. Much of this information requires careful verification, and should not be unquestioningly relied on to select cases for prosecution. Instead, institutions and agencies should be encouraged to record the details of potential witnesses, including and especially their future contact information, but should be encouraged not to attempt to take comprehensive witness statements. Rather, they should simply record in a general way the statements of potential witnesses based on their own direct experiences, and they should understand that the taking of statements is a professional process that is best left to the criminal justice system and to trained investigators. It is good practice to issue guidelines to outside agencies regarding proper practices.

D.1 Modular investigations

24. In the work of an international prosecutor it is likely that several investigations will concern the same or similar events. For example, for crimes perpetrated in a particular town, one investigation may examine the responsibility of local political leaders while another investigation might examine the role of a senior military figure from a third country. Wherever possible these common areas of investigation and proof should be identified and investigated in a way that efficiently meets the requirements of all investigations to which they are relevant. However, investigators must be cognizant of the fact that investigation of a single event that is relevant to two distinct investigations may compromise both investigations by producing contradictory conclusions. A single investigation designed to form a reliable and accurate view of events should be undertaken in a way that collects and preserves all of the evidence necessary for subsequent related investigations. In order for this to happen, investigations should be modular, in that they are uniformly prepared and organized, and case filing and evidence collection methods should be standardized so that they can easily be incorporated and made part of other case files.

D.2 Investigative missions

25. Since the seat of the ICTY was in The Hague, and therefore outside the territory of the former Yugoslavia, the Prosecutors Office was forced to send staff to the region, and these staff teams in the field conducting investigations were said to be "on mission". Although Field Offices were established in each of the countries of the former Yugoslavia to facilitate investigative work, it was considered preferable to base investigators at the main office of the Prosecutor in The Hague, rather than have them permanently stationed away from the Tribunal. After spending time in the field, especially if operating in difficult conditions or climate, investigators need to return to the central office in order to analyze and process the information collected. In order to facilitate field work, the ICTY's Prosecutor's Office developed detailed guidelines on mission procedures, and in particular detailing the procedures for sending teams into the region to conduct investigations.

Annex 115

UN GA, Situation of Human Rights in Myanmar, Note by the Secretary-General, UN Doc. A/72/382, 8 September 2017 (extract)

English version available at:

https://documents.un.org/api/symbol/access?j=N1727973&t=pdf

French version available at:

https://documents.un.org/api/symbol/access?j=N1727974&t=pdf

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Seventy-second session
Item 73 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in Myanmar, Yanghee Lee, submitted in accordance with Human Rights Council resolution 34/22.

* A/72/150.

** The present report was not submitted on schedule because of the dates of the country mission to Myanmar (10-21 July 2017).

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example — must go through the verification process. She further recalls that the Kaman Muslims that she met in Kyauk Ta Lone camp in Kyaukphyu were confined to the camp and notes that, out of 185 applications for citizenship verification from among this community, only three were successfully processed, while the rest have remained pending for a protracted period. They apparently also had to pay a fee for the process even though the Labour Ministry has confirmed that no such fee is required. It would further be crucial for those who have been granted citizenship to be able to fully exercise the rights to which they are entitled beyond being able to travel abroad. Security reasons cannot continue to be used to justify depriving them of access to food, education, health care and livelihoods. The Special Rapporteur welcomes the facilitation by the Labour Ministry for around 2,000-3,000 Muslims from northern Rakhine to undertake their Hajj pilgrimage to Saudi Arabia. She nonetheless received reports, which are regrettable if true, that several Muslims were physically blocked from leaving Rakhine State to undertake the pilgrimage despite having obtained official permission.

73. According to the Government, the United Nations and other international actors resumed humanitarian work in previously restricted areas, including northern Maungdaw, in early January 2017 and humanitarian aid has reached 95 per cent of those affected. However, the food security situation in northern Rakhine is still acute, which is significantly attributed to the restrictions in movement as well as security operations that have altered the operational context in the area. Residents reportedly do not have full access to forests, agricultural land and fishing grounds owing to the presence of security personnel. Fishermen are not allowed to resume fishing activities in Maungdaw South unless they apply to undergo the citizenship verification process, which is meant to be a voluntary exercise. Access for humanitarian actors remains conditional and reportedly the Government suspended issuance of travel authorizations to one organization that issued a critical assessment, and the State government also issued a temporary suspension of data collection, surveys and assessments conducted by United Nations and international non-governmental organizations.

74. She was also informed of a third Government-managed visit in July involving select journalists, this time including foreign correspondents, to areas normally inaccessible to media, particularly since the attacks in October 2016. The visit reportedly took five days and involved at least five villages, where many villagers spoke of continuing violations and abuses suffered and how they felt engulfed in a state of fear, caught between two sides.[15]

75. The Special Rapporteur noted in her statement at the end of her July visit that many of those that she met in Buthidaung Prison had not been properly informed of the charges against them and were mostly without legal representation. She acknowledges nonetheless that, following her previous visit, the authorities had made efforts to allow the families of those detained to visit the detainees. Separately, she raised her concerns with the authorities regarding reported deaths in custody, including those of children, among those arrested during the security operations following the 9 October attacks. She recalls in particular how the children in detention that she met did not appear to fully understand their situation and the implication for their liberty and other freedoms if found guilty of the charges against them. Detention of children should be used as a measure of last resort, as stated in article 37 of the Convention on the Rights of the Child; where children are detained, legal proceedings should be completed as quickly as possible to minimize periods of detention. As reports of detention of children in Rakhine are already three months old at least, detained children should be immediately released

[15] Ibid.

to their families and/or guardians and provided with support. Children should not be prosecuted for "illegal" movement and those arrested on such grounds should be immediately released.

76. The Special Rapporteur notes that the President's Maungdaw Investigation Commission publicly released its summary report on 6 August. Among other things, it stated that many allegations of human rights violations are being investigated or have been recommended for further investigation. The Commission also admitted that it was not able to verify many alleged violations or crimes, including torture, rape and arson, and asked that these be properly addressed by the relevant authorities. The Special Rapporteur looks forward to receiving and studying the Commission's full report.

V. Conclusions

77. The Special Rapporteur recognizes that development and security are pressing priorities for Myanmar currently. However, she also urges Myanmar to recognize human rights as an equal priority, both because human rights are a lynchpin in ensuring that development and security are realized in a balanced and just way and because steps to guarantee the rights of the people of Myanmar are steps to improve their day-to-day lives.

78. In striving to achieve these three priorities, the United Nations and its partners can, and do, offer vital assistance. The Special Rapporteur is therefore extremely concerned by the increasing anti-United Nations and anti-international non-governmental organization sentiment being built up in some areas of the country, which appears to be going unchallenged. The Government must take active steps to stop incorrect rumours or stories from being spread and to publicly recognize the vital work carried out by these organizations. She recalls, however, that to be a true democratic society, freedom of expression must be guaranteed and any steps should respect this right. In this vein, she encourages the Government to urgently protect freedom of speech and remove the current limitations on this right while ensuring that incitement to hate, intolerance and violence is appropriately dealt with in line with international standards and norms. Myanmar also needs to recognize the indispensable work carried out by civil society organizations and human rights defenders and urgently ensure that they can work freely without fear of reprisals, threats or intimidation.

79. All civilians should be fully protected in all areas of the country, and no allegations of serious human rights violations should be left uninvestigated or dismissed, no matter who the alleged perpetrators. Now, more than ever, Myanmar should enlist the assistance of outside experts to independently, impartially and objectively assess what happened in Rakhine State following the attacks on Border Guard Police facilities on 9 October 2016 and the clashes in November 2016 and the continuing reports of killings and other rights violations during related security operations, with the sole emphasis on finding out what exactly happened, so that future incidents can be avoided. Similarly, Myanmar must ensure that the numerous and continuing cases of alleged serious violations of human rights by all parties to the conflict in Shan and Kachin States are impartially and independently investigated. The people of Myanmar also have a right to know the truth, whatever that may be, and this is why the Human Rights Council established a fact-finding mission, and why it would be in the best interest of Myanmar to cooperate fully with it. The Special Rapporteur reiterates that she stands ready to work with Myanmar to ensure that the rights of all are guaranteed.

Annex 116

United Nations, Security Council, Press Release no. SC/13331, "Security Council Press Statement on Security Council Visit to Bangladesh, Myanmar", 9 May 2018

Available at:

https://press.un.org/en/2018/sc13331.doc.htm

Press Release
Security Council

SC/13331
9 May 2018

Security Council Press Statement on Security Council Visit to Bangladesh, Myanmar

The following Security Council press statement was issued today by Council President Joanna Wronecka (Poland):

From 28 April to 1 May, members of the Security Council visited Bangladesh and Myanmar as part of its efforts to address the crisis since 25 August 2017 and urge implementation of its presidential statement of 6 November 2017. The Security Council is grateful to the Governments of Bangladesh and Myanmar, as well as the United Nations, for facilitating the visit.

Members of the Security Council were struck by the scale of the humanitarian crisis and remain gravely concerned by the current situation.

In Bangladesh, the members of the Security Council visited the refugee camps in Cox's Bazar, where they met Rohingya refugees. The members of the Security Council also met Prime Minister Sheikh Hasina, Minister of State Mohammed Shahriar Alam, acting Foreign Secretary M. Khurshed Alam, Refugee Relief and Repatriation Commissioner Mohammed Abul Kalam, other senior Government officials and representatives of the United Nations country team in Bangladesh.

The members of the Security Council expressed their deep appreciation to the Government of Bangladesh for its efforts to provide refugees protection and assistance and expressed their determination to continue supporting Bangladesh, and Bangladeshi host communities, especially in preparing for the upcoming monsoon season and in providing refugees with sustainable support. The members of the Security Council reiterated their support to the work being undertaken by the United Nations country team in support of Bangladesh.

In Myanmar, the members of the Security Council met State Counsellor Aung San Suu Kyi, Senior General Min Aung Hlaing, Union Minister for the

State Counsellor's Office U Kyaw Tint Swe, Union Minister for Office of the Union Government and National Security Adviser U Thaung Tun, Union Minister for Social Welfare, Relief and Resettlement Win Myat Aye, and other senior Government officials, representatives of the United Nations country team in Myanmar and members of civil society. They also visited northern Rakhine state and observed the situation in northern Rakhine State, including widespread destruction of villages, as well as reception centres and transit camps under preparation by the Government of Myanmar.

The members of the Security Council noted the efforts taken by the Government of Myanmar to prepare for the repatriation of refugees. The members of the Security Council urged the Government of Myanmar to step up its efforts to create conditions conducive to the safe, voluntary and dignified return of Rohingya refugees and internally displaced persons to their homes in Rakhine State and to address the root causes of the crisis through implementation of the Rakhine Advisory Commission recommendations, including those related to human rights, citizenship, poverty alleviation and development. The members of the Security Council welcomed Myanmar's commitment to work with the United Nations in the press release by the Ministry of the State Counsellor of Myanmar on 1 May 2018 after State Counsellor Aung San Suu Kyi met with members of the Security Council.

The members of the Security Council encourage States able to do so to continue and increase support to the Government of Bangladesh, and Bangladeshi host communities, in hosting the Rohingya refugee community, especially regarding emergency preparedness measures to be taken ahead of the monsoon and cyclone seasons.

The members of the Security Council welcome the signing of a Memorandum of Understanding and the Arrangement on the Return of Displaced Persons from Rakhine State between the Governments of Myanmar and Bangladesh and urge the Government of Myanmar to work with the Government of Bangladesh and the United Nations to allow the voluntary return of all refuges in conditions of safety and dignity to their homes in Myanmar, including through intensified bilateral consultations and implementation of the Memorandum of Understanding and the Arrangement.

The members of the Security Council urge the Government of Myanmar to grant the United Nations agencies and their partners immediate, safe and unhindered access to Rakhine State, as well as to other domestic and international non-governmental organizations providing humanitarian assistance, and as an initial confidence-building measure, to conclude a Memorandum of Understanding with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Programme (UNDP) in the coming days.

The members of the Security Council, in light of the importance of undertaking transparent investigations into allegations of human rights abuses and violations, urge the Government of Myanmar to fulfil, based on respect for the rule of law, its stated commitment to holding accountable perpetrators of violence, including sexual violence and abuse and violence against children.

The members of the Security Council reaffirm the Security Council's presidential statement of 6 November 2017 in full, including its strong commitment to the sovereignty, political independence, territorial integrity and unity of Myanmar.

The members of the Security Council intend to discuss in the coming days how the Security Council can work with the Governments of Bangladesh and Myanmar, as well as the United Nations, including the Secretary-General's newly appointed Special Envoy on Myanmar, Christine Schraner Burgener, to resolve the crisis and create the conditions allowing the safe, voluntary, and dignified repatriation of refugees to their homes in Rakhine State.

Bangladesh | Myanmar

For information media. Not an official record.

Annex 117

Statement by H.E. Mr. Kyaw Moe Tun, Permanent Representative of Myanmar at the consideration of the draft resolution on “the Situation of Human Rights of Rohingya Muslims and other minorities in Myanmar” at the 39th Session of the Human Rights Council, Geneva, 27 September 2018

Statement by H.E. Mr. Kyaw Moe Tun
Permanent Representative of Myanmar
at the consideration of the draft resolution on "the Situation of Human Rights of Rohingya Muslims and other minorities in Myanmar"
at the 39th Session of the Human Rights Council
Geneva, 27 September 2018

Mr. President,

The draft resolution L.22 was tabled under agenda item 2. It was drafted based on the the findings and recommendations of the report of the Independent Fact-Finding Mission on Myanmar, which was in fact discussed under agenda item 4. A legitimate question comes to me. What is the rationale behind it?

Many delegations in this room time and again stressed that constructive approach and genuine cooperation are very important for the promotion and protection of human rights. What happens to these principles in crafting this resolution, which is based on impetuous judgement based on the FFM report which is replete with unverified information.

At this important juncture of improving the efficiency of the Human Rights Council, objectivity and impartiality are essential principles for all of us to adhere to, especially when it comes to issue that could have far-reaching impact on a member State's sovereignty and dignity.

Mr. President,

Since the draft resolution is a reflection of the FFM's report, allow me to reiterate the position of Myanmar with regard to FFM. The Government of Myanmar has rejected the establishment of the FFM since the beginning, as the government's acceptance could have created strong opposition and instability inside the country. We have therefore set up our own independent commission of enquiry.

The establishment, composition and mandate of the FFM also raised serious concerns that it would lack impartiality and hinder the Government's own efforts to find long-term solutions to the situation in Rakhine State. As expected, the FFM's report is found to be unbalanced and put the whole blame on one side. It seems even encouraging disunity of the nation by dividing among national races.

The draft resolution is based on serious, but unverified accusations and recommendation of the FFM that could even endanger the national unity of the country. Non-constructive measures and retributive actions will only lead to further polarization of the divided communities and institutions we wish to reconcile and worsen the already complicated situation and undermine the government's ongoing efforts to bring peace, national reconciliation and development in the entire nation.

We should never make impetuous judgement on a country over such a serious and important issue. We must always take great care and assess thoroughly if all the contents of the Report gathered from the interviews of selected groups could be true or are supported by hard evidence. Narrative by the mainstream media must be fair and the narratives of the country concerned should also deserve careful consideration.

Mr. President,

Regardless of the lack of balance, impartiality and fairness of the Report, the Government of Myanmar takes the allegations of human rights violations seriously. Therefore, the Government has established the Independent Commission of Enquiry including two eminent diplomats last July to investigate the allegations at its own initiative to address the issue of accountability and to pursue reconciliation in Rakhine State. We have allowed them to investigate independently at their own will. We must give time and space for the Commission to come up with their credible report.

Moreover, The implementation of the MoU between Myanmar and the UNDP and the UNHCR is gaining momentum. The UN team has just completed their first phase of assessment and their work will be extended to additional villages soon. We hope that the implementation will facilitate our efforts for creating more conducive environment for expeditious repatriation to which the Government gives high priority.

While striving tirelessly for solving the issue in Rakhine, the Government is trying to end armed conflicts that have ravaged the country since its independence in 1948, and to bring peace with myriad of other ethnic armed groups. The Government is keeping up its efforts for the peace process and national reconciliation. Rakhine issue is one of the many challenges facing Myanmar on its path to democratization. This issue of Rakhine should be viewed from broader perspective, not from the narrow angle.

Despite positive developments and cooperative measures being taken by the Government, it is regrettable that the draft resolution contains intrusive languages and demands that will not contribute to finding lasting solution to the delicate and complex situation of Rakhine state. Some elements in the draft resolution make direct challenge to the sovereignty of a nation. A United Nations forum such as Human Rights Council should not be a platform for such an intrusive approach, and we have serious concern that it will be setting a bad precedence for other member states.

Mr. President,

It is our firm belief that country specific resolutions are not conducive to meaningful dialogue but give rise also to polarization and even confrontation.

A draft resolution focusing on confrontation and retribution will only be counterproductive. It will not solve, but worsen the humanitarian situation we want to resolve, as it will impose huge impediments to our efforts for early

repatriation and for promoting peace, stability and development in Rakhine State.

Therefore, my delegation categorically rejects the draft resolution L.22.

We appeal the member states of the Human Rights Council to vote against the resolution.

I thank you.

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Annex 118

Delegation of China at the 39th session of the Human Rights Council, "The Human Rights Situation of Rohingya Muslims and Other Minorities in Myanmar", Draft resolution (A/HRC/39/L.22), Speech before taking action, (Afternoon, September 27, 2018)

Unofficial Translation

The Chinese delegation addressed the issue at the 39th session of the Human Rights Council

"The Human Rights Situation of Rohingya Muslims and Other Minorities in Myanmar"

Draft resolution (A/HRC/39/L.22)

Speech before taking action

(Afternoon, September 27, 2018)

Mr. president:

China pays close attention to the situation in Rakhine State in Myanmar. China condemns any violence against civilians. In recent times, with the joint efforts of all parties concerned, some positive progress has been made in resolving the Rakhine State issue. Bangladesh and Myanmar held a ministerial meeting to discuss the implementation of the bilateral repatriation agreement and reached consensus on issues such as screening forms and displaced persons at the border. The Myanmar government has reached a memorandum of understanding with the United Nations Refugee Agency and the Development Program. Myanmar has established an independent investigation committee on the Rakhine State issue. China appreciates Bangladesh's continued provision of humanitarian assistance to displaced persons in Bangladesh. China has provided humanitarian material assistance to Myanmar and Bangladesh respectively to help improve the living conditions of the displaced people.

The Rakhine State issue involves complex historical, ethnic and religious factors, and cannot be resolved overnight. Myanmar and Bangladesh are both friendly neighbors of China. China has been actively working with the two countries to promote the two sides to resolve existing problems through dialogue and consultation. At the end of June this year, Chinese State Councilor and Foreign Minister Wang Yi held an informal meeting with visiting Bangladeshi Foreign Minister Ali and Myanmar Minister of State Counsel Kyaw Tint Swe. They discussed the issue of "stop violence, repatriation and development" on the Rakhine State issue raised by China last year. On the basis of the three-stage settlement concept, a four-point principled consensus was reached on the proper settlement of the Rakhine State issue. First, we should continue to promote the situation in Rakhine State to improve as soon as possible in accordance with the three-phase concept of "stopping violence, repatriation, and development", and on this basis, seek an appropriate solution through consultations between Myanmar and Bangladesh. This is in line with the fundamental interests of Myanmar and Bangladesh and is also conducive to maintaining regional peace and stability. Second, the top priority is to solve the problem of repatriation of people who have entered Bangladesh to seek refuge in chaos. Practical measures should be taken as soon as possible to take substantive steps to achieve the first batch of repatriation. Third, China is willing to provide further assistance to Myanmar and Bangladesh in improving the living and resettlement conditions of people fleeing chaos, including emergency material assistance and the construction of related facilities, based on the wishes of both Myanmar and Bangladesh. Fourth, we should give full play to our respective advantages, increase development cooperation in the border areas of Myanmar and Bangladesh, and effectively improve local people's livelihood. China is working with Myanmar and Bangladesh to implement the above-mentioned principled consensus.

Under the current circumstances, the international community should cherish the hard-won positive progress in resolving the Rakhine State issue, continue to be patient, provide help to promote bilateral dialogue and consultation between Myanmar and Bangladesh, promote the resolution of practical problems, and create a good external environment. The Human Rights Council should play a constructive role in this regard instead of just applying pressure.

Just now, Myanmar, as a country concerned, expressed its opinions on the draft resolution on "The Human Rights Situation of Rohingya Muslims and Other Minorities in Myanmar" submitted by the relevant sponsors. It is obvious that the draft resolution does not respect the opinions of Myanmar, as a country concerned, and unilaterally Pressure includes very controversial content such as "ethnic cleansing", "genocide", submission to the International Criminal Court, and the establishment of a new investigation mechanism. China has been actively participating in consultations on the draft resolution and has communicated with the sponsors many times. We hope that the draft resolution will delete controversial content and be fair and objective. Unfortunately, China's opinions were not adopted by the sponsors. We believe that the adoption of such a resolution by the Human Rights Council is likely to intensify conflicts, deepen estrangement, hinder dialogue and consultation between Myanmar and Bangladesh, and hinder the repatriation process of people fleeing chaos. It will not help to comprehensively and properly resolve the Rakhine State issue, and is not in the interest of either party. , China is deeply worried about this. Therefore, China requests the Human Rights Council to vote on draft resolution A/HRC/39/L.22 and will vote against it.

China has always upheld a fair and objective stance in international affairs and actively worked to promote peace and talks. We call on all parties to seriously consider the correct way to resolve the Rakhine State issue, adhere to dialogue and cooperation, abandon confrontation and pressure, provide constructive assistance to Myanmar and Bangladesh, and play a positive role in resolving the Rakhine State issue. China will, as always, work with the international community to make its due contribution to the early and proper resolution of the Rakhine State issue.

Thank you, Mr. Chairman.

中国代表团在人权理事会第 39 届会议对

“缅甸罗兴亚穆斯林和其他少数群体人权状况”

决议草案（A/HRC/39/L.22）

采取行动前的发言

（2018 年 9 月 27 日下午）

主席先生：

中方高度关注缅甸若开邦局势。中方谴责任何针对平民的暴力行为。近段时间，在有关各方共同努力下，若开邦问题解决取得一些积极进展。孟加拉国与缅甸举行部长级会议，讨论落实双边遣返协议，就甄别表格、边境流离失所者等问题达成共识。缅甸政府同联合国难民署、开发计划署达成谅解备忘录。缅方已成立若开邦问题独立调查委员会。中方赞赏孟加拉国继续向在孟流离失所者提供人道主义援助。中方已分别向缅、孟两国提供人道物资援助，帮助改善流离失所者居住条件。

若开邦问题涉及复杂历史、民族和宗教因素，解决起来不可能一蹴而就。缅甸和孟加拉国都是中国的友好邻邦，中方一直积极做两国工作，推动双方通过对话协商解决存在的问题。今年 6 月底，中国国务委员兼外交部长王毅同访华的孟加拉国外长阿里和缅甸国务资政府部部长觉丁瑞举行非正式会晤，在去年中方提出的若开邦问题“止暴、遣返、发展”三阶段解决设想基础上,就妥善解决若开邦问题达成四点原则共识。第一，应继续按照“止暴、遣返、发展”三阶段设想，推动若开邦局势尽快改善，并在此基础上通过缅孟双方协商，寻求妥善解决办法。这符合缅孟两国根本利益，也有利于维护地区和平稳定。第二，当务之急是解决入孟避乱民众遣返问题，应尽快采取切实措施，迈出实质性步伐，实现首批遣返。第三，中方愿根据缅孟双方意愿，为双方改善避乱民众生存和安置条件提供进一步帮助，包括紧急物资援助和相关设施建设。第四，发挥各自优势，加大在缅孟边境地区的发展合作，切实改善当地民生。中方正与缅、孟两国一起抓紧落实上述原则共识。

当前形势下，国际社会应珍惜来之不易的解决若开邦问题所取得的积极进展，继续保持耐心，为促进缅孟双边对话协商、推动解决实际问题提供帮助，营造良好外部环境。人权

理事会应在此方面发挥建设性作用，而非一味施压。

刚才缅甸作为当事国对有关提案国提交的“缅甸罗兴亚穆斯林和其他少数群体人权状况”决议草案发表了意见，很明显，决议草案未尊重缅甸作为当事国的意见，单方面向缅甸施压，包含“种族清洗”、“种族灭绝”、提交国际刑事法院、设立新调查机制等非常具有争议性内容。中方一直积极参与决议草案磋商，与提案国进行多次沟通，希望决议草案删除争议性内容，做到公正客观。遗憾的是，中方的意见未被提案国采纳。我们认为，人权理事会通过这样一份决议，很可能激化矛盾，加深隔阂，阻碍缅孟双方对话协商，阻碍避乱民众遣返进程，无助于全面妥善解决若开邦问题，不符合任何一方利益，中方对此深感忧虑。因此，中方要求人权理事会对 A/HRC/39/L.22 决议草案进行表决，并将投反对票。

中国历来在国际事务中秉持公正、客观立场，积极致力于劝和促谈。我们呼吁各方认真思考推动解决若开邦问题的正确途径，坚持对话合作，摒弃对抗施压，向缅、孟提供建设性帮助，为若开邦问题的解决发挥积极作用。中国将一如既往，同国际社会一道，为若开邦问题早日得到妥善解决做出应有贡献。

谢谢主席先生。

Annex 119

Delegation of the Philippines at the 37th Session of the Human Rights Council, Item 4, Decision, Explanation of vote before the vote on the situation of human rights of Rohingya Muslims and other minorities in Myanmar (A/HRC/39/L.22), 27 September 2018

PHILIPPINES

37th Session of the Human Rights Council
Item 4. Decision
EXPLANATION OF VOTE BEFORE THE VOTE
on the situation of human rights of Rohingya Muslims and other minorities in Myanmar
(A/HRC/39/L.22)
27 September 2018

Mr. President,

The Philippines shares the concerns of the international community on the plight and the future of the Rohingya people who have been deprived of their rights, for so long, and the view that those responsible for the appalling human rights abuses and crimes should be held to account by a court of law. We condemn all acts of violence and join other States in urging all parties, including non-state actors, to avoid actions that will further worsen the situation on the ground. We share the belief that the international community has an important role to play in addressing the grave humanitarian crisis and in assisting Myanmar in resolving the deeply-rooted problems in the concerned regions in a comprehensive manner. We recognize the difficult burden this crisis has placed on Bangladesh, and take serious interest in the expeditious implementation of bilateral agreements between Bangladesh and Myanmar for the safe, dignified, sustainable and voluntary return of Rohingya people to their communities.

Mr. President,

The Philippines has been consistent in our view that sustained constructive dialogue, cooperation and engagement with the country concerned is the most effective way to address our aims and objectives. We do not see much value in imposing measures that polarize parties and engender mistrust with the concerned State and among parties on the ground. We maintain this view in considering this resolution.

We have seen this positive approach work when countries transition to democracy from authoritarian rule. Modern democracies are not built overnight, they must be given the chance and time to build the necessary institutions for the establishment of the rule of law. It has only been 20 years ago, this month, that thousands of students in Myanmar were calling for an end of the military junta. Myanmar has since then transitioned into a democracy and the democracy leader that the students supported then, is now State Counsellor of Myanmar.

The report of the Fact-Finding Mission itself recognized the social and political context in Myanmar, as well as the compounding factor of the existence of terrorist groups, all of which we must fully take into account in considering how to assist Myanmar effectively. There are at least two measures that convince us of the will of the Myanmar leadership to cooperate in good faith with the international community and towards the just resolution of this crisis: the opening of the Office of the Special Envoy of the UN Secretary General in Nay Pi Daw, and the establishment of the Commission of Enquiry that will investigate allegations of human rights violations. We believe that these and other measures must be fully considered, respected and supported by the Human Rights Council. It is for this reason that this delegation will vote against L22. I thank you, Mister President. **END**

MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS
AND OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA
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Annex 120

UN SC, 8333rd meeting Tuesday, 28 August 2018, S/PV.8333, p. 26 column 2 (Mr Suan (Myanmar)) (extract)

English version available at:

https://documents.un.org/api/symbol/access?j=N1826924&t=pdf

French version available at:

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United Nations S/PV.8333

Security Council

Seventy-third year

Provisional

8333rd meeting
Tuesday, 28 August 2018, 3 p.m.
New York

President:	Lord Ahmad/Ms. Pierce	(United Kingdom of Great Britain and Northern Ireland)
Members:	Bolivia (Plurinational State of)	Mrs. Cordova Soria
	China	Mr. Wu Haitao
	Côte d'Ivoire	Mr. Ipo
	Equatorial Guinea	Mrs. Mele Colifa
	Ethiopia	Ms. Guadey
	France	Mrs. Gueguen
	Kazakhstan	Mr. Umarov
	Kuwait	Mr. Alotaibi
	Netherlands	Mrs. Gregoire Van Haaren
	Peru	Mr. Meza-Cuadra
	Poland	Ms. Wronecka
	Russian Federation	Mr. Nebenzia
	Sweden	Mr. Orrenius Skau
	United States of America	Mrs. Haley

Agenda

The situation in Myanmar

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18-26924 (E)

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Association of Southeast Asian Nations Coordinating Centre for Humanitarian Assistance on Disaster Management. We note the willingness and openness shown by the Government of Myanmar to work with the Special Envoy of the Secretary-General to find the best ways to deal with the problems and challenges the country is facing. In that regard, we highlight the agreement to open an office of the Special Envoy in the city of Naypyidaw.

We are also concerned that, according to the operational update of the Office of the United Nations High Commissioner for Refugees of 19 July, more than 11,000 people have continued to enter Bangladesh since the beginning of this year, escaping persecution and a lack of security. That is an issue that must be urgently addressed by the Government of Myanmar. However, urgent needs must also be addressed in Bangladesh, including assistance to mothers who have given birth in refugee camps; the need to improve food distribution and humanitarian assistance, while ensuring the receiving communities are impacted as little as possible; and access to water and sanitation to avoid an outbreak of diseases such as diphtheria, from which 8,000 people are suffering, according to the World Health Organization.

My delegation recognizes and commends the efforts that the Government of Bangladesh has been making over the past year regarding the refugees in its country. With that in mind, it is imperative that the international community and the United Nations do everything in their power to support the host communities in Bangladesh, particularly in the short term, taking into account that the monsoon season may have a devastating impact on the Rohingya population in the Cox's Bazar camps.

Finally, it is important to point out and reiterate that Bangladesh is not responsible for what happened in Myanmar. It has welcomed the Rohingya refugees selflessly and therefore needs the full support of the international community and incentives for its development in the short, medium and long term, since the unexpected influx of more than 900,000 refugees is significantly affecting Bangladesh's economy, politics and society. The Government and the people of Bangladesh should receive the full support of the United Nations, international funding bodies and subregional and regional actors and mechanisms to be able to continue its collaboration until the safe return of refugees and displaced persons can be guaranteed.

The President: I now give the floor to the representative of Myanmar.

Mr. Suan (Myanmar): I would like to congratulate you, Madam President, for presiding over this important meeting and for the United Kingdom's successful presidency of the Security Council this month.

At the outset, please allow me to pay tribute to the late Kofi Annan, former Secretary-General of the United Nations, who contributed tremendously towards our efforts to find lasting solutions to the problems that were jeopardizing peace and progress in Rakhine state. When he took on the responsibility of leading the Advisory Commission on Rakhine State, at the request of State Counsellor Daw Aung San Suu Kyi, he wanted Myanmar to succeed and reach its goals of peace, prosperity, security and progress. The Commission's recommendations are welcomed by all as important steps for lasting peace and development in Rakhine state. The people of Myanmar will always be grateful for his invaluable support and wise counsel in the country's democratic transition. We should all learn from his way of solving conflicts in a peaceful manner with a constructive and caring approach.

Addressing the deep-rooted and complex issues in Rakhine state was a fundamental and crucial part of Myanmar Government's efforts in building peace and national reconciliation in the country. In May 2016, just two months after taking on State responsibility, the Government established the Central Committee for the Implementation of Peace, Stability and Development in Rakhine State. Soon after, on 5 September, the Advisory Commission on Rakhine State, headed by Mr. Annan, was established. The Commission was mandated to examine the complex challenges facing Rakhine state and to propose responses to those challenges.

Barely a month later, on 9 October 2016, a religious extremist terrorist group called Aqa Mul Mujahidin, later known as the Arakan Rohingya Salvation Army (ARSA), launched its first attack on three border police posts in northern Rakhine state. The attack was premeditated and well organized, causing the deaths of 13 security personnel and other civilians. Their goal was clear— to incite violence and attract international attention of the issue at a time when the whole world was welcoming our peaceful democratic transition.

On 24 August 2017, the Rakhine Advisory Commission presented its final report to the Government of Myanmar. The 88 recommendations are aimed at

the international border line is unlawful, those people put themselves unwittingly in a situation that can affect the stability of the two bordering countries. It is highly possible that the areas could become an ARSA terrorist foothold. In that regard, we have requested the Bangladesh authorities not to provide them any assistance from their side of the border, instead we are now arranging to provide humanitarian assistance for them from the Myanmar side.

Moreover, the Government of Myanmar also signed a memorandum of understanding with the United Nations Development Programme and the Office of the United Nations High Commissioner for Human Rights to assist with speedy and efficient resettlement and rehabilitation of the returnees. We have already mapped out potential resettlement sites. On 7 August, United Nations officials were granted access to 23 villages in 13 village tracts selected for the first phase of the assessment programme. An additional three village tracts have been marked out for the resettlement of internally displaced persons residing near the border line. We urge the United Nations team to start the assessment programme as soon as possible.

The Government continues to implement the recommendations of the Rakhine Advisory Commission in earnest. Eighty-one out of the 88 recommendations have been implemented or are under implementation. In the process of implementation, the Government attaches great importance to the advice and opinion of the advisory board, chaired by Mr. Surakiart Sathirathai, former Deputy Prime Minister of Thailand. The advisory board submitted its final report on 16 August. The report contained balanced and viable final recommendations, which will certainly receive our serious attention.

We recognize the crucial role of the United Nations in addressing the issue of Rakhine, and the present humanitarian crisis in particular. Last April, we facilitated the visit by members of the Security Council, representatives of neighbouring countries and the Chair of the Association of Southeast Asian Netions. We welcomed the appointment of Ambassador Christine Schraner Burgener as Special Envoy of the Secretary-General. We believe that we could maintain a constructive and fruitful relationship with the Special Envoy. We have facilitated the opening of her office in Naypyidaw.

Let me now turn to the question of accountability. The Government of Myanmar has made its position very clear that it will not condone any human rights abuses. Action will be taken against anyone if there is sufficient evidence. In that regard, the Government has established an independent commission of inquiry, led by Ambassador Rosario Manalo, an eminent diplomat with rich experience in the field of human rights. The Commission also includes Ambassador Kenzo Oshima, another prominent diplomat, and two highly respected members from Myanmar.

The Commission is tasked with investigating allegations of human rights violations and related issues following the terrorist attacks on 9 October 2016 and 25 August 2017, with a view to seeking accountability and reconciliation, as well as formulating recommendations on steps to be taken to ensure peace and stability in Rakhine state. The Commission will submit its report to the President of Myanmar within a year, including its recommendations prepared on the basis of the outcomes of its investigation.

In discharging its mandate, the Commission will apply in particular the 1950 Investigation Committee Act, which gives the Commission the necessary authority to investigate. The Commission will also avail itself of international human rights law and international humanitarian law where applicable. The Government of Myanmar will provide protection to all those who are in contact with the Commission, particularly victims and witnesses. The Commission will conduct its mandate while observing the principles of independence, impartiality and objectivity. The members met for the first time on 15 August. The Commission will commence its work this week.

With regard to the allegations of atrocity crimes committed by Myanmar security forces, as set out in the recent report (A/HCR/39/64) of the Independent International Fact-Finding Mission on Myanmar, I would like to reiterate that we did not accept the mandate of the Mission because we have concerns about its impartiality. Besides, I have serious doubts as to the intention behind the timing of the release of the report. The report, which was scheduled to be submitted only to the Human Rights Council on 18 September, was hastily released on the eve of this particular meeting of the Security Council. This action raises serious questions about the objectivity, impartiality and sincerity of the Fact-Finding Mission.

Annex 121

UN SC, 8381st meeting Wednesday, 24 October 2018, S/PV.8381, p. 24 columns 1and 2 (Mr Suan (Myanmar)) (extract)

English version available at:

https://documents.un.org/api/symbol/access?j=N1833774&t=pdf

French version available at:

https://documents.un.org/api/symbol/access?j=N1833775&t=pdf

United Nations S/PV.8381

Security Council

Seventy-third year

Provisional

8381 st meeting

Wednesday, 24 October 2018, 3 p.m.

New York

President:	Mr. Llorentty Solíz	(Bolivia (Plurinational State of))
Members:	China	Mr. Ma Zhaoxu
	Côte d'Ivoire	Mr. Adom
	Equatorial Guinea	Mr. Ndong Mba
	Ethiopia	Mr. Amde
	France	Mr. Delattre
	Kazakhstan	Mr. Tumysh
	Kuwait	Mr. Almunayekh
	Netherlands	Mrs. Gregoire Van Haaren
	Peru	Mr. Meza-Cuadra
	Poland	Ms. Wronecka
	Russian Federation	Mr. Nebenzia
	Sweden	Mr. Skoog
	United Kingdom of Great Britain and Northern Ireland	Ms. Pierce
	United States of America	Mrs. Haley

Agenda

The situation in Myanmar

Letter dated 16 October 2018 from the representatives of Côte d'Ivoire, France, Kuwait, the Netherlands, Peru, Poland, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the President of the Security Council (S/2018/926)

Letter dated 18 October 2018 from the Permanent Representatives of Bolivia (Plurinational State of), China, Equatorial Guinea and the Russian Federation to the United Nations addressed to the President of the Security Council (S/2018/938)

This record contains the text of speeches delivered in English and of the translation of speeches delivered in other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-0506 (verbatimrecords@un.org). Corrected records will be reissued electronically on the Official Document System of the United Nations (http://documents.un.org).

18-33774 (E)

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issue for their political purposes. My delegation has joined other Council members in our strong objection to this injustice and abuse of the established practice of the Security Council.

When the fact-finding mission on Myanmar was established by the Human Rights Council, in March 2017, we objected to the mission because of our serious concerns, particularly about the advisability of its establishment and the mandate itself. The Human Rights Council resolution mandated the mission

> "to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State … with a view to ensuring full accountability for perpetrators and justice for victims" (*Human Rights Council resolution 34/22, para. 11*)

The mandate was very clear. The mission has already designated who should be perpetrators and who should be victims. From its genesis, the establishment of the fact-finding mission has been flawed, biased and politically motivated, with hidden agendas. We are also concerned that the release of its report (A/HRC/39/64), which is based on narratives and not on hard evidence, will serve only to further inflame tensions and potentially hinder the Government's effort to create much-needed social cohesion in Rakhine state. The one-sided report of the mission has confirmed our concerns.

We also raised previously in the Chamber, on 28 August (see S/PV.8333), our doubt — or our concern — about the sincerity of the mission. Although the mission was mandated to submit its report to the Human Rights Council on 18 September, it released, well ahead and in haste, the unedited version of the report on 27 August, just one day ahead of the Security Council's public debate on the situation in Myanmar. The action called for our legitimate concerns about the objectivity, impartiality and credibility of the mission. The methodology of its investigation is also flawed, as the report was prepared from results of interviews of selected groups of displaced persons in Cox's Bazar and information gathered from some non-governmental organizations (NGOs), international NGOs and human rights groups who had already set their predetermined agenda on the issue. Therefore, the mission's report did not shed new light on the problem but was found to be identical with the reports of certain human rights groups with no accountability for their work at all.

We have repeatedly explained the fact that the current humanitarian crisis in Rakhine state was ignited by the unprovoked and premeditated attacks against 30 police outposts and a military battalion headquarters by the Arakan Rohingya Salvation Army (ARSA) terrorist group in August 2017 and, previously, in October 2016. The ARSA terrorists had massacred security personnel and hundreds of innocent civilians, including 100 Hindu villagers, other ethnic minorities and even pro-Government Muslims. The atrocities perpetrated by ARSA have made thousands of innocent ethnic people flee their villages to the other parts of Rakhine state. Likewise, it created a massive exodus of Muslims to the neighbouring country. It is crucial to bear in mind that the present crisis did not affect only the Muslim community. When we talk about human rights, we should look at the human rights of both communities.

However, we are dismayed by the fact that the fact-finding mission has deliberately and glaringly discounted ARSA terrorist atrocities, which could even be interpreted by many as justifying or condoning the acts of Muslim extremist terrorists. In its report, the fact-finding mission took great courage to reluctantly and half-heartedly mention the atrocities committed by ARSA terrorists. It lists a few ARSA human rights violations, including "the killing of up to 100 Hindu men and women from Kha Maung Seik" (*A/HRC/39/64, para. 54*). It continues:

> "[t]he mission's primary source information on the latter incident" — that is, the killing of Hindus — "corroborates the killing, but is inconclusive as to the perpetrator. Other militant or criminal groups were also active in the region and may also have been responsible for abuses." (*ibid.*)

Amazing. I am just bringing the naked truth of the report to the attention of the members of the Council.

Much has been talked about accountability. As the Council is well aware, the Government of Myanmar has established an independent commission of inquiry, led by Ambassador Rosario Manalo. The commission will investigate allegations of human rights violations and related issues following the terrorist attacks of 9 October 2016 and 25 August 2017 by the Arakan Rohingya Salvation Army in Rakhine state with a view to seeking accountability and reconciliation. The commission will conduct its mandate in accordance

Annex 122

International Law Commission, Draft conclusions on identification of customary international law, with commentaries (2018), *Yearbook of the International Law Commission, 2018,* vol. II, Part Two (extract)

English version available at:

https://legal.un.org/ilc/publications/yearbooks/english/ilc_2018_v2_p2.pdf

French version available at:

https://legal.un.org/ilc/publications/yearbooks/french/ilc_2018_v2_p2.pdf

DOCUMENT A/73/10*

Report of the International Law Commission on the work of its seventieth session (30 April–1 June and 2 July–10 August 2018)

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* Initially distributed as *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10.*

(3) Although resolutions of organs of international organizations (unlike resolutions of intergovermental conferences) emanate, strictly speaking, not from the member States but from the organization, in the context of the present draft conclusion what is relevant is that they may reflect the collective expression of the views of such States: when they purport (explicitly or implicitly) to touch upon legal matters, the resolutions may afford an insight into the attitudes of the member States towards such matters. Much of what has been said of treaties in relation to draft conclusion 11 applies to resolutions; however, unlike treaties, resolutions are normally not legally binding documents, and generally receive less legal review than treaty texts. Like treaties, resolutions cannot be a substitute for the task of ascertaining whether there is in fact a general practice that is accepted as law (accompanied by *opinio juris*).

(4) Paragraph 1 makes clear that resolutions adopted by international organizations or at intergovernmental conferences cannot independently constitute rules of customary international law. In other words, the mere adoption of a resolution (or a series of resolutions) purporting to lay down a rule of customary international law does not create such law: it has to be established that the rule set forth in the resolution does in fact correspond to a general practice that is accepted as law (accompanied by *opinio juris*). There is no "instant custom" arising from such resolutions on their own account.[734]

(5) Paragraph 2 states, first, that resolutions may nevertheless assist in the determination of rules of customary international law by providing evidence of their existence and content. The word "may" seeks to caution that not all resolutions serve such a role. As the International Court of Justice has observed, resolutions "even if they are not binding … can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*".[735] This is particularly so when a resolution purports to be declaratory of an existing rule of customary international law, in which case it may serve as evidence of the acceptance as law of such a rule by those States supporting the resolution. In other words, "[t]he effect of consent to the text of such resolutions … may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution".[736] Conversely, negative votes, abstentions or disassociations from a consensus, along with general statements and explanations of positions, may be evidence that there is no acceptance as law.

(6) Because the attitude of States towards a given resolution (or a particular rule set forth in a resolution), expressed by vote or otherwise, is often motivated by political or other non-legal considerations, ascertaining acceptance as law (*opinio juris*) from such resolutions must be done "with all due caution".[737] This is denoted by the word "may". In each case, a careful assessment of various factors is required in order to verify whether indeed the States concerned intended to acknowledge the existence of a rule of customary international law. As the International Court of Justice indicated in *Legality of the Threat or Use of Nuclear Weapons:*

> it is necessary to look at [the resolution's] content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.[738]

The precise wording used is the starting point in seeking to evaluate the legal significance of a resolution; reference to international law, and the choice (or avoidance) of particular terms in the text, including the preambular as well as the operative language, may be significant.[739] Also relevant are the debates and negotiations leading up to the adoption of the resolution and especially explanations of vote and similar statements given immediately before or after adoption.[740] The degree of support for the resolution (as may be observed in the size of the majority and where there are negative votes or abstentions) is critical. Differences of opinion expressed on aspects of a resolution may indicate that no general acceptance as law (*opinio juris*) exists, at least on those aspects, and resolutions which attract negative votes or abstentions are unlikely to be regarded as reflecting customary international law.[741]

(7) Paragraph 2 further acknowledges that resolutions adopted by international organizations or at intergovernmental conferences, even when devoid of legal force of their own, may sometimes play an important role in the development of customary international law. This may be the case when, as with a treaty, a resolution (or a series of resolutions) provides inspiration and impetus for the growth of a general practice accepted as law (accompanied by *opinio juris*) conforming to its terms, or when it crystallizes an emerging rule.

(8) Paragraph 3 makes it clear that provisions of resolutions adopted by an international organization or at an intergovernmental conference cannot in and of themselves serve as conclusive evidence of the existence and content of rules of customary international law. This follows from the indication that, for the existence of a rule to be demonstrated, the *opinio juris* of States, as may be evidenced by a resolution, must be borne out by practice;

[734] See also para. (9) of the commentary to draft conclusion 8, above.

[735] *Legality of the Threat or Use of Nuclear Weapons* (see footnote 649 above), pp. 254–255, para. 70 (referring to General Assembly resolutions).

[736] *Military and Paramilitary Activities in and against Nicaragua* (see footnote 637 above), p. 100, para. 188. See also *The Government of the State of Kuwait v. The American Independent Oil Company (AMINOIL)*, Final Award of 24 March 1982, ILR, vol. 66, pp. 518–627, at pp. 601–602, para. 143.

[737] *Military and Paramilitary Activities in and against Nicaragua* (see footnote 637 above), p. 99, para. 188.

[738] *Legality of the Threat or Use of Nuclear Weapons* (see footnote 649 above), p. 255, para. 70.

[739] In resolution 96 (I) of 11 December 1946, for example, the General Assembly "*[a]ffirm[ed]* that genocide is a crime under international law", language that suggests that the paragraph was intended to be declaratory of existing customary international law.

[740] In the General Assembly, explanations of vote are often given upon adoption by a Main Committee, in which case they are not usually repeated in plenary.

[741] See, for example, *Legality of the Threat or Use of Nuclear Weapons* (footnote 649 above), p. 255, para. 71: "several of the resolutions under consideration in the present case have been adopted with substantial numbers of negative votes and abstentions; thus, although those resolutions are a clear sign of deep concern regarding the problem of nuclear weapons, they still fall short of establishing the existence of an *opinio juris* on the illegality of the use of such weapons".

Annex 123

Statement by Myanmar, 8477th meeting of the Security Council on 28 February 2019, S/PV.8477 (extract)

English version available at:

https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/PV.8477&Lang=E

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United Nations S/PV.8477

Security Council

Seventy-fourth year

Provisional

8477th meeting

Thursday, 28 February 2019, 4.30 p.m.

New York

President:	Mr. Ndong Mba	(Equatorial Guinea)
Members:	Belgium	Mr. Pecsteen de Buytswerve
	China	Mr. Wu Haitao
	Côte d'Ivoire	Mr. Ipo
	Dominican Republic	Mr. Singer Weisinger
	France	Mr. Delattre
	Germany	Mr. Heusgen
	Indonesia	Mr. Djani
	Kuwait	Mr. Alotaibi
	Peru	Mr. Duclos
	Poland	Ms. Wronecka
	Russian Federation	Mr. Polyanskiy
	South Africa	Mr. Van Shalkwyk
	United Kingdom of Great Britain and Northern Ireland	Ms.Pierce
	United States of America	Mr. Cohen

Agenda

The situation in Myanmar

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19-05868 (E)

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What we want is for all the essential basic requirements for the Rohingya's successful return to be addressed and ensured in a reasonable time, keeping in mind that hundreds of thousands of people from that ethnic group have been living for more than a year in very insecure conditions. If they have to remain in that situation any longer it will jeopardize the future of their children, who, like the rest of us in this world, deserve to grow up in decent conditions. In that regard, and without discounting the important steps that Myanmar has taken so far, including the agreements it has already signed and the written updates we have had from its Permanent Representative in New York, I want to urge the Government of Myanmar once again to redouble its efforts to ensure a full settlement of the problem in Rakhine state.

In the same way, we call on the countries of the region such as China, regional organizations such as the Association of Southeast Asian Nations, the United Nations and the international community to spare no effort in their support for Myanmar and Bangladesh so that we can at last ensure the normal and unhindered flow of humanitarian aid to the vulnerable population of Rohingya refugees, as well as their return to Myanmar, their country of origin, under humane and dignified conditions and with the necessary security guarantees to avoid any return to the previous situation that led to their displacement to Bangladesh.

I now resume my functions as President of the Council.

I give the floor to the representative of Myanmar.

Mr. Suan (Myanmar): I would like to congratulate you for chairing this important meeting and for Equatorial Guinea's successful and commendable presidency of the Council for the month of February.

I thank Ambassador Christine Schraner Burgener for the objective and comprehensive briefing this afternoon and I would also like to acknowledge and welcome the presence among us of Mr. Shahidul Haque, Foreign Secretary of Bangladesh.

In the spirit of cooperation with the United Nations and as a demonstration of our desire to addressing the issue of Rakhine, we agreed to the appointment of the Special Envoy. We have provided her with all necessary support in discharging her mandate. We appreciate her tireless efforts and dedication in undertaking her mandate with objectivity and impartiality. The Special Envoy has made five official visits to Myanmar in the nine months since her appointment. Her office in Naypyidaw is now fully functioning. We will continue to work closely with her in our effort to resolve the issues relating to the situation in Rakhine state.

Soon after assuming its state responsibilities, the National League for Democracy Government has placed a high priority on bringing sustainable peace, stability and development to Rakhine. We have been implementing most of the recommendations of the Advisory Commission on Rakhine State, formerly led by the late Mr. Kofi Annan, which was set up by the Government voluntarily even before the humanitarian crisis took place as a result of Arakan Rohingya Salvation Army (ARSA) terrorist attacks. In the process of implementation, we identified five priority areas: citizenship, freedom of movement, closure of displaced persons camps, education and health. We are also finalizing a strategy for closure of the remaining displaced persons camps.

Some delegations previously alluded to the question of freedom of movement. The national verification card is the necessary step in the citizenship application process and also provides proof of residency in Rakhine state and facilitates freedom of movement. This requires the cooperation of people to apply for such cards, which is a totally voluntary process. Concerning humanitarian access, due to the present security situation in northern Rakhine state, access has been limited to certain areas, however humanitarian supplies can be delivered through the International Red Cross or through the Rakhine state Government.

The most urgent task of the Government at hand is to commence the repatriation process as soon as possible to resolve the humanitarian situation. We are ready to receive verified returnees in a voluntary, safe and dignified manner, in accordance with the bilateral agreements and arrangements with Bangladesh. We have proposed recently to Bangladesh that the joint working group resume its meetings in April. We are confident that we can make the repatriation plan a success if we both act strictly in compliance with the agreements.

On the other hand, we have been working with the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) to create conducive conditions in accordance with the trilateral memorandum

of understanding. We have agreed to implement 35 quick impact projects as soon as the security conditions permit. Another 36 quick-impact projects are under consideration. The project assessments will also be extended to other designated villages in northern Rakhine.

Moreover, we are also working with the Association of Southeast Asian Nations (ASEAN) to facilitate the repatriation process. We have invited ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management to dispatch a needs assessment team to identify possible areas of cooperation in Rakhine state to assist with repatriation. The terms of reference of the needs assessment team were agreed during the visit of the ASEAN Secretary-General to Myanmar in December last year. The ASEAN Emergency Response and Assessment Team will be sent to Rakhine as soon as possible. The presence of the ASEAN assessment team in the repatriation process will enhance trust and confidence of the returnees.

While we are engaging constructively with the United Nations in our efforts to resolve the multitude of challenges we are facing as a nascent democracy, some groups and countries in the United Nations system continue to exploit various United Nations mechanisms to exert discriminatory and illegitimate political pressures on Myanmar with malicious intent.

One vivid example, among many others, is the establishment of the Independent Investigative Mechanism on Myanmar by the Human Rights Council. That action is yet another step in a series of unprecedented discriminatory examinations of a member State. We strongly objected to the establishment of the Mechanism. The reasons are simple. The Mechanism was set up beyond the Council's mandate. It represents selectivity and a discriminatory and double-standard practice on the part of the United Nations human rights body. In addition, its terms of reference are very intrusive to a sovereign country's domestic jurisdiction. The Mechanism will only serve the political purposes of those who wish to exploit the Human Rights Council for their political agenda. Such intrusive measures, without the consent of the country concerned, will only further polarize different communities and exacerbate tensions.

Some members of the Council in this Chamber have just made reference to the report of the Human Rights Council fact-finding mission in connection with accountability issues. In that respect, I would like to reiterate our firm position, as I did before in this Chamber on 24 October last year, that Myanmar has categorically objected to the fact-finding mission since its establishment. We also reject its narrative-based report.

The report of the fact-finding mission was totally biased and one-sided. Its investigation targeted only Myanmar security forces and excluded the violations committed by the Arakan Rohingya Salvation Army (ARSA). The report was prepared mainly on the basis of interviews and information gathered from non-governmental organizations and human rights groups. Moreover, the report fully authenticates the stories of Muslim displaced persons while rejecting any contradictory evidence. The fact-finding mission has ignored reports revealing massacres by the ARSA and has discounted its atrocities. Most importantly, the conclusions of the report are politically motivated and aim to inflict maximum damage on the image of Myanmar and its leadership.

The ARSA is alive and active. On 25 February, news media reported the death of one of the top ARSA military commanders, Nurul Alam, in a gunfight with Bangladesh Rapid Action Battalion at Muchuni camp in Cox's Bazar. Bangladesh local media also reported recently on abductions, murders, disappearances and rape committed by members of ARSA in 30 camps of Ukhia and Teknaf, in the district of Cox's Bazar. They are also threatening people who wanted to go back to Rakhine.

The Government of Myanmar has repeatedly stated that it will not condone human rights violations and will take action against perpetrators according to the law if the allegations are supported by sufficient evidence. Therefore, the Government of Myanmar has established an Independent Commission of Enquiry to investigate all allegations of human rights violations following ARSA terrorists attacks in August 2017 in northern Rakhine. The mandate of the Commission is to seek accountability and reconciliation. The Commission is carrying out its mandate with independence, impartiality and objectivity.

The Commission is also requesting access to the refugees camps in Cox's Bazar, in Bangladesh. We urge the Government of Bangladesh to facilitate the Commission's visit to the camps and to meet with the alleged victims of abuse. The Commission's work

will be evidence based. Therefore, the international community should support the work of the Commission.

The Government of Myanmar is willing and able to address the issue of accountability. Therefore, we strongly reject any move to bring the issue to the international judicial system. With this firm commitment and in the spirit of cooperation with the United Nations, the Government of Myanmar has signed a joint communiqué with the Special Representative of the Secretary-General on Sexual Violence in Conflict to prevent and address conflict-related sexual violence. The Government of Myanmar has recently facilitated the visit of Special Representative Patten.

We have also been working very closely with the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Ms. Gamba. The Government is now in the process of forming a ministerial committee on the prevention of the six grave violations affecting children. We conducted training on the six grave violations in December 2018. We have been cooperating closely with Special Representative Gamba.

The issue of Rakhine is not one of religious persecution, as wrongfully portrayed in the massive media campaign against Myanmar. Myanmar is a multi-ethnic and multi-religious country where different faiths, including the majority of the Muslim population, have lived in harmony across the country for centuries. The issue of Rakhine state is a political and economic issue involving prolonged cross-border illegal migration since colonial times, poverty, a lack of rule of law and national security. The issue of northern Rakhine state is not a threat to international peace and security. The recent outbreak of fighting in north Rakhine state, ignited by the Arakan Rohingya Salvation Army's attacks against three police outposts, has further complicated the situation. It has also highlighted the urgent need to achieve a nationwide ceasefire agreement under the ongoing national peace process.

We are fully aware of the urgent need to solve the humanitarian problems, but we want to seek the Council's understanding of the practicality and possibilities on the ground. There are huge physical and psychological barriers that hinder the implementation of the repatriation, building peace and stability and development efforts. It takes time and patience, as well as courage, to build trust and confidence among different communities in Rakhine. We want to resolve the issue as quickly as anyone.

While the primary responsibility to address the situation in Rakhine rests with the Government and the people of Myanmar, the objective and constructive contribution and support of the international community will be crucial to the success of Myanmar's national efforts. I wish to express our sincere appreciation to all our friends who are helping and supporting us in various ways to resolve the challenges in Rakhine at this critical juncture. We shall continue to work in good faith with the United Nations and with all our friends to end the suffering of the people of Rakhine and rebuild the state into a land of peace, harmony and prosperity for all communities.

The President (*spoke in Spanish*): I now give the floor to the Foreign Secretary of Bangladesh.

Mr. Haque (Bangladesh): We thank you, Mr. President, for giving us the opportunity to deliver a statement to the Council. We appreciate in particular the efforts of nine Council members in organizing this briefing. We also thank the Special Envoy of the Secretary-General on Myanmar for her briefing.

We appreciate the willingness of the international community, in particular the members of the Security Council, to resolve this protracted humanitarian and human rights crisis. At the same time, we cannot hesitate to express our frustration as nothing concrete has happened so far to convince us or the Rohingyas living in camps in Bangladesh that there will be an early resolution of the crisis, including the safe, dignified, voluntary and sustainable return of the Rohingyas to their homeland. Is there anything more disappointing than discovering that despite our wholehearted efforts, the repatriation cannot start due to non-conducive conditions in Rakhine state of Myanmar? Is Bangladesh being made to pay the price for being responsive and responsible in showing empathy to a persecuted minority group of a neighbouring country?

Bangladesh does not have any agenda or ulterior motive to support terrorism anywhere, in particular in Myanmar. We are successfully implementing our zero-tolerance policy towards terrorism and violent extremism. In fact, the problem of the Rohingyas is an outcome of a multidimensional and multi-layered geopolitical construct, with its genesis in Myanmar. It is the result of the decades-long state practice of deprivation, disenfranchisement and atrocities. Its

Annex 124

UN GA, Human Rights Council, Detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/42/CRP.5, 16 September 2019 (extract)

Other extracts are also included at CMM, Vol. VI, Annex 246

Available at:

https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/20190916/A_HRC_42_CRP.5.pdf

A/HRC/42/CRP.5

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Human Rights Council
Forty-second session
9-27 September 2019
Agenda item 2
Human rights situation that require the Council's attention

Detailed findings of the Independent International Fact-Finding Mission on Myanmar*

* Information complementary to that contained in the official report (A/HRC/42/50), submitted to the Human Rights Council pursuant to resolution 39/2. Reproduced as received, in the language of submission only.

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a range of restrictions, including on humanitarian access, that have led to significant displacement of the civilian population.

24. While each of the situations of the ethnic minorities in Myanmar is distinct with its own facts and dimensions, a common thread underlies the situation of each of the ethnic groups. All ethnic groups highlighted in this report have suffered human rights violations and violations of international humanitarian law at the hands of the Tatmadaw. They have experienced the insecurity and hardship that prevail wherever the Tatmadaw operates. They have all been driven off their traditional lands and subjected to forms of marginalisation as a result of the Tatmadaw's policies.

25. All the ethnic minority communities that the Mission investigated have been deprived of justice for the serious human rights violations perpetrated against them. For this reason, the Mission found it necessary to highlight once again the situation of ethnic minorities in Myanmar, to provide an independent and impartial assessment of the violations committed against them, and to call on the Government of Myanmar and the international community to put a halt to these violations by finally breaking the cycle of impunity that protects the Tatmadaw and leads to further violence in the future.

II. Introduction

26. This report complements the Mission's report submitted to the Human Rights Council pursuant to resolution 39/2,[2] by which the Council extended the mandate of the Independent International Fact-Finding Mission on Myanmar ("the Mission"). The Council requested the Mission to present a final report on its activities to the Council at its forty-second session.

27. This report focuses on human rights developments since September 2018. It highlights the situation of ethnic groups in Rakhine, Chin, Kayin, Kachin and Shan States, focussing on conflict-related human rights violations and abuses and violations of international humanitarian law. It also provides a legal analysis of the situation of the Rohingya under the rules of State responsibility and the 1948 Genocide Convention, to which Myanmar is a party. The Mission further presents its findings on the situation of the conflict between the Tatmadaw and the Arakan Army since the beginning of 2019 and the latest developments in northern Myanmar.

28. The Mission comprised three experts: Marzuki Darusman (Indonesia, chair), Radhika Coomaraswamy (Sri Lanka) and Christopher Sidoti (Australia).

29. The Mission regrets the continuing lack of cooperation from the Government of Myanmar, despite the numerous appeals made by the Human Rights Council and the Mission. During the reporting period, the Mission requested to meet with the Permanent Representative of Myanmar in Geneva on two occasions and requested country access on 12 February 2019. It sent a detailed list of questions pertaining to the mandate of the Mission on 28 March 2019. The Mission received no official response to any of its communications. The Mission's draft main findings were shared with the Government prior to its public release, providing an opportunity to comment or make factual corrections. No response was received. This conference room paper, containing the detailed findings of the Mission in relation to conflict-related and other human rights violations, was also shared with the Government on 11 September 2019. No response was received. The Mission's letters are in annex 2.

[2] A/HRC/42/50.

Annex 125

Delegation of Belarus at the 42nd session of the UN Human Rights Council, Item 4 of the agenda Dialogue with an international mission after establishing the facts in

Просьба сверять с устным текстом

BELARUS

42-я сессия Совета ООН по правам человека

Пункт 4 повестки дня

Диалог с международной миссией

по установлению фактов в Мьянме

Выступление представителя

Республики Беларусь

17 сентября 2019 года

Беларусь традиционно выступает за то, чтобы Совет ООН по правам человека в своей работе уделял больше внимания укреплению механизмов сотрудничества с государствами. При этом мы принципиально не поддерживаем принятие страновых резолюций и учреждаемые на их основе мандаты и механизмы, которые не признаются правительствами затрагиваемых государств.

Сейчас Мьянма переживает непростой период в своей истории и нуждается в поддержке со стороны международного сообщества. В этом контексте международное сообщество, включая СПЧ, могут сыграть конструктивную роль в поиске того самого устойчивого решения, которое привело бы к миру, стабильности и развитию в штате Ракхайн.

Однако мы убеждены, что оказание дискриминационного политического давления на Мьянму, в том числе через учреждаемые в Совете механизмы по установлению фактов или по расследованию, не поможет решению проблем.

В данной связи нам представляется более целесообразным задействование региональных (АСЕАН) и двусторонних механизмов сотрудничества с Мьянмой, ориентированных на диалог и вовлеченность.

Unofficial Translation

42nd session of the UN Human Rights Council Item 4 of the agenda Dialogue with an international mission after establishing the facts in Myanmar

Speech of the representative Republic of Belarus

September 17, 2019

Belarus traditionally advocates that the UN Human Rights Council in its work pay more attention to strengthening the mechanisms of cooperation with states. At the same time, we fundamentally do not support the adoption of national resolutions and the mandates and mechanisms established on their basis, which are not recognized by the governments of the affected states.

Now Myanmar is going through a difficult period in its history needs support from the international community. In this context, the international community, including HRC, can play a constructive role in the search for the most sustainable solution that would lead to peace, stability and development in Rakhine State.

However, we are convinced that exerting discriminatory political pressure on Myanmar, including through the fact-finding or investigative mechanisms established in the Council, will not help solve the problems.

In this regard, it seems to us more expedient to involve regional (ASEAN) and bilateral cooperation mechanisms with Myanmar, focused on dialogue and involvement.

Annex 125*bis*

Statement by Ambassador Hau Do Suan, Permanent Representative of the Republic of the Union of Myanmar to the United Nations in response to the Presentation made by Mr. Marzuki Darusman, Chair of the former Independent International Fact-finding Mission on Myanmar, Agenda Item 70-c, Promotion and protection of human rights: Human rights situation and reports of special rapporteurs and representatives at the Third Committee of the 74th Session of the United Nations General Assembly (New York, 22 October 2019)

MYANMAR

*please check against delivery**

Statement by Ambassador Hau Do Suan,
Permanent Representative of the Republic of the Union of Myanmar to the United Nations
in response to the Presentation made by Mr. Marzuki Darusman,
Chair of the former Independent International Fact-finding Mission on Myanmar
Agenda Item 70- c "Promotion and protection of human rights: Human rights situation and reports of special rapporteurs and representatives at the Third Committee of the 74th Session of the United Nations General Assembly
(New York, 22 October 2019)

Mr. Chairman,

First of all, let me make it clear that Myanmar's participation in this interactive dialogue does not, in any way, be interpreted as recognizing the International Independent Fact-finding Mission (FFM) on Myanmar, its mandate or any of its reports.

A few moments ago, in this very chamber, my delegation had stated valid reasons why Myanmar could not work with the present Special Rapporteur of Human Right Situation in Myanmar.

Just now, we have heard the chair of the FFM. As expected, we heard one sided views, unsubstantiated allegations, misleading information based on secondary sources, and narratives. Obviously, he completely ignored contradicting evidence and facts including the devastated situation experienced by innocent Hindu minority as well as the other ethnic nationalities in Rakhine State. The whole work of the FFM validated our rejection of the Mechanism.

Mr. Chairman,

Myanmar always takes the issue of accountability seriously, and clearly states time and again that perpetrators of all human right violations for causing a large outflow of displaced persons to Bangladesh must be held accountable. However, we will never accept any attempt to exert unjust and unwarranted political pressures under the pretext of accountability.

In the same vein, I would like to reiterate our rejection of the establishment of the Independent Investigative Mechanism (IIM) on Myanmar. This mechanism is yet another form

of unprecedented discriminatory scrutinization on a member country. It was set up beyond the mandate of the UN General Assembly and the Human Rights Council. Therefore, we do not recognize nor will we cooperate with this mechanism.

Mr. Chairman,

The democratic civilian Government of Myanmar has set out the agenda for peace and national reconciliation as a national priority. Moreover, it has been striving to translate its commitments of advancing human rights into practice for all people. Rakhine State issue is just one of the many challenges that we are facing as a young democratic nation. The Government has given high priority to find a lasting solution to the protracted problems in Rakhine State, which resulted in the formation of Rakhine Advisory Commission led by the late Secretary-General Dr. Kofi Annan. The issue cannot be seen solely as humanitarian and human rights problems affecting one particular community. It needs to be looked at from the wider scope and holistic point of view.

Despite our genuine efforts to solve the long-standing complex problems in Rakhine State, the Arakan Rohingya Salvation Army (ARSA) terrorist attacks of Myanmar Border Guard posts in October 2016 had caused the initial outflow of displaced persons across the border, following counter-terrorism operations. Subsequently, the then High Commissioner Zeid of the Office of the High Commissioner for Human Rights (OHCHR) sent his team to Bangladesh to compile a flash report on the humanitarian situation. The flash report was issued on 3 February 2017. It was based on the information gathered from interviews with displaced people in the camps in Cox's Bazar without established facts. This had led to the formation of the Independent International Fact-Finding Mission by the HRC.

We objected to the formation of FFM because we are seriously concerned particularly about the advisability of its establishment and the mandate of the Mission. Moreover, we warned the international community that the formation of Fact-Finding Mission would help nothing but deepen the wound and would create greater hostility between different communities in the Rakhine State.

The FFM issued one report in August 2018 and three reports in 2019. The reports mostly contained the narratives of the alleged victims of the displacement without hard evidence. The FFM in its reports portrayed the Myanmar security forces as perpetrators of mass atrocity crimes while deliberately ignoring or discounting the provocative and premeditated armed attacks of ARSA terrorists on various security posts in October 2016 and August 2017 which were the undeniable causes of the present humanitarian situation. Most importantly, the FFM never condemned the well-documented atrocity crimes committed by ARSA that resulted in the death

of security personnel and hundreds of innocent people in Rakhine, including a hundred Hindu villagers, in August 2017.

We are again appalled by the politically motivated, biased, and harmful recommendations contained in the final reports. The justification that FFM gave for economic isolation will inflict economic hardship to the ordinary people of Myanmar and will cause negative impact on the enjoyment of their human rights, including the right to development.

Those reports not only cast the dark shadow on the Human Rights Council and the UN system, but also disconcert the whole population of Myanmar, who had looked to the UN during their long struggle for democracy. The reports clearly demonstrate hostile intentions towards the democratically elected government and the peace-loving people of Myanmar. The Government, Chambers of Commerce, Confederation of Trade Unions in Myanmar, Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine State (UEHRD), and private companies have voiced their strong condemnation of the reports and their allegations. Confederation of Trade Unions even called FFM to hold accountable for its recommendations made in the reports.

Mr. Chairman,

We are seriously concerned about the widespread terror threats of ARSA in the camps in Cox's Bazar. Death threats and intimidation of ARSA against displaced persons have made the repatriation process impossible to commence. Recently, the German news agency DW has revealed that over three thousand five hundred ARSA terrorist individuals are sheltering in the refugee camps in Bangladesh. They have reportedly threatened aid workers and even killed people who expressed their desire to return to Rakhine State.

There is an urgent need to address the security threat of ARSA in the refugee camps to create a conducive condition for the speedy implementation of the repatriation process.

Mr. Chairman,

Myanmar has never fallen short of its commitment to the accountability for human rights violations in Rakhine or any other place in the country. We are willing and able to take on the accountability issues for any alleged human rights violation where there is sufficient evidence.

We are addressing the issue of accountability by setting up the Independent Commission of Enquiry (ICoE) in July 2018. The Commission is tasked to investigate

allegations of human rights violations and related issues following the terrorist attacks by ARSA, to seek accountability and reconciliation. The Commission will act as a fact-finding commission with special investigative and judicial powers under the Investigative Committee Act 1950. It will then submit a report to the President of Myanmar with its recommendations. Members of the ICoE have visited Bangladesh from 17-22 August 2019 to prepare the groundwork. The Commission is now awaiting approval from the Bangladesh Government for the ICoE's Evidence Collection and Verification Team (ECVT) to visit Cox's Bazar to interview and collect evidence from the alleged victims.

A military investigation into Rakhine-allegations is also currently being undertaken by the Office of the Judge Advocate General. A recent announcement suggests that there will soon be a court-martial. The integrity of these independent investigations should not be compromised by international actors.

Mr. Chairman,

The issue in Rakhine State is one of the many complex challenges faced by Myanmar on its path towards democracy. The government has been striving through a holistic approach for long term stability, security, and sustainable development in the State. Our priority now is to expedite repatriation and to create a more conducive environment for verified returnees. To this end, we are working hard in cooperation with Bangladesh, UNDP,UNHCR, ASEAN, friends, and well-wishers.

Our cooperation with the international community is based on our faith in the principles and purposes of the UN Charter and multilateralism. However, there has been a growing sentiment among the people of Myanmar that they are being treated unfairly by the international community about the situation in Rakhine State. There is obviously diminishing trust between the two sides.

The success of multilateralism depends on the extent of states' adherence to the UN Charter and international law governing the conduct of inter-state relations, including respect for sovereignty and territorial integrity, non-interference in the internal affairs of state, mutual respect and peaceful settlement of disputes.

If the United Nations, the centerpiece of the multilateralism, acted beyond its mandates in the interest of certain groups of countries and failed to deliver the purpose of the Charter in defending member states without discrimination, it will lose the trust and confidence of the people of member countries.

We are grateful to our friends near and far who have been steadfastly standing with us to face the challenges that we are encountering today. As for the People and Government of

Myanmar, we are confident and determined to overcome all the challenges with the spirit of national unity and the collective strength of our people.

I thank you, Mr. Chairman.

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Annex 126

International Criminal Court, Office of the Prosecutor, Situation in Iraq/UK, Final Report, 9 December 2020 (extract)

English version available at:

https://www.icc-cpi.int/sites/default/files/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf

French version available at:

https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-fra.pdf

Cour Pénale Internationale

International Criminal Court

Le Bureau du Procureur

The Office of the Prosecutor

SITUATION IN IRAQ/UK

FINAL REPORT

9 December 2020

I. EXECUTIVE SUMMARY

1. On 13 May 2014, the Prosecutor re-opened the preliminary examination into the situation in Iraq/United Kingdom (UK). In its 2017 Report on Preliminary Examination Activities, the Office announced that, following a thorough factual and legal assessment of the information available, it had reached the conclusion that there was a reasonable basis to believe that members of UK armed forces committed war crimes within the jurisdiction of the Court against persons in their custody. The Office's admissibility assessment has now been completed. For the reasons set out in this report, the Prosecutor does not conclude that the UK authorities have been unwilling genuinely to carry out relevant investigative inquiries and/or prosecutions (article 17(1)(a)) or that decisions not to prosecute in specific cases resulted from unwillingness genuinely to prosecute (article 17(1)(b)). On this basis, having exhausted reasonable lines of enquiry arising from the information available, the Office has determined that the only appropriate decision is to close the preliminary examination without seeking authorisation to initiate an investigation.

2. The preliminary examination has found that there is a reasonable basis to believe that various forms of abuse were committed by members of UK armed forces against Iraqi civilians in detention. In particular, as set out below, there is a reasonable basis to believe that from April 2003 through September 2003 members of UK armed forces in Iraq committed the war crime of wilful killing/murder pursuant to article 8(2)(a)(i) or article 8(2)(c)(i)), at a minimum, against seven persons in their custody. The information available provides a reasonable basis to believe that from 20 March 2003 through 28 July 2009 members of UK armed forces committed the war crime of torture and inhuman/cruel treatment (article 8(2)(a)(ii) or article 8(2)(c)(i)); and the war crime of outrages upon personal dignity (article 8(2)(b)(xxi) or article 8(2)(c)(ii)) against at least 54 persons in their custody. The information available further provides a reasonable basis to believe that members of UK armed forces committed the war crime of rape and/or other forms of sexual violence article 8(2)(b)(xxii) or article 8(2)(e)(vi), at a minimum, against the seven victims, while they were detained at Camp Breadbasket in May 2003.

3. These crimes, while not exhaustive, were sufficiently well supported to enable a subject-matter determination on crimes within the jurisdiction of the Court. In this respect, the Office recalls the wider body of findings by other public authorities and institutions in the UK that hundreds of Iraqi detainees were subjected to conditions of detention and practices which amounted to inhuman or degrading treatment. Although the Office's findings may not be fully representative of the overall scale of

investigations into allegations of wilful killing and abuse of detainees in Iraq.[4] As such, one of the key areas of focus for the Office's preliminary examination into the situation in Iraq/UK, which was re-opened on 2014, was to examine the relevance and genuineness of subsequent investigations into historical allegations by Iraq Historic Allegations Team (IHAT), and later the Service Police Legacy Investigations (SPLI), and of decisions by the Service Prosecuting Authority (SPA) on the submission of cases for prosecution.

6. The outcome of the more than ten year long domestic process, involving the examination of thousands of allegations, has resulted in not one single case being submitted for prosecution: a result that has deprived the victims of justice. Although IHAT and SPLI did refer a handful of cases to the SPA for prosecution, the SPA declined to prosecute in each instance on the grounds that the cases failed to meet the evidential test or the public and service interest component of the 'full code test'.[5] This outcome might trigger apprehension that either the claims submitted were frivolous and vexatious, or, conversely, that the UK process was not genuine and was designed to intentionally shield alleged perpetrators from criminal responsibility. Unpacking these issues has proven more complex than might immediately be expected.

7. From the information available, there is a reasonable basis to believe that, in the incidents which form the basis of the Office's findings, the Iraqi detainees concerned were subjected to forms of abuse with varying levels of severity that would amount to torture, cruel treatment or outrages against personal dignity, and in some cases wilful killing. One incident involving seven victims included the rape of one person and the commission of sexual violence against others. That the allegations investigated by IHAT and SPLI did not result in prosecutions by the SPA does not mean that these claims were all vexatious. At most, it means either that IHAT or the SPLI were not satisfied that there was sufficient credible evidence to refer the cases to the SPA, or that the SPA was not confident that those cases which were referred had a realistic prospect of conviction in a criminal trial. As IHAT noted to the Office, a significant and recurrent weakness in the cases that it investigated was the dearth of forensic evidence and inconsistencies in witness testimony given the historical nature of the investigations, years after the events. It should be noted, in this respect, that this was also due – at least in part – to the inadequacies of the

[4] As set out below, The creation of IHAT was deemed necessary to discharge the implicit duty to investigate set out in sections 116 and 113, of the Armed Forces Act 2006 ('the Act'), as well as the procedural duty under articles 2 and 3 of the ECHR Sir David Calvert-Smith, Review of the Iraq Historic Allegations Team, 15 September 2016, para. 3.4. *See also* UK EWHC, *R (Ali Zaki Mousa and others) v. Secretary of State for Defence No. 2*, [2013] EWHC 1412 (Admin), 24 May 2013, para. 147.
[5] *See below*, Section IX.E (Individual Cases).

those tests to the actual claims resulted in outcomes that appear manifestly inconsistent with the material available to the Office.

12. Having assessed the information before it, and despite the concerns expressed in this report, the Office does not ultimately conclude that the UK authorities have been unwilling genuinely to carry out relevant investigative inquiries and/or prosecutions (article 17(1)(a)) or that decisions not to prosecute in specific cases resulted from unwillingness genuinely to prosecute (article 17(1)(b)).

13. On this basis, having exhausted reasonable lines of enquiry arising from the information available, the Office has determined that the only appropriate decision is to close the preliminary examination and to inform the senders of communications. While this decision might be met with dismay by some stakeholders, while viewed as an endorsement of the UK's approach by others, the reasons set out in this report should temper both extremes.

II. PROCEDURAL HISTORY

14. The situation in Iraq/UK has been under preliminary examination since 13 May 2014. The Office has received a total of 236 communications or additional submissions pursuant to article 15 in relation to the situation in Iraq/UK.

15. On 10 January 2014, the European Center for Constitutional and Human Rights (ECCHR) together with Public Interest Lawyers (PIL) submitted an article 15 communication alleging the responsibility of members of UK armed forces and United Kingdom (UK) officials for war crimes involving systematic detainee abuse in Iraq from 2003 until 2008 ('First article 15 communication').[8]

16. On 13 May 2014, the Prosecutor announced that the preliminary examination of the situation in Iraq, previously concluded in 2006, was re-opened in the light of the submission of new information on alleged crimes. The Office noted "new information received by the Office alleges the responsibility of officials of the United Kingdom for war crimes involving systematic detainee abuse in Iraq from 2003 until 2008".[9]

[8] ECCHR and PIL, First article 15 communication, 10 January 2014.
[9] ICC OTP, Prosecutor of the International Criminal Court, Fatou Bensouda, re-opens the preliminary examination of the situation in Iraq, 13 May 2014.

such as Whiskey 1. When a whiskey number was discontinued after all the serious allegations within it were examined, the complainants were informed. However, where the complainant had allegations within multiple whiskey numbers, the whiskey number would stay open until all of the allegations concerning that individual had been examined. For example, if a complainant alleged that they had been raped in two locations, neither would be closed until both lots of allegations had been dealt with. [275]

C. SERVICE POLICY LEGACY INVESTIGATIONS (SPLI)

182. Following criticism in the UK parliament over the work, duration and expense of IHAT,[276] the Secretary of State for Defence announced in February 2017 his intention to close down IHAT in advance of its scheduled December 2019 timeline,[277] which took effect on 30 June 2017.[278] The remaining investigations were reintegrated into the service police system and taken over by a new investigative unit, known as Service Police Legacy Investigations (SPLI), led by a senior Royal Navy Police (RNP) officer (Officer in Command) and made up of RNP and Royal Air Force Police (RAFP) personnel.[279]

183. The SPLI is thus composed of service (naval and air force) police personnel and headed by a senior Royal Navy Police Officer.[280] In its June 2017 submission the UK authorities informed the Office that the SPLI would consist of a mix of 40 Royal Navy Police and Royal Air Force Police supported by 25 existing current IHAT contractor staff and 12 civil servants from MoD to ensure investigative continuity and specialist support. Under the new arrangements, SPLI would be led by a senior Royal Navy Police officer who, for the purpose of investigations, would report to the Provost-Marshal (Navy), as occurred with IHAT. The SPLI was to be based in Upavon Wiltshire, utilising extant IHAT infrastructure and resources.[281] The continuity of

[275] Information received from the UK authorities, February 2020.
[276] *See e.g.* House of Commons Defence Committee, 'Who guards the guardians? MoD support for former and serving personnel', 10 February 2017, Conclusion, para. 31: "IHAT, the MoD-created vehicle for these investigations, has proved to be unfit for purpose. It has become a seemingly unstoppable self-perpetuating machine and one which has proved to be deaf to the concerns of the armed forces, blind to their needs, and profligate with its own resources. We look to the Secretary of State to set a firm and early date for the remainder of the investigations to be concluded, and for the residue of cases to be prosecuted by a replacement body which can command the confidence of the armed forces."
[277] UK Government, News Story: 'IHAT to close at the end of June: Defence Secretary Sir Michael Fallon has confirmed the date that IHAT will close', 5 April 2017.
[278] *See* IHAT, Homepage, undated (accessed on 26 November 2020).
[279] *See* IHAT, Homepage, undated (accessed on 26 November 2020); SPLI, Homepage, 8 August 2017 (accessed on 26 November 2020). Regarding the contested decision to shut-down IHAT ahead of original scheduled timeframe, *see above*, notably paras. 86-88. IHAT criteria governing the assessment (and closing) of claims are examined in detail below, paras. 324-334.
[280] SPLI, Homepage, (accessed on 26 November 2020).
[281] Information received from the UK authorities, 5 June 2017, paras. 11-12.

personnel between IHAT and SPLI would extend to the Officer in Command of SLPI, Tony Day, who served previously as Deputy Head of IHAT, and prior to that as Provost-Marshall (Navy) to whom IHAT reported.

184. The UK reported that the SPA's role would also be preserved in the same way as it functioned in relation to IHAT. The SPA would have four prosecutors co-located with SPLI, providing legal advice to the investigative teams on both the law and evidence. These would be the same lawyers who were working with the IHAT in order to guarantee continuity in corporate knowledge, procedures and processes, and expertise, with the role of the DSP and SPA remaining the same.[282]

185. In terms of the transition from IHAT to SPLI, Officer in Command of the SPLI informed the Office that various IHAT staff, including some IHAT senior investigating officers (SIOs), were carried on to SPLI. The IHAT SIO's and deputy senior investigating officers (DSIOs) were all replaced with uniformed service police officers, with the former SIOs moving into supporting roles. The transition was described as a 'scaling down' of contractor staff, but retaining key skillsets such as intelligence and major incident room staff who could not be replaced by uniformed service police officers. The SPLI informed the Office that 73% of IHAT's contractor staff were let go or redeployed to other organisations. The SPLI stated it had tasked an independent review team (comprised of two ex-career senior detective superintendents with significant experience in major crime). The review was overseen by a former Chief Constable and examined all key areas of SPLI business, focusing on: investigative structure; end-to-end processes; resources; capacity; capability; time scales; investigative methodology; priorities and resilience of SPLI; funding model; and governance arrangements. The Officer in Command of the SPLI reported that some recommendations had been made but overall the review team had found that the transition from IHAT to SPLI had been challenging, but had been conducted with commendable enthusiasm, professionalism and attention to detail, and that the current SPLI processes were, according to the review team, fit for purpose. The former Director of IHAT added that the transition from IHAT to SPLI had caused a delay as processes returned to full operational capacity, but he believed that the delay did not impact the quality of the investigations, since many cases were already at a mature stage.

186. The Officer in Command of SPLI explained that he sits down at least monthly with the SPLI teams in a case conference on each case and its progress. Separately, there is a joint case review panel for more mature cases, which the DSP joins to give his view. The Officer in Command had sometimes requested teams to conduct further

[282] *Ibid.*

in and of itself, provide a basis for the Office to argue that the UK authorities have sought to shield persons in military command or civilian superior or ministerial roles from criminal responsibility.

e) Allegations of cover-up

372. Among the most serious allegations of shielding that the Office has examined have been allegations of cover-up within IHAT/SPLI itself and/or the SPA to intentionally shield members of UK armed forces and members of the MoD from genuine criminal inquiry. The Office has paid particular attention to the findings published in November 2019 by the BBC's Panorama programme and the Sunday Times ('BBC/Times') which alleged efforts to shield the conduct of British troops in Iraq and Afghanistan from criminal accountability. In particular, the reports allege that this has involved the intentional disregarding, falsification, and/or destruction of evidence as well as the impeding or prevention of certain investigative inquiries and the premature termination of cases.[597]

373. The BBC/Times reportedly interviewed a range of individuals, including: ten former Iraq Historic Allegations Team ('IHAT') investigators; several Iraqi witnesses, including family members of alleged victims; former British military interrogator Frank Ledwidge;[598] and other unnamed army personnel, including soldiers of the Black Watch Battalion. Only one of the ten IHAT investigators was named publicly, with the rest either assigned pseudonyms or described as former IHAT investigators. The BBC/Times also accessed documentation from both the RMP's and IHAT's investigations, including photographic evidence and investigative reports. The BBC/Times concluded that UK authorities had attempted to cover up killings in Iraq, including through the obstruction of investigative steps, political pressure and the premature termination of cases.[599] The principal reported allegations are set out below.

374. In relation to the events at Camp Stephen, corresponding to the two deaths in custody and mistreatment set out in section V.A above, the BBC/Times allege that IHAT investigators had found overwhelming evidence that the deaths of two Iraqi civilians, Rhadi Nama and Abdul Jabbar Mossa Ali, were caused by their treatment

[597] Sunday Times, War crimes scandal: Army 'covered up torture and child murder' in the Middle East, 17 November 2019; BBC, Panorama: War Crimes Scandal Exposed, 18 November 2019. *See also* earlier report in Guardian, Why we may never know if British troops committed war crimes in Iraq, 7 June 2018; ECCHR, Follow-up communication: War crimes by UK forces in Iraq, 31 July 2019, pp. 16-17.
[598] Lewidge, who worked as a military investigator in Iraq, spoke about ill-treatment in detention and said that army personnel were instructed to use aggressive questioning techniques. The documentary does not suggest that Lewidge has information on subsequent criminal investigations or proceedings.
[599] Sunday Times, War crimes scandal: Army 'covered up torture and child murder' in the Middle East, 17 November 2019; BBC, Panorama: War Crimes Scandal Exposed, 18 November 2019.

406. The DSP said that it is impossible to explain why Lord MacDonald disagreed with IHAT's conclusions because it is not clear what material he had access to.[622]

(iii) Conclusions

407. The Office has treated the allegations of cover-up from former personnel of IHAT with the utmost seriousness. The allegations of intentional disregarding, falsification, and/or destruction of evidence, as well as the impeding or prevention of certain investigative inquiries and the premature termination of cases, are of direct relevance to the Office's genuineness assessment. Verification of these allegations could have established a basis to seek the opening of an investigation by the ICC, since the relevant domestic proceedings would have been demonstrably vitiated by an unwillingness of the State concerned to carry them out genuinely. Given the determinative nature of the results of these inquiries, the Office undertook the necessary due diligence to verify whether the allegations could be substantiated for the purpose of admissibility proceedings.

408. The Office spoke with a number of former staff of IHAT who held different levels and functions. This sample of individuals was to some extent self-selected (being persons who were willing to speak to the Office). Accordingly, there may be limits to the representativeness of their experiences as compared with that of former IHAT staff as a whole. The Office nonetheless notes that the views of these individuals were on the whole balanced, as evidenced through their advancement of both praise and critique for various aspects of IHAT's work. The Office also accepts that these individuals were not natural 'whistle-blowers'. As former law enforcement personnel bound by confidentiality undertakings with their former employer and liable for penal sanction for potentially breaching protections on classified information, they may have been naturally reticent to speak with the ICC, which also reduces their likelihood of having made frivolous or malicious allegations. On the whole, the information received by the Office corresponds to the reports made in the BBC Panorama programme and in the Sunday Times.

409. The Office views with concern the fact that professional IHAT investigators – drawn from experienced retired officers of civilian police forces or serving Royal Navy Police personnel – would have made allegations of a cover-up or expressed concerns over the fate of the IHAT investigations that they worked on. At the same time, the Office has put the specific allegations with respect to specific cases, lines of inquiry or decisions taken to the former and current leadership of IHAT, SPLI and SPA in both oral meetings and subsequent written exchanges, and considers that the

[622] It has been confirmed to the Office that Lord Macdonald had sight of the documentation which was used to support the referral to the SPA, including relevant witness statements and IHAT findings.

explanations offered to the Office on each of these allegations appeared generally reasonable. More specifically, after exhausting relevant lines of inquiry, the Office has not been able to substantiate, with evidence that it could rely upon in court, the allegation that decisions were taken within IHAT or the SPA to block certain lines of inquiry or that viable cases with a realistic prospect of conviction were inappropriately abandoned. While the Office cannot categorically rule out such a hypothesis, the evidence available to it at this stage does not allow it to conclude that there was intent on the part of the UK authorities to shield persons under investigation from criminal responsibility.

410. In saying this, the Office accepts the likelihood of strong differences of views and professional assessment both within IHAT and between IHAT and IHAPT or between IHAT/SPLI and the SPA as to whether there was a realistic prospect of obtaining sufficient evidence in a given case to satisfy the evidence sufficiency test at the investigative stage or a realistic prospect of conviction to support a prosecution. It appears clear that IHAT personnel viewed the fate of cases they worked on in different terms, and that staff at all levels, from the operational level to the leadership team, held strong views on the issue. As set out earlier, the Office has also expressed its own concerns on how IHAT/SPLI and the SPA made certain decisions and applied certain aspects of the evidence sufficiency test.[623] However, Office cannot establish an intent to shield based upon internal or external disagreements on operational and legal assessments made by IHAT/SPLI and the SPA.

411. With respect to alleged political pressure and difficulties in securing unfettered access to materials held by the MoD, the Office recognises that IHAT personnel clearly operated in a difficult and challenging environment. It is concerning, in this respect, that former IHAT investigators stated that they felt under pressure to close cases, or that they did not always receive the levels of support for access to materials they sought from the MoD. Nonetheless, based on the information and evidence before it, the Office cannot at this stage conclude that cases were improperly and prematurely terminated due to pressure from the MoD, the UK Government or the public criticism of its work more generally.

412. The Office has expended considerable effort on its inquiry into the allegations made by former IHAT staff to the BBC Panorama programme and the Sunday Times. Nothing in the Office's findings should detract from the seriousness of the allegations made in those reports. Nonetheless, the Office has not been able to substantiate the allegations to the required level of proof before the Court to demonstrate an intent to shield perpetrators from criminal justice.

[623] *See above*, paras. 305-312

to establish relevant facts to the necessary standard. Given the frequency of the application of the 'passage of time' criteria by IHAT and SPLI, it would appear that these initial failings contributed not only to frustrating genuine RMP investigations, but necessarily impacted on the quality of later IHAT and SPLI inquiries. The issue does not directly engage the genuineness of IHAT or SPLI's work, but does call into question the efficacy of measures taken to remedy those initial failings and the extent to which those failings might ultimately have affected the outcome of later inquiries.

b) IHAT/SPLI and SPA

448. The High Court also accepted that concerns arose with respect to independence and impartiality of domestic criminal inquiries also arose in relation to IHAT.[710] IHAT was initially staffed by a combination of RMP and civilian personnel and led by a civilian who reported to the Provost-Marshall of the Army (Head of the RMP). In 2011, the High Court observed that since the Provost-Marshall of the army was "plainly involved in matters surrounding the detention and internment of suspected persons in Iraq … the practical independence of IHAT is, at least as a matter of reasonable perception, substantially compromised."[711]

449. IHAT was reconfigured between 2012 and 2013 by MoD to become part of the Royal Navy Police (RNP), and reported to the Provost-Marshal of the Navy.[712] IHAT's original mandate was also expanded to include fatality cases and to examine the findings of the Baha Mousa public inquiry to determine whether any additional prosecutions could be brought.[713] In May 2013, the High Court ruled that it was satisfied that IHAT was now "perceived in its investigative role to be institutionally independent from the Ministry of Defence and the hierarchy of the armed forces".[714]

450. As emphasised by the UK Government in its April 2015 response to the Office, IHAT in conducting its investigations, served as a dedicated investigative resource of the RNP, which was ensured independence from the MoD by statutory and

[710] *Mousa, R (on the application of) v Secretary of State for Defence & Anor* [2011] EWCA Civ 1334 (22 November 2011), paras. 34-38.
[711] *Mousa, R (on the application of) v Secretary of State for Defence & Anor* [2011] EWCA Civ 1334 (22 November 2011), paras. 34-38.
[712] Sir David Calvert-Smith, Review of the Iraq Historic Allegations Team, 15 September 2016, Appendix C, IHAT 'Terms of Reference' 2.0, May 2014.
[713] Arabella Lang, Iraq Historic Allegations Team, Commons Briefing papers CBP-7478, 22 January 2016, pp. 5-6.
[714] UK EWHC, *R (Ali Zaki Mousa and others) v. Secretary of State for Defence No. 2*, [2013] EWHC 1412 (Admin), 24 May 2013, para. 121. The Iraqi Fatality Investigations, referred to earlier, was set up by the MoD as an inquisitorial body following the same High Court ruling, to undertake examine fatality cases where there is no IHAT investigation and/or no prospect of further prosecution; *see* paras. 212-225.

identified various issues of concern on the issue of delay, it could not attribute them to a lack of willingness to carry out the proceedings genuinely within the terms of those two sub-provisions. Of more immediate and potentially tangible an impact on the admissibility assessment was the recent proposed legislation that would introduce a presumption against prosecution for the crimes set out in this report (currently excluding SGBC). Since the adoption of any such legislation remains prospective, the Office will only be able to factor in its impact, once it is adopted, on the ability of the UK authorities to address ongoing cases or any historical allegations that may arise in the future, and thereafter assess whether there is a basis for the Office to reconsider its determination under article 15(6) of the Statute.

501. The Office must now decide whether it should keep the preliminary examination open; close the preliminary examination; or open an investigation. Although the Appeals Chamber has recently held that admissibility does not form part of a Pre-Trial Chamber's determination under article 15(4), it nonetheless stressed the persisting duty of the Prosecutor, under rule 48, to be satisfied that all of the factors relevant to the opening an investigation, including admissibility, are met before proceeding with an article 15 application.[775] Moreover, such a requirement is necessary to anticipate possible deferral requests under article 18 of the Statute.[776] As set out elsewhere in this report, to satisfy this requirement, mere disagreement or conflicting opinion is not enough: the Office would need to be able to substantiate why it should proceed, based on an assertion of unwillingness on the part of the domestic authorities to genuinely investigate and prosecute such conduct as a result of shielding.

502. The Office recalls that, based on its evaluation of the totality of the information available, it cannot conclude that the UK authorities have been unwilling genuinely to carry out relevant investigative inquiries and/or prosecutions (article 17(1)(a)) or that decisions not to prosecute in specific cases resulted from unwillingness genuinely to prosecute (article 17(1)(b)). Specifically, for the purpose of article 17(2), the Office cannot conclude that the relevant investigative inquiries or investigative/prosecutorial decisions were made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; that there has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; or that the proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the

[775] *Afghanistan* AJ, paras. 35-40.
[776] *See* *Afghanistan* AJ, paras. 42-43.

circumstances, is inconsistent with an intent to bring the person concerned to justice.

503. On this basis, having exhausted all avenues available and assessed all information obtained, the Office has determined that the only appropriate decision is to close the preliminary examination and to inform the senders of communications. While this decision might be met with dismay by some stakeholders, while viewed as an endorsement of the UK's approach by others, the reasons set out in this report should temper both extremes.

504. The Office has set out in some detail its assessment of various aspects of the domestic processes which, while falling short of evidence demonstrating unwillingness, continue to be areas of concern. The Office's findings are also without prejudice to a State's duty to provide an effective remedy to the victims under national or international law more generally.

505. The Office's conclusion that the information provided does not constitute a reasonable basis for an investigation does not preclude the Prosecutor from considering, under article 15(6), further information submitted to him or her regarding the same situation in the light of new facts or evidence. In the light of the due diligence implicit in this provision, the Office will consider any new information it may receive on the remaining allegations under investigation by SPLI and/or under consideration by SPA, including the pending 'Problem Profile' cases concerning possible pattern evidence and command responsibility; and any additional information substantiating allegations into intentional and improper interference with the conduct of genuine domestic inquiries; and the impact of any new legislation on the ability of the competent domestic authorities to consider new allegations arising from the conduct of UK armed forces in Iraq.

Annex 127

IIMM, Witness Statement No. IIMM0019925304, 1 October 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Rohingya from Myanmar	[redacted]	
Gender:	Male		
Mechanism person code:	P1235		
Date of birth/Age:	05 January	Place of birth:	Shuap Praung, Myanmar
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya, Burmese, Rakhine
Religion:	Islam	Language(s) written:	Burmese
Formal educational level:	8th grade	Prior occupation and employer in Myanmar:	
School attended:			

		Current occupation and employer:	[redacted]
Previous address in Myanmar:		Current address:	
Date or approximate date of departure from Myanmar if applicable:	September 2017		
Photo ID:		Type of photo ID:	
Authority issuing photo ID:	UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:	N/A		

II. Interview Information

Prior screening(s) conducted: No

Place/modality of interview: In person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS):

24/09/22 [redacted]
25/09/22
26/09/22
27/09/22
28/09/22
29/09/22
01/10/22

Language(s) used in interview: English, Rohingya

CONFIDENTIAL

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0059	
	M0054	
Interpreter:	M0093	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that the latter would interpret everything the interviewers say in English to me in the Rohingya language and vice versa.
2. I was provided with an overview of the mandate of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and explained the purpose of this interview. I understand that the mandate of the Mechanism only covers event that occurred in Myanmar and nothing in the Bangladesh territory.
3. I was informed that my cooperation with the Mechanism is entirely voluntary and that I had no obligation to participate in this interview or answer any specific questions. I confirm that nobody coerced me or made promises to me to participate in this interview. Nobody told me what to say or not to say. I am happy to be here and I feel like I have a connection with my country now that I can tell my story.
4. The interviewers explained that the Mechanism's investigations are confidential, both to protect the integrity of the investigations and the security of the individuals the Mechanism interacts with. The interviewers requested I keep my interactions with the Mechanism confidential.
5. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or if I do not know, or recall, what they are asking about. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from others. I was explained that I might be shown documents, photos, videos and maps during the interview.
6. They stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, I will be given the opportunity to read, clarify and correct this statement to ensure that it accurately reflects my recollection of events.
7. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent.
8. The interviewers asked if I fully understood these issues and asked if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and confirmed my willingness to proceed with the interview.

IV. Statement

9. My name is [redacted] (this is how I write my name, though my official registered name is [redacted]). I am 57 years old and I am a Rohingya man from Burma. I was born in the village of Shuap Praung (which in Burmese is called "Chut Pyin"). I am married to [redacted]

79. These canons were there from the very beginning, they had brought all this when they came, but didn't install them until 2-3 days before the attack. From the 23rd or 24th of August, myself, Ahmed Husson, and other villagers could see this from a distance. They had installed a tent. One soldier was sitting there and other 4-5 people were doing their rounds. The rice cycle normally goes from July to October, when it is removed from the field. People start preparing the land in the first phase of July, and then by August seeds leaves are there. Around that time fields had rice already, and some of them were already giving flowers depending on the type of rice plant. At that time there were no other crops, you would have vegetable plants inside the village around your house, not in the field. Those posts were positioned on barren lands, because the soil is hard.

80. I remember 4 spots where they were positioned. I could see these [redacted]. We had roads on three sides around village. They installed them firstly on the main road side, and later also on top of hills - not big hills, just actually areas of elevated land not used for farming anything but rather used for grazing the cattle. One spot would be located as far as from here to the main road (less than 1/4 of a mile); another one on the west side of our village, that would be the mountain side, at the edge of the mountains, and the distance would be approximately 1 km. A 3rd one was on the east side of the village along the road, at a distance of approximately twice as far as from here to main road, and the 4th on the south side, where they had to install it in an open field used for cultivation, and which was at a distance a little more than from here to main road.

81. There were two types of the weapon that I described before (nr. 3). One would have one cannon, one would have more than one cannon and would rotate, with a button to control the direction. At two of these spots, there were more than one cannon pointing in different directions. I saw military soldiers taking positions also at other spots, but mainly using the *Bei-Rin-Gun*. I don't remember seeing any canons like this there.

82. The military also planted mines around the village and along the road that goes on the side of the mountain, on the villages' side. It looks like a little plate that is put under the ground and has wires one hand long coming out, hanging. They said if you step on it, this thing will blow up. They were not marked. I saw one of these closely behind the school on the ground, they were taking it out to plant it somewhere else. I saw them planting them in different areas. From the village we could see two people carrying a big box and coming with tools to dig in the earth, and then move to another spot and do the same. Whenever we went to the camps, they would tell us that we had a mine planted next to our village. I made a drawing which the IIMM registered with BIN **IIMM0019629019**. It shows one of these from the top, you can see different parts, the keys and the wire going out. At the top of the wire there is something made of plastic, earth color. Where the keys are, I could see a little spark, a very tiny light that blinks, which means that this thing is already activated.

83. No individual died by these mines. Because of the warnings villagers stayed away; only one cow died. After that, people started being extremely careful.

was the only person that addressed us, but was surrounded by other soldiers that were carrying pistols.

89. From the very beginning, we were very scared, because we had heard in the past of people being called by military and then being killed. I was also scared because I could see soldiers around in the area holding weapons. At first, all villagers had to introduce themselves. After asking identifying questions to all 30 people, since not all of them were fluent in Burmese, they said that only people fluent in their language had to remain, and that everyone else could go.

90. It was a sunny day. The meeting started before midday prayer and lasted at least one hour. However, once the introduction was concluded, only 10 of us participants had remained in the room, plus the *Oak-ka-Hta* Aung Thein Mya. I have put in the above mentioned list of participants, BIN **IIMM0019629004**, the symbol of a check mark ("✓") next to the names of those who stayed.

91. At the meeting, they used a very strong message. They said "Do you know who we are, where we come from? We are from the borders of Shan state, we are coming from a place where big fights are going on. Do you understand the word "*Nay-Myae-Shin-Lin*?" We said no. "What it means is that if you do not follow what we say, we will get rid of all this land, burn all this land, burn these trees, to an extend that the land will be up to one arm deep under fire". I remember that when he said this, he raised his arm and showed with his other hand the length from hand to elbow to show how deep the land will be burned. They added that no one is allowed to go out of village, and that if someone does, he will be killed and the whole village will be killed. "You have to follow all our orders, and someone educated and who speaks the language has to bring us whatever we ask for". During the interview, I was asked to write down the word "*Nay-Myae-Shin-Lin*" in Burmese. The IIMM registered the document with BIN **IIMM0019629012**.

92. One month before this meeting, a mogh guy had disappeared in the jungle. At the meeting, Aung Thein Mya pulled out from his pocket a photo of that guy and said "Look at this person, this person was alive as we are. Shuap Pranug, Firing Taung or any other village must have been involved behind his disappearance". No more meetings took place between this one and the attack.

93. After the threats we were very scared. However, when leaving the meeting, we were a little less scared because the commander acted friendly, shook his hands with us, and said "do not do bad things, do not allow other people to do bad things, go and spread this message".

94. On the 23rd of August, three of my sons went to plant rice in our field. Military from the school approached them. The little one ran away. The other two were questioned about what they were doing, and then were severely beaten. On the next day, 24th, a cow was taken from the yard of the house of Rohim Ali and taken to the military camp at the school, they beat the cow and ate it at night. On the next day, 25th, military took 5 of my goats and 3 more from another house. This taking of animals was happening all the time until the 27th. Even on the 27th in the morning 4-6 soldiers took a cow from a widow lady's house.

were missing. I thought that maybe they had died during the attack. She said that [redacted] were with her in [redacted]'s house when they were taken away to the school. The military tied their hands in the back and were beating them and throwing them on the ground. [redacted] was thrown away thinking he was dead. [redacted] was never found. He was 13 years old. She went on, "You don't need to look for [redacted] because I saw them beating him up so he must be dead by now".

129. Militaries don't attack ladies; they only shoot and kill the guys. It was not just him, they would do this to any guys. When the houses were on fire, people were coming out and they would take everybody among the men. I say this because a lot of ladies returned and I met them later in U-Oror Fara - except for the young ones that were taken for a few days. The women who died got shot when they were running, but they were not specifically targeted. They don't want the guys to be alive. I don't know why they do this, but I've seen that any male, even infants, is killed. For instance, after the meeting at the school only the women were allowed to go out to the fields, though not very far. That's how we know that there is a difference. In addition, many ladies told us that during the attack they were shown their way, meaning that the soldiers did not kill them, but would kill the men that were with them.

130. I was asked to mark on the map with BIN **IIMM0019629006** with a circle using green color the spot where I reunited with my family. I wrote that this spot is on the main road of U-Oror Fara, and that I show the location where I, [redacted] met with my wife and the family.

131. On that road there were a lot of people, at least 50 or maybe more, crying and screaming. Some were fainting. There were a lot of villagers that were also injured or shot while running. Relatives had found them and dragged their bodies to the road. Some people also died in between. I saw wounds from bullets passing through body parts, coming in one way and coming out the other way, taking away a lot of flesh on the side where the bullet came out. I also saw people whose leg was completely smashed. I saw a few individuals with similar injuries, some of whom had rods inserted in their broken legs once they got treated in Bangladesh. There was a lady whose back skin was ripped off because, I guess, she was trying to flee and something hit her. Other people had skin ripped off from their chest. As bullets were shot randomly while people were running away, those must have been graze wounds caused by bullets. I didn't see wounds caused by burning because when the fire was set everybody started fleeing, so no one stayed in the burning houses.

132. I did see injured children as well. I could tell in one instance a mother was holding her baby while running and the bullet did not hit the mother but took off the baby's leg. Mother and baby are alive and they are here in the camp in Bangladesh, in the [redacted] I don't know the name of the lady but I know her father's name, [redacted]. That child's leg is not totally torn off, but he cannot walk using both feet, he limps. He was treated after coming to Bangladesh.

Shuap Praung being burned. I could clearly see because the spot where we were standing is very elevated, there was nothing in between and the vegetation was pretty low. I could see people getting dragged to a pile, with rope around their necks, and people dragging holding the rope on the shoulder. I could see the mogh people carrying dry grass to be added to the fire. I didn't need glasses, I use glasses only from close. I could see very clearly that the people who were dragging were mogh in civilian clothes, while the soldiers were not dragging but just there to control the situation. There were both police and military. I could differentiate the two because from that distance we could clearly see the police uniform, which is lighter in color and the military one that is kaki, deep green. After bodies were put into fire, you could hear the big blast coming out of their bodies.

150. There was another spot where bodies were put together, but those were not burnt. It was closer to the mogh fara, on the east side of our village. The villagers from our village who later went out for their people, said that they saw a very big grave in the ground where they knew all the bodies were piled and put together. I did not go back to Shuap Praung myself, but one of my daughters, [redacted] went back at night crying for her brother and looking for him. She was with [redacted]'s sister. She told me that saw a lot of dead bodies, some piled up, some burnt. They couldn't find anyone alive. They saw a big hole on the ground that looked like all the bodies were put together in that hole and could see blood around the area.

151. Until the time that we left, the forces would surround the village U-Oror fara but would not come inside the village, they would shoot and make a lot of noise but not kill us. They let go everyone who wanted to go to Bangladesh. That was the only direction were people were allowed to move. From the first day we could see a lot of people from many surrounding villages leaving towards the mountains and not being stopped. I couldn't leave at that time because I had to treat my son.

Sexual violence

152. I did not witness myself any sexual violence, but I have seen people being taken away.

153. While I was in the pond I heard a lady screaming and I looked, it was not very far. Her name is [redacted], mother of 2, around 20-25 years old. She was taken away by the military, not by police. When I saw her being taken away I thought she would be killed. She came back one day later to U-Oror fara and told me what happened to her. [redacted] she said, "I was raped, I was tortured". She was very unsettled, [redacted] She was raped by militaries, maybe four or six. They had taken her towards the mountain, to the west, in the forest. She told me that her eyes were tied with a cloth. She and her husband had been taken together

Annex 128

IIMM, Witness Statement No. IIMM0019922094, 15 October 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Myanmar	[redacted]	
Gender:	Male		
Mechanism person code:	P1540		
Date of birth/Age:	[redacted] 1971	Place of birth:	Gu Dar Pyin, Buthidaung, Myanmar
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya, Burmese, English
Religion:	Islam	Language(s) written:	Burmese, English
Formal educational level:	10th grade	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Buthidaung high school	Current occupation and employer:	

Previous address in Myanmar:	Gu Dar Pyin village	Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:	12 September 2018		
Photo ID:	UNHCR	Type of photo ID:	UNHCR
Authority issuing photo ID:	UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	The registration number on photo ID:	
Any other form of photo ID:	Identity card for National Verification (NVC) [redacted]		

II. Interview Information

Prior screening(s) conducted: No

Place/modality of interview: In person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS):
08/10/22 [redacted]
09/10/22
10/10/22
11/10/22
12/10/22
13/10/22
15/10/22

Language(s) used in interview: English, Rohingya

CONFIDENTIAL

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0054	
	M0030	
Interpreter:	M0092	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that the latter would interpret everything the interviewers say in English to me in the Rohingya language and vice versa.
2. I was provided with an overview of the mandate of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and explained the purpose of this interview.
3. I was informed that my cooperation with the Mechanism is entirely voluntary and that I had no obligation to participate in this interview or answer any specific questions. I confirm that nobody coerced me or made promises to me to participate in this interview. Nobody told me what to say or not to say. I am very happy to have the chance to tell my story.
4. The interviewers explained that the Mechanism's investigations are confidential, both to protect the integrity of the investigations and the security of the individuals the Mechanism interacts with. The interviewers requested I keep my interactions with the Mechanism confidential.
5. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or if I do not know, or recall, what they are asking about. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from others. I was explained that I might be shown documents, photos, videos and maps during the interview.
6. They stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, I will be given the opportunity to have this statement interpreted to me in the Rohingya language, clarify and correct this statement to ensure that it accurately reflects my recollection of events.
7. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent.
8. The interviewers asked if I fully understood these issues and asked if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and confirmed my willingness to proceed with the interview.

IV. Statement

9. My name is [redacted] I am a 50 year old Rohingya man from Myanmar. I was born in the village of Gu Dar Pyin, Buthidaung township, Myanmar. I am married to [redacted] and I have [redacted] children; [redacted] daughters and [redacted] sons.

42. After that, I was taken to the interrogation room. I was told, "Because you are a respected person, we will not beat you, just answer our questions". I told them that I would answer truthfully. It was a big room with a lot of personnel, I cannot tell the exact number of people present. The interrogator was Thaung Zin. I am familiar with the area and know some officers by name. I also know some other officers but cannot remember their names now. Thaung Zin was in civilian clothes. A second individual was assisting him, who was wearing uniform pants and a singlet. One person from the intelligence ("*Sa Ra Pa*") was also participating in the interrogation, named Pi Chay. He was wearing civilian clothes as well. I know some *Sa Ra Pa*, and I talked with Pi Chay at the market several times. Also with Thaung Zin I had had exchanges in the past and never had problems, this is why I couldn't believe that the two of them were there. When Thaung Zin questioned me, Pi Chay was writing down the information.

43. They asked for many details about me, including my father's name, where I live, my education level, and where I completed my studies. Then they asked me about a speech I gave during a meeting at the [redacted]. The meeting was held 30 days before I was arrested. This meeting had been held with [redacted] and all the wealthy people from the village, and we had even invited a commander from the border guard, one with one flower - I cannot remember his name. At that meeting, I spoke about the [redacted] but someone had misinformed the authorities that the meeting was in support of the Rohingya Society Organization ("RSO"). There are a lot of militias, and the RSO is one of those, but I do not know anything about it. There was no RSO in the village. I told the interrogators that the [redacted] meeting was about [redacted] and that even their commander was present, that they should ask him. As I said this, they started beating me badly, saying, "Son of a bitch, how dare you say we are involved". I told them I would agree to whatever they wanted me to because I could not tolerate the beating. During the interrogation, they accused me of collecting money from the people to support RSO and wanted me to admit this. Thaung Zin and Pi Chay did not beat me, but Thaung Zin gave the other officers a signal for them to start.

44. Then they stopped and left me on the floor for 5 minutes, after which they tied my hands behind my back and hung me up from the roof by my wrists. The handcuffs were cutting my skin to the bone. It was bleeding very badly. Then, the border guard high-rank commander that arrested me, the one with one flower and one moon, came inside the room. He saw that I was bleeding, he asked them to stop for 5 minutes. After that, he asked me to tell the truth. They then hung me a second time, and I cried very loud because it was intolerable for any human being. They put two open beer cans on the floor with the opening spike up - blocked with some small stones so that it couldn't bend -, then dropped me suddenly, making me fall on those cutting cans and injure my knees. Once on the floor, they kept on beating me until, because I wasn't saying anything, they sent me back. I was kept for about 30 minutes.

45. I recall three people beating me. They wore only trousers, they didn't wear a top uniform. They beat me with a wooden rod and a rubber stick. I had severe injuries on my head, and

seven to eight inmates were taken. From Camp 13 to Buthidaung prison, it took 10 to 12 minutes; from Buthidaung prison to Maungdaw district court, it took one and a half hours.

Maungdaw district court and the temporary detention facility

67. When we arrived in Maungdaw, they took us to the Maungdaw district court. This court was located on the western side of Maungdaw town. From the main road there is a sign indicating "*Narisaung*" on a board, and from that sign to the court it takes two minutes walking. The court building is one-story, I cannot say much more because it was evening and I didn't recognize anything else. We were handcuffed. One officer identified all of us with our names, and inside there were board guards guarding us. I don't remember the person who checked our names.

68. After that, we were taken to a detention facility called "*Maungdaw Achok Ken*", which serves as a temporary place for accused still going to court, before they are sent to prison. I saw both police and border guard there. Around this facility there is only empty land. It was close to the district court, 15 minutes walking distance. We had to walk all the way, keeping our heads down – they showed us how we had to keep our heads. The facility comprised several buildings; the one were we were interrogated in was two-story, the one where prisoners were kept, one-story. There were about six to seven cells.

69. At 8:20 pm, they provided us with some rice but it was very dirty. There was a clock on the wall inside our cell, and 8:20 pm was the exact time they would give us food. At 10 pm, Pi Chay from *Sa Ra Pa* and another person came to interrogate us individually. I don't know the name of the other one. Both of them were wearing civilian clothing. They asked for all my details, including my name and the reason for the arrest. They asked if my family was informed of my whereabout and I answered "They don't know where I am now". The *Sa Ra Pa* officers told me that I was arrested because of my alleged involvement with the attack organized by the Arakan Mujahideen groups to the border guard Headquarters in Maungdaw ("*Ta Na Choke*") on 25 August 2016. I had heard that on 25 August there had been fighting between the Arakan Mujahedin and border guards at the border guard headquarter in a village called Hawar Bill in Rohingya (Kyee Kan Pyin in Burmese), in Maungdaw. It was the first time I heard about these allegations; up until that moment I thought that I was arrested for the [redacted] meeting and for collecting money for the RSO. The *Sa Ra Pa* repeatedly interrogated me in every way about the 25 August attack. Because I denied the accusation and did not answer the questions correctly, the second man beat me on my back and shoulders with a wooden stick. Whenever I gave wrong answers, he beat me very badly. The interrogation lasted one hour. During the interrogation, the other person was taking notes and at the end, they forced me to put my fingerprints on the paper without letting me read the document.

70. During the interrogation, I saw a border guard named Hla Aye, whom I knew because he was previously a police officer in Kyauk Sar Daing. He sneaked in the room and talked to Pi Chay, telling him that I was a good person. Pi Chay didn't stop the interrogation, but

guard and military guarding us. Until the judge arrived, we had to keep our heads down; if someone moved, the security would beat them with sticks. I did not know about this special court before, I only found out as I got there. When the Judge came in, we lifted our heads. The Judge asked us if we were ok. We generally said yes. Lawyers from the government side ("*Asora Cheney*") and from our side were also present. I don't know the name of the lawyer from the government side. There were defense lawyers provided by the government, but we had our own lawyer, paid by us. There were 98 witnesses against us, which included border guard, police, military and *Sa Ra Pa* officers, as well as the chairmen (" *Oak-ka-IIta*") from the various villages of the accused. The chairman of Gu Dar Pyin was not among them. Out of 98 witnesses, I recognized some officers from Nyaung Chaung, including the commander with one moon and one flower that arrested me. When the trial began, they asked many questions from both sides. The court adjourned at 4 pm, and we were taken back to the prison.

109. There were two judges, both of them male. There was more than one case number. My lawyer was [redacted]. He was from our area, and I knew him from before. When I was in Buthidaung prison, my family informed me that they had hired [redacted] to represent the seven of us. The accusations against me were public bombing, murder and treason for the attacks on 25 August and 9 October 2016. This was the first time I heard about the accusation for the 9 October attack. Until that day, I had only seen those papers that I was forced to fingerprint during the interrogations, where I had seen case numbers mentioned. I was also told, the day before going to court, that my case number was [redacted], I had to tell it when coming out of the prison. But from the day I was taken to prison to the day I appeared in court, I did not receive any documents from the court, and never had the chance to speak with my lawyer about the allegations against me, nor to prepare whatsoever defence. I only learned about all the case information at the court, when the Judge and lawyer were talking.

110. We were not allowed to speak about anything on the first day, but all seven of us spoke with our lawyer. The case ran for 12 months, with two weekly hearings taking place always at the special court. I attended most of them, and when I didn't, it was because they didn't take us there. There was an interpreter during the hearings. During the trial, our lawyer asked how we were caught in Gu Dar Pyin. The court clerk was typing everything that was being said. When I heard the testimonies, they were completely false and inconsistent. For example, we were arrested in Gu Dar Pyin, and the witness said we were arrested in Yeke Chaung Kwasone in Maungdaw. Our lawyer was able to cross-examine the prosecution witnesses. On one occasion, when my lawyer cross-examined one of the prosecution witnesses, an army officer, he became aggressive toward my lawyer, and shouted "are you Rohingya as well, are you on their side?!" The Judge warned him that his behaviour was not tolerated in that court, and to not interfere with the court process otherwise he would make a case against him.

111. At last, I had a chance to testify as well, for about 4 to 7 minutes. In our defence, we indicated Aye Kyaw IIla, the chairman of Gu Dar Pyin, as a witness. The court summoned him, and he testified in favour of all of us. He said that I was [redacted], that he had known us for 20 years and that we were all good people. We were so pleased about this.

112. Before the final judgement, the court adjourned for 15 days. The day that the court adjourned the case, I recall border guards telling us that we might be lucky. On the day of the judgement, of the 900 defendants most were imprisoned, and only [redacted] us and [redacted] were acquitted. Among those 900, five received a life sentence, around 70-75 of them at least 70 years of imprisonment, some 30 years, others 16, and others between three and five years.

113. After the judgement, around 7-8 pm, we were taken back to the prison, and the prison guards removed our handcuffs. At 9 pm, the head of the prison informed us in his office that we would be released shortly, but asked for 10 lakhs for our release. We informed our family in Buthidaung, they managed to pay 8 lakhs to the head of the prison and then we got all released. Our relatives were there to pick us up. Apart from appearing in court two days a week during the trial, I was not allowed to go anywhere else, I stayed in Buthidaung Prison the whole time. My lawyer never came to see me inside the prison.

114. I did not receive any court documents concerning my case during the trial or after my release, and I did not see the final judgement. I was shown a document registered with BIN **IIMM0000012151** written in Burmese language. It is a case paper, a declaration, issued by a court. On page [redacted], I identified my name as [redacted] on the defendant list, at nr. [redacted] On the same page, I also saw the names of the [redacted] people who had been arrested with me, from [redacted]. I see for the first time that [redacted]'s name is actually [redacted] Aye Kyaw Hla and Maung Kan Sein testified in our favour. I was not there when Maung Kan Sein, it must have been during one of the hearings that I did not attend, but I heard that he had given testimony. [redacted]. They said that they knew us and that we were good persons. They explained that our village is 9 miles away from the south of Buthidaung, close to Rathedaung, and that the incident took place in the north of Maungdaw. They explained that since 2012, there was an order under Section 144. I can add that the order was that no one could be out of their homes from 6 pm to 6 am. They added that after 9 October 2016, they put other restrictions in addition to the Section 144, and the immigration stopped issuing Form 4 (a travel pass that is necessary to move from one village to another). They explained that we, the accused, did not go anywhere from our village. The paragraphs also say that Aye Kyaw Hla was the chairman until 2016, and Maung Kan Sein from January 2016. In relation to my initial statement that Aye Kyaw Hla "became chairman in 2007 and is still in this position now", I explained to the interviewers that Maung Kan Sein succeded him in the formal capacity, but that Aye Kyaw Hla still rules everything.

115. I understand this is the document in which the court declared I am innocent. I did not receive any compensation from the government. Instead, I had to pay 8 lakh to the head of the prison for my release, although I was acquitted by the court.

Identity card for National Verification

116. Six or seven months after arriving in Buthidaung prison, immigration officers came to the prison and took individual pictures only of Rohingya inmates. There was also a form where they asked my name and details. I didn't write it myself. I only had to put my signature and fingerprint. It was not possible for us to refuse. They didn't tell us the purpose

Annex 129

IIMM, Witness Statement No. IIMM0019627993, 5 November 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:			
Other names used:		Spouse(s)' name(s):	
Nationality(ies):	Myanmar	Childrens' name(s) and date(s) of birth/age:	
Gender:	Male		
Mechanism person code:	P0806		
Date of birth/Age:	35(Born in 1987)	Place of birth:	Gu Dar Pyin, Buthidaung, Myanmar
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya
Religion:	Islam	Language(s) written:	
Formal educational level:	Grade-3	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Gu Dar Pyin Primary School Quranic Study at the Madarasa	Current occupation and employer: N/A	

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Previous address in Myanmar:	Gu Dar Pyin (Gudam Fara)	Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:	17 October 2017		
Photo ID:	UNHCR	Type of photo ID:	UNHCR
Authority issuing photo ID:	UNHCR	Issuance date on photo ID: UNHCR	
Name on photo ID:	[redacted]	The registration number on photo	[redacted]
Any other form of photo ID:	N/A	Issued Date:	[redacted]

II. Interview Information

Prior screening(s) conducted: NO

Place/modality of interview: In person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS):

29/10/22
30/10/22
31/10/22
01/11/22
02/11/22
~~03/11/22~~
05/11/22

[redacted] M0059

Language(s) used in interview: English, Rohingya

Names and signatures of persons present during the interview:

	Name:	Signature:
Interviewer(s):	M0059	
	M0030	
Interpreter:	M0093	

Witness support person: N/A

Other persons present: N/A

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that he would interpret everything the interviewers say in English to me in the Rohingya language and vice versa.
2. The interviewers explained to me the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. I have been explained what a "court" or "tribunal" is, and what it means to be a "witness". I understand that, with my consent, my story may be shared with national or international courts prosecuting crimes committed in Myanmar and that I may become a witness in these cases.
3. I was informed that my cooperation with the Mechanism is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that nobody coerced me or made promises to me to participate in this interview. Nobody told me what to say or not to say.
4. The interviewers explained that the Mechanism's investigations are confidential, to protect both the work of the Mechanism and the people it interacts with. The interviewers asked that I keep my interactions with the Mechanism confidential.
5. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I do not know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others. I was explained that I might be shown documents, photos, videos and maps during the interview.
6. They stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, I will be given the opportunity to have this statement read to me in the Rohingya language, so that I can clarify and correct it, to ensure that it accurately reflects what I said.
7. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent.
8. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I understood the points raised by the interviewers and confirmed my willingness to proceed with the interview.

occasion, Hafiz Habibu Rahman from Sain Dee Prang was arrested for wearing Kurta. [redacted]

32. Similarly, religious books such as "Quraan and Hadis" were restricted to carry, and the authorities extorted money if they found someone carrying those holy books. On one occasion, the authorities confiscated [redacted] while travelling from Buthidaung. They did not return [redacted] could not pay the 100000 Kyats they asked for.

33. Around 2005-2006, a Buddhist monastery was built between Gu Dar Pyin and Dommai Fara. I saw *Oak-ka-Hta* Aye Kyaw Hla and *Mogh* people helping during the monastery's construction. A sitting monk and a layman lived in the monastery. Buddhists from other Mogh villages would visit and do religious celebrations one or two times a year. They brought prominent monks from other towns at least once a year. The sitting monk was responsible for managing the monastery. I do not know the names of those prominent Monks, but I heard they were brought from Buthidaung.

2016 Events

34. In 2016, before Tanashook (*Na Sa Ka* headquarter) was attacked, people from our village could do their farming and work nicely and peacefully. But we still required permission for travelling, marriage and reporting of childbirth. Nevertheless, the relationship in the area among the ethnic groups was good. I say this because, for example, Rohingya villagers could do farming within the Mogh Fara areas. However, Rohingya still faced persecution and had to work doing forced labour whenever required by the authorities. It was mandatory to do forced labour, and many people from Gu Dar Pyin(Gudam fara) worked routinely whenever the authority required. They punished people if they fell asleep when taken to work as forced labour.

35. In 2016, seven Rohingya from Gu Dar Pyin(Gudam fara), [redacted] and [redacted] were arrested, accusing them of involvement with the 9 October Tanashook attack. They were taken to *Ne Me Re* 10 (Region camp 10) in Nyaung Chaung. I heard from people from my village who went to *Ne Me Re* 10 and saw that they were tortured very badly in the camp and later transferred to Buthidaung prison and kept for 1 year and 6 months without any charges. [redacted] was also taken to *Ne Me Re* 10, tortured for seven days, and he paid 500000 kyats for his release. [redacted] was killed on [redacted] 2022 by the AA. [redacted] and [redacted] currently lives in Bangladesh.

Definition and use of term "*Mogh*"

36. When we say "*Mogh*", we refer to ethnic Rakhine. In the Rohingya language, *Mogh* means Rakhine. I heard that my great-grandfathers used to call them *Mogh* as well. Other races in our area include Mro (Muroon) and Kui, live together with Rakhine. Rakhines feel

43. I followed to the north end of our village, and we could see the motorbikes reaching around the bridge area halfway between our village and Dommai Fara. Suddenly we heard a big bang, which I assumed to be a blown-up tire. However, the soldiers got off their bikes and started shooting immediately. The shooting from that spot continued for around half an hour. I only heard the noise from the direction of the bridge. Because of the shooting, we ran all back to the houses and were still observing from the roadside. Among the villagers gathered at that time, I remember Amir Sultan, Noor Islam, Mohammed Hasan, Noor Huson, and Fayas are currently living in Bangladesh.

Attack on Gu Dar Pyin (Gudam fara) in August 2017

44. The following day, when I woke up, I heard no sounds of guns firing. I woke up early morning before the *Fajar* prayer (dawn prayer). My wife, myself and our two children were at home. It was a rainy season and cloudy on that day. The whole night we were frightened. We had not made any preparations to flee. I did not go to the mosque that morning; I prayed at home. We had been in discussion with other people as to what we would do next.

45. I went to see the bridge in the morning where we saw the soldiers the night before and from where we heard the loud bang. Being asked to describe the bridge, I say it was just a normal bridge made of wood where cars could pass. The bridge was intact, but I saw a fresh hole in the south end of the bridge. The hole size was one arm's length and one palm width. That damage looked new to me. I learnt from the villagers that Mohammed Shoif and Zahir Hussain from my village got injured by the gun firing the last night while they were at home. Later in the morning, sometime after 9:00 am, I went to see them at their home and saw Mohammed Shoif had been hit by a bullet in his leg, and Zahir Hussain was injured on his arm.

46. On that day, after the *Fajar* prayer (dawn prayer), people started to leave the village, and everyone was terrified. As all the villagers were leaving, my wife and I decided to leave and started walking, taking our two children towards the river near our village. We didn't take much with us, only a set of cloth to change. We followed the other villagers and crossed the river by boat. I didn't see any security forces in the village then and could not hear any sounds. No gunshots or firing were heard. It was relatively calm in the morning. When we crossed the river, I did not see people with guns or arms, just villagers on the boat. On the other side of the river, there was no road or path, only mud and a bushy area, and it took around 45 minutes to reach Hain Pyin.

47. We reached Hain Pyin around 7:30 am. After all, we had to wait a long time on the shore because many people were waiting to cross the river, and only eight people could fit on the boat each time. I saw people crossing the river with boats from other points as well. Only one boat could bring people to the other side at the part of the village where I was. As my house was in the middle of the village, I could also see groups trying to cross from the north and south sides. I saw around 100 to 200 people going towards Hain Pyin and Hpo Kaung Chaung by crossing the river.

48. The condition of Hain farang was relatively quiet at that time; people from this village did not have to leave, and there was no military at that time. I saw people from my village going to neighbouring villages. When we reached Hain Pyin, I saw many people waiting at the shore to cross a small river going to Hsin Daung. I left my wife and two children on the boat with other people and returned to Gudam fara on foot by crossing the paddy field in order to find out the situation of my village and my house. There were around 80 other villagers with me at that time. We arrived at Gudam fara at around 9:00 am. I didn't see any people with arms among these people at that time. They were just villagers I saw around me; maybe a handful of people were carrying sticks. I don't why, maybe to protect themselves.

49. Around *Asar* prayer time (around 4 pm), we divided ourselves into small groups of around 8-10 people and organised cooking and stayed at night in the village. We divided the group because we could not cook for all the people. No one told us to make a group we just made a group to make it easy for all of us. When I returned to my village, there was no gun firing or military. I stayed in the village and went south and east of the village we did not see anybody. It was quiet and calm at nighttime. We stayed with 6-7 people in each house. We did not use any light in the house because we were scared.

50. We could not sleep at night because we worried that something would happen at night. But nothing happened. I spent the night together at the same house with Anwar Halek, Mujibul Rahman, Harres, Mohammed Hasan, Anwar, and Osman. These people currently live in Myanmar. The following morning nothing happened, but people were worried about the situation. Then, at around 11.00 am, people said the soldiers were coming towards Gu Dar Pyin. At that time, I was still at Anwar Halek's house and standing on the street near his house. As soon as we heard the soldiers were coming from the south, we rushed to the north side of the village near the river. But I did not see any soldiers at that time.

51. Around 80 people were at the north end of the village at that time, and some of us crossed the paddy fields and went to Dommai Fara, and others were already there. When I reached Dommai Fara, people from Dommai Fara were already outside their houses and gathering at one place because they had heard that the military coming to Gudam fara. However, at that time, I did not see any military or hear any gunfire. But I saw people were fleeing.

52. I joined the crowd in Dommai Fara and stayed there for two hours. The place where all the people gathered was on the south end of Dommai fara. At around 1 pm., we heard a big bang. At that time, I called [redacted], who was in the north end of Gudam fara at that time, said the military had entered the south end of Gudam fara.

53. I saw more people escaping from Gudam fara. After that, I heard an explosion and saw a house burning in the middle of the Gudam fara on the side of the main road. Around 600-700 people gathered and waited to enter the village, crossing the paddy field between Dommai fara and Gudam fara. We decided to go back to extinguish the fire. I and some other men from my village started going towards Gudam fara and reached north end of the

70. We then fled to the hilly areas where the *Kian* (monastery) was. There was a little pond where cattle drank from. It was near sunset time and getting dark. When we saw a person waving his hand, laying on the ground next to the pond, he couldn't speak. He was a young guy, around 23 years. He was injured in the leg; therefore, he couldn't move. We, the six of us, transported him towards his village Dani Prang; we recognized him as [redacted]. We took him near the little river and put in the gallons as floating devices and swam him over the river to transport.

Events for the next 3 days: 28th, 29th, 30th

71. I stayed in Hsin Daung and visited Dommai Fara every day for the next three days. Military and *Lon Htein* were in Gu Dar Pyin(Gudam fara), and people were not allowed to go to the village. So, I could see them only from a distance. Sain Dee Prang and Kyazigya fara are on the way to Dommai Fara. In the following days, I saw several bodies in the rice fields between Gu Dar Pyin and Dommai Fara. Three injured people from my village were taken to Sain Dee Prang. Being asked, but no medical help was provided by any authorities.

Return to my village after 8 days

72. It was 8 days after the attack. It was around 11 am. We could not use the regular road: my uncle [redacted], my neighbour, [redacted] my neighbor, [redacted], and my neighbour [redacted], all went into our village. The situation was a bit calmer by then. Other people also went back to see if their houses were still standing. All houses except five to six were burned to the ground. I could still see smoke coming up. It had not rained for the last few days. The smoke was mainly coming from the rice storage next to the houses, which were still burning.

73. I went directly to see my house. Everything was burned; all the woods and trees were burned. I recovered some papers because I had buried them next to a pole eight to ten days before the incident happened. My father called me one day from [redacted] and told me to do this at some stage.

74. I didn't see any corpses in the Gu Dar Pyin(Gudam fara) that day, and I only saw two human heads sticking out in a small waterway on one of the side roads. People who were with me identified them as Kobir and his wife. Afterwards, for two months and three days, I stayed in my father-in-law's home until I went to Bangladesh. It was the 13th or 14th of November I started my journey to Bangladesh.

75. I was asked if any women were taken or raped by the authorities during the days of the attack in my village. I said I did not see or hear any such things. I only saw dead bodies of women after the attack.

The journey to Bangladesh:

76. The journey started from Hsin Daung to Sain Dee Prang, and it took 1 hour to get there by boat. I walked through the forest in Sain Dee Prang from 3 am to 4 pm on the way to Daung Khali. About 500 to 600 people were there at that time. When I arrived in Daung Khali, the military stopped us and took photos of us in groups according to the village track we came from. After that, the soldiers told us to return to our villages. When we refused to return, they showed us how to go to the seashore. We stayed at Daung Khali shore in tents waiting for the boat to go to Bangladesh. After 3 days, we caught the boat and arrived in Sahfodia (Shahpori) in Bangladesh the next day at 10 pm.

Gu Dar Pyin Death Toll of 2017 Events

77. I learnt that 53 people from the Gu Dar Pyin village track were killed in August 2017. attack. When I say 53 people were killed, I want to clarify that people from my village made a list of 53 who got killed in the attack. All 53 names of these people are known to me. I can confirm that I have not seen or heard of any of these people alive after the attack.

78. Furthermore, I also saw some of those dead people three days after the attack around the field between Gu Dar Pyin(Gudam fara) and Dommai Fara. Three people I saw dying right in front of me, three feet away. This was when a bullet hit me, which I believe came through the body of one of these persons. When I later visited Gu Dar Pyin, I saw two more people laying dead in a ditch. I can give all the names of the people died during the days of attack, right now:

Names	Father's name	Families in Bangladesh
1.Mohammed Kabir	Amir Huson (Son Zafar and family live in [redacted])	
2.Mohammed Alom	Amir Humza (Wife and children live in [redacted]	
3.Shamjida	Islam	
4.Hafiz Noor Hakim	Abul Hashim (Parents and siblings live in [redacted]	
5.Sayadul Amin	Noor Huson (Parents and siblings live in [redacted]	
6.Mohammed Sadek	Robiul Hassan	
7.Hair Huson	Alimia	
8.Tayub	Nasir Ahme (Wife and children live [redacted])	
9.Nuru	Abdul Mabul	
10.Rahim Ullah	Eliyas	
11.Shafi Alom	Salim	
12.Karim Ullah	Dil Mohammed	
13.Sultan Islam	Jamil	
14.Zubair	Eliyas	
15.Furuk Ahmed	Akbar Mia	
16.Mohammed Rafiq	Hafizul Karim	
17.Mohammed Zubair	Lukman Hakim	

18.Tanda Mia	Bodiu Zaman
19.Shofi Alam	Samir Ullah
20.Sayed Karim	Mohammed Huson
21.Abbas Mia	Sayed Ahmed
22.Amin Ullah	Siddiq Ahmed
23.Mohammed Siddiq	Shamshul Haquq
24.Mabia Khatun	Bodiuz Zaman
25.Saiful Islam	Nazir Ahmed
26.Sawmir Din	Ruhul Amin
27.Mohammed Zalil	Samir Ullah
28.Hafizul Karim	Mohammed Huson
29.Mohammed Shabbir	Not known
30.Mohammed Faruk	Abdul Malik
31.Nazu Mia	Shomoluk
32. Nawbi Huson	Unknown
33.Mohammed Rahim	Mohammed Shafi
34.Abdul Huson	Noor Alam
35. Mohammed Abu	Mohammed Kasim
36.Mohammed Kasim	Tamiz Mia
37.Zor Muluk	Not known
38.Mariam Khatun	Ali Mia
39.Abul Siddiq	Sayedul Haque
40.Shokul Islam	Not known
41.Salamat Ullah	Nurul Haque
42.Mohammed Yusuf	Not known
43.Sultan Ahmed	Abdul Malik
44.Rashid Ullah	Sayed Ahmed
45.NoorJaan	Not known
46.Mohammed Faisal	Shabbir
47.Mohammed Sawba	Furikka (nickname)
48.Sayeda Khatun	Not known
49.Nozu Mia	Not known
50.Mohammed Isaaq	Not known
51.Molavi Abdul Mabood	Not known
52.Sayed Kasim	Mohammed Hashim
53.Hanafura	Omar Mia

Post August 2017 – Impact of the Events

79. After the 2017 attack, from Gu Dar Pyin (Gudam fara) 35 families escaped to Hpon Nyo Leik and 150 to Hsin Daung, 4 to Ziallya Fara and 4 to KyaZinga Fara.

80. I was asked why I could provide these precise numbers. I said 13 days after the villagers fled, the villagers from Gu Dar Pyin(Gudam fara) were calculating how many people escaped to other villages. At that time, I was present with the villagers. The gathering

happened at Sain Dee Prang. On the 13th day at that time, no one was in Gu Dar Pyin. The numbers I gave you came from that time. The Oak-Ka-Hta of the receiving villages had to report to the authorities about all these villagers coming to their places. From there, we got these numbers. Around 2230 people returned to Gu Dar Pyin after approximately 1 year.

81. No one went directly from Gu Dar Pyin to Bangladesh, and people started to come to Bangladesh in October. All in all, 2602 persons came to Bangladesh beginning in October. I know this number because Ah-Hpwet-Win of Gu Dar Pyin village office [redacted] told me this because he submitted these statistics to the Burmese authorities. I learned about this in around 2018 by speaking with [redacted]

82. Most people did not return to the village because their houses were burned. Moreover, the government officials were all around the village, and they did not allow people to return. Those who returned to Gu Dar Pyin could come only back after 6 months; those who came to Bangladesh left before that time. People had to bribe officials to go back to their villages. I was asked if there was anybody today living in Gu Dar Pyin(Gudam fara) who was not from the pre-conflict population; I said no; only people from Gu Dar Pyin(Gudam fara) who fled to other villages returned.

Personal Impact of the 2017 Events - Loss of Property

83. My family owned [redacted] and I still have copies of land tax receipts registered in my father's name. The land management and registration office (*Mray Sa Rong*) is located in Buthidaung.

84. None of the lands my family owned was ever grabbed or confiscated before the events in August 2017. The government took all my family-owned lands when we came to Bangladesh. My house was burnt to the ground. I have lost all my life stock. We learnt this from my uncles and neighbours living in the Gu Dar Pyin(Gudam fara). They told me that nowadays, the government gives that land for lease to Rohingya people who returned after the attack. The Myanmar government built new houses and gave it to the villagers who returned to Gu Dar Pyin. Some refused them and but some took them. The government was doing this to show the world they were doing something for the Rohingya. I learnt this from the village office *Ah Hpwet Win*, [redacted] and a village office clerk from my village. In August 2017, all Rohingya from Gu Dar Pyin left the village. No one could live there for about a year. When we came to Bangladesh, all Rohingya from my village escaped to other villages and stayed there for approximately 12 months until they could return to Gu Dar Pyin. Some fled to Bangladesh. My uncle's family escaped to Sein Hnin Pyar and moved back to Gu Dar Pyin later.

Annex 130

UN, General Assembly resolution ES-11/5, Furtherance of remedy and reparation for aggression against Ukraine, adopted on 14 November 2022, UN Doc. A/RES/ES-11/ 5, 15 November 2022

English version available at:

https://documents.un.org/api/symbol/access?j=N2269355&t=pdf

French version available at:

https://documents.un.org/api/symbol/access?j=N2269358&t=pdf

United Nations A/RES/ES-11/5

General Assembly

Distr.: General
15 November 2022

Eleventh emergency special session
Agenda item 5
Letter dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136)

Resolution adopted by the General Assembly on 14 November 2022

[*without reference to a Main Committee (A/ES-11/L.6)*]

ES-11/5. Furtherance of remedy and reparation for aggression against Ukraine

The General Assembly,

Reaffirming the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Recalling the obligations of all States under Article 2 of the Charter, including the obligation to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means,

Recalling also the obligation under Article 33 (1) of the Charter that Members which are parties to any dispute shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice,

Taking note of Security Council resolution 2623 (2022) of 27 February 2022,

Recalling its right under Article 14 of the Charter to recommend measures for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the Charter,

Recalling also its resolutions ES-11/1 of 2 March 2022, entitled "Aggression against Ukraine", ES-11/2 of 24 March 2022, entitled "Humanitarian consequences of the aggression against Ukraine", and ES-11/4 of 12 October 2022, entitled "Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations",

in which, among other things, it reaffirmed its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine,

Recalling further the order of the International Court of Justice of 16 March 2022 on the indication of provisional measures in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*,[1]

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for human rights, and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Expressing grave concern at the loss of life, civilian displacement, destruction of infrastructure and natural resources, loss of public and private property, and economic calamity caused by the aggression by the Russian Federation against Ukraine,

Recalling its resolution 60/147 of 16 December 2005, the annex to which contains the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,

1. *Reaffirms* its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine and its demand that the Russian Federation immediately cease its use of force against Ukraine and that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders, extending to its territorial waters;

2. *Recognizes* that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts;

3. *Recognizes also* the need for the establishment, in cooperation with Ukraine, of an international mechanism for reparation for damage, loss or injury, and arising from the internationally wrongful acts of the Russian Federation in or against Ukraine;

4. *Recommends* the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record, in documentary form, of evidence and claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering;

5. *Decides* to adjourn the eleventh emergency special session of the General Assembly temporarily and to authorize the President of the General Assembly to resume its meetings upon request from Member States.

15th plenary meeting
14 November 2022

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[1] See *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 4* (A/77/4), paras. 189–197.

Annex 131

IIMM Witness Statement No. IIMM0019628625, 30 November 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):			
Gender:	Male		
Mechanism person code:	P1496		
Date of birth/Age:	01 January 1976	Place of birth:	Maung Nu, Chin Thar Ma Village Tract, Buthidaung township, Rakhine State, Myanmar
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya, Burmese and Mogh
Religion:	Muslim	Language(s) written:	Burmese, Mogh and English

Formal educational level:	[redacted]	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Hpaung Taw Pyin Affiliated Middle School Classes 0-8 Buthidaung Highschool Classes 9–10	Current occupation and employer:	
Previous address in Myanmar:	Maung Nu, [redacted]	Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:			
Photo ID:	Yes	Type of photo ID: Concern of UNHCR	UNHCR Forcibly Displaced Myanmar National / Person of concern to UNHCR Issuance date on photo ID: [redacted]
Authority issuing photo ID:	UNCHR		
Name on photo ID:	[redacted]	Registration number on photo ID:	[redacted]
Any other form of photo ID:			

II. Interview Information

Prior screening(s) conducted: **No**

Place/modality of interview: In-person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview:
26 November 2022, [redacted]
27 November 2022,
28 November 2022,
29 November 2022,
30 November 2022,

Language(s) used in interview: Rohingya and English

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0065	
	M0047	
Interpreters:	M0092	
Witness support person:		
Other persons present:		

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreters. The interviewers explained that they would ask questions in English and the interpreter would then interpret the question into Rohingya for me. Equally, the interpreter would tell the interviewers in English what I had said in Rohingya.
2. The interviewers explained the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. They explained that as team members from the Mechanism, they belong to an organization which is called the "United Nations", or "UN" for short. I understand their explanation that other organizations like UNHCR and WFP are part of this same big organization, but they all do different jobs. I understand that the team speaking with me is collecting information about the crimes committed in Myanmar. I also understand that the mandate of the Mechanism only covers serious international crimes that occurred in Myanmar and not in the Bangladesh territory. The interviewers explained what a court is, and what it means to be a "witness". I understand that my statement may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.
3. I was told that this interview is about the events that led me to leave Myanmar and come to Bangladesh, including my home village of Maung Nu. I want to share my experiences with you and explain what has happened.
4. I was informed that I am not obliged to participate in this interview or answer any specific questions. I confirm that I am cooperating with the Mechanism voluntarily. Nobody forced me, threatened me or made promises to get me to participate in this interview. Nobody told me what to say or not to say.
5. The interviewers explained that the Mechanism's investigations are confidential, to protect both the work of the Mechanism and the persons it interacts with. The interviewers asked me to keep my interactions with the Mechanism confidential. Not even my wife knows that I am making this statement. Since I leave my home and the camp where I live every day to go to my volunteer job, no one will notice that I am traveling each day to meet with the interviewers. I took a leave from my volunteer position during these days and told them I had to tend to some personal matters.
6. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others.
7. The interviewers stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, they will read it to me, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.

8. The interviewers explained that this statement and the material that I shared with the Mechanism would not be shared with anyone else without my full and informed consent.

9. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I did.

IV. Previous statements

10. When I first arrived in Bangladesh five years ago, there were a lot of people coming to the camps to speak to and interview us, including different organizations and members of the media. Initially, I spoke to some people but I am not sure where they were from or who they worked for. I quickly learned that the media was not trustworthy and did not present information in a fair manner so since then I have intentionally avoided speaking with the

11. [redacted]

12. [redacted]

V. Statement

13. I crossed the border into Bangladesh on 8 September 2017. I can recall this precise date because shortly after arriving in Bangladesh, I took my own notes about important information, events and dates, and also collected documents. I thought that maybe one day there would be some type of efforts to get justice for what we suffered in Bangladesh. I

Chairman today. The *Nay Khra Zound* explained that the annual photograph session was a government process that everyone was subject to. It was agreed between the *Nay Khra Zound* and representatives of the village tract that the villagers who hid in the forest would not be arrested for their actions if they came for their photographs. After 4-5 days, all the villagers returned to their villages and had their family list photograph taken.

49. [redacted] I explained to U Than Shwe that I was not in a position of power to know what was happening in all of the villages and that I heard that Shwe Maung was the person who encouraged the villagers to hide in the forest. I emphasised that I and all 29 members of my family were present for the photograph in 2015, and that I could not counter the influence of Shwe Maung, who was a powerful Member of Parliament.

50. After the meeting with U Than Shwe, an order was issued by the *kha yaing* stating that the election for Chairman was conducted incorrectly and ordered the election process to be repeated. [redacted], Mohamed Arof was again elected as Chairman, with a five-year tenure until 2020.

51. [redacted]

ARSA activities in Maung Nu in the months before the 27 August 2017 attacks

52. Before I share with you the reasons and the events that took place that led me and my family to flee our home village of Maung Nu for Bangladesh, I have to share with you very important information. I believe that people who are members of ARSA may come to speak with your organisation and will share fake information with you. [redacted]

53. ARSA stands for the "Arakan Rohingya Salvation Army". This was the only name used for the organization when I was living in Myanmar. Since I have come to Bangladesh, I have heard other names used but never before that. I do not know what ARSA's objectives are though I know they say they want to save the Rohingya people and form an independent state for Arakan. Practically, what I have learned about them and seen is that they practice polygamy, rape, extortion, kidnapping, drug-dealing and eliminate anyone who tries to stop

them in what they are doing. Back in 2017, there were three people in Maung Nu who were in charge of ARSA: Molluvi Nurul Hakim, whose father's name was Kobir Ahmad, a second man also named Nurul Hakim whose father's name was Amir Hamza and Molluvi Zahed Hussein, whose father's name was Sadek Ahmed. They were misguiding the youth of our village and were asking them to watch out for and resist the military in all ways. Four to five months before the main event in August 2017, ARSA began to assemble these youths in our village mosques after the *Isha* prayer each evening when the mosques were empty and people in the village had gone to sleep. They used to brief the youths, talk with them about their vision and conduct trainings with them. The number of youths at these gatherings varied between 20 and 60 people and they were between the ages of 17 and 20 years old. I knew most of these youths but I do not wish to share their names with you during this interview. I believe they were young and did not understand what they were doing. Only 2-5 of them were killed during the August 2017 attack and the rest of them survived. [redacted] I heard that more frequently the ARSA meetings with the youths took place at another mosque to the east of the village by the hill, close to the home of Kobir Ahmad, Molluvi Nurul Hakim's father, and which was referred to as the Monu Fara Foukor Mosque. I also knew that the ARSA youths used to patrol the village at night. Sometimes in groups of 5-10 youths, they would station themselves at one or more corners in the village, dressed all in black so they could not be seen. I often saw the youths doing this with my own eyes. When the *Nay Khra Zound* patrolled in our village, which was not every evening but depended on the circumstances, the ARSA youths were told by the ARSA leaders to observe their behaviours and learn more about them.

54. On one occasion about two to three months before the attacks in August 2017, at the time of the *Isha jamat* prayer, which is conducted in congregation with many people at once, I arrived at the Monu Fara Mazor Mosque rather late. I saw the people inside were wearing all black clothing and appeared to be following instructions. Whistles were being blown and I saw that some of these people carried with them long swords ("*dha*"), long knives and long bamboo sticks. I did not speak to anyone at the time. I simply completed my prayers and then went home.

55. I was concerned about what I had seen. I spoke to some of my neighbours to ask who was providing this type of training to the local youths and they confirmed that Nurul Hakim (f/Amir Hamza) was doing this. [redacted]

56. [redacted]

57. [redacted]

58. [redacted]

59. [redacted]

60. [redacted]

61. [redacted]

62. [redacted]

63. [redacted]

64. [redacted]

65. [redacted]

Detention of [redacted] and Rofiq

66. Approximately 2-3 days before the attack on the *Nay Khra Zound* sub-camp, ARSA members from Maung Nu detained two men in Chin Tha Mar village. These two men were [redacted], and Rofiq, whose father's name was Zalal Ahmed. They were taken because ARSA believed they were informants for the military at No.564 base. Rofiq and [redacted] were regularly seen on military boats and were frequently at No.564 base when villagers went there to try and secure the release of their relatives or to pay money.

67. I heard from [redacted] that Mojia, ARSA Molluvi Zahed Hossein, and the two Nurul Hakims took the men during daytime in front of their families and neighbours. Other ARSA youths were helping to take the two men but I do not want to disclose their names. The neighbourhood where [redacted] and Rofiq were taken was like a ghetto, and everyone had come out to watch what was happening when they heard the screams. Everyone knew who was responsible for these men being taken.

68. After being taken away, Rofiq had his throat cut. His body was placed in a sack and thrown down a hill on the eastern side of Maung Nu called Foukor Mura and the Maung Nu Foukor Mosque. Villagers who found the sack saw that dogs and other animals had tugged at the sack trying to gain access to the body. The villagers opened the sack and found Rofiq's body inside. This was not a surprise to anyone as everyone assumed that he would be dead once ARSA had taken him.

69. [redacted] worked for [redacted] and people knew she had money. It was rumoured that [redacted] paid ARSA 10 *lakhs kyat* for [redacted] release. I later spoke directly with [redacted] about this and she admitted that she paid a ransom but did not disclose the amount. Rofiq was from a poor family and had no one to pay a ransom for him. [redacted] are still in Myanmar.

70. [redacted] was released 2-3 days after he had been taken. [redacted] I suspect that [redacted] informed the military about Mojia's connections with ARSA, which is why the military later attacked Zahed Hussein and Bodu's

maybe had wounded people. I told him that if he didn't go out, they would kill him. If he went out of his house, he may still have a chance to live.

75. [redacted] told me later that after speaking with me, he left his house and went to the *Na Khra Zound* sub-camp [redacted] He later told me that by that time, military reinforcements had arrived in Hpaung Taw Pyin by way of military boats and military trucks. Once [redacted], he later told me that he found that *Sayar* Inspector Sergeant Soe Win and the Camp Inspector (*"Bo Lay"*) had both been killed. The newly arrived *Mogh* medical assistant was alive but had cuts all over his body including on both of his hands and legs, his neck and throat. The *Mogh* medical assistant, whose name I did not know because he was so new, was bleeding heavily but was able to tell [redacted] what had happened. He said that attackers had come in the camp when everyone was asleep and had cut the two deceased and the medical assistant with *dha* or knives. The *Mogh* medical assistant pretended to be dead so the attackers left. [redacted] also saw the dead bodies of six or seven purported ARSA members, all dressed in black. He did not recognise any of their faces so he knew that they were not from Chin Tha Mar village tract. [redacted] then fled Hpaung Taw Pyin. I later heard from people in the village and members of ARSA from Maung Nu who had participated and survived attacks in various places that night, that ARSA members from outside of Maung Nu had gone to the *Nay Khra Zound* sub-camp in Hpaung Taw Pyin prepared to attack it. They did not see that there were night guards hiding in trenches and thought the sub-camp was unguarded. They snuck inside the sub-camp and found three people sleeping and slaughtered the two men in their beds, while also attacking the medical assistant who had survived. They had intended to steal ammunition and hand bombs when shooting started. At that point, the guards in the trenches had found the ARSA members and shot at them from behind, killing many but not all of them. I did not ask or find out the names of the ARSA members who had survived. It was a tense time and I did not want to cross-examine people about what had happened.

76. [redacted] told me that he witnessed the military wrap the bodies of the two dead members of *Nay Khra Zound* as well as the deceased ARSA members. The bodies were then taken to the military boats and transported to Buthidaung. I am not sure where the military reinforcements came from. I only know they were under the *"Sa Ka Ka* 15" (OCC-15). I also heard that Division 99, which is normally based outside of Rakhine state, had an operational group of 40 personnel staying in a sub-base in Taung Bazar that we referred to as *sit kyaung* (column), and had joined this group of military reinforcements.

77. [redacted] lives in [redacted] now but he had a total breakdown and does not want to talk to anyone about his experiences in Myanmar. After the attack, he was so traumatized that he became mentally very unwell. [redacted]. He initially spent three or four months at a hospital [redacted]

78. After the attack on the sub-camp, most of the villagers in Hpaung Taw Pyin fled the village and came to shelter in Maung Nu. Once the military arrived there, the villagers believed that the military would simply kill everyone, whether they participated in the attack or not. The villagers that arrived in Maung Nu talked about what they knew and this information quickly spread around the village and came to me. People were saying that the attackers in Hpaung Taw Pyin were not from the Chin Tha Mar village tract. I heard that they may have come from the other side of the river from one or more of the following village tracts: Dar Paing Sa Yar, Maung Gyi Taung, Inn Chaung (Ba Da Nar), or Nga Kyi Tauk. I heard that the ARSA members based in Maung Nu went to attack the No.552 military base in Done Paing, Thin Ga Net village tract.

79. During the day of 25 August 2017, Maung Nu was very crowded with villagers from Hpaung Taw Pyin. Our villagers were helping them. [redacted] I decided to move my wife and children to the home of my maternal grandfather [redacted] since it was more in the centre of the village and was made of mud walls. In my mind, if there was shooting again, it would be hard for the bullets to penetrate the mud walls. I suspected there would be shooting again because the No.552 military base and the *Nay Khra Zound* sub-camp had been attacked and people killed. I knew there was a big danger coming our way. They had taken away our children's education. They had taken away our political freedoms. They had taken away our freedom of movement. I knew they could do anything. I left the front gate to [redacted] open so as to invite any villagers to shelter there while my family and I were elsewhere.

80. As that day was Friday, I went to the mosque for the *joumaa* prayers. On my way back home afterwards, I passed by the shared home and yard of Zahed Hussein (not the ARSA member) and his brother Bodurul Doza, also called Bodu. Bodu was our former "Village Secretary" (*"Atwan Ray Muu")* and served with the Village Chairman (*"Oak Ka Hta"*) Anwar. Bodu had a son-in-law named Mojib Ullah, whom everyone called Mojia, who was the ARSA leader for the entire village tract. I forget the name of Bodu's daughter who was married to Mujia but I know she is now living in [redacted] While passing by Bodu's house, I saw Mojia and Molluvi Nurul Hakim (f/Kobir Ahmad) in the front yard making "bombs" with their own hands. I saw they were working with wires and batteries. I continued watching as the two men assembled two bombs. Each bomb was the width of a Tupperware container with material inside the frame of a battery that we used for wireless table fans inside our homes. The height of the battery frame was about a "hands length", from the wrist to the fingertips. I saw they were mixing a lot of materials and placing it inside the battery frame. They were mixing lots of "*gondorok"* which I believe is called gunpowder and joining wires together. It was not common to find *gondorok* and not something that was sold at the local market. I am not sure but I think they may have obtained the *gondorok* by having people in Maungdaw send it to them. [redacted]

81. Once the men had assembled these two bombs, which could each be carried by a single person, ARSA members Molluvi Nurul Hakim (f/Kobir Ahmad) and Molluvi Zahed Hussein proudly carried the bombs and told a crowd of people watching them that they were going to test these weapons. This crowd of people included villagers from Maung Nu and Hpaung Taw Pyin. Within the crowd were some of the youths I previously saw in the mosque, who were dressed in black clothing and receiving training. Before the attacks that previous night, ARSA members were very secretive about their activities but now they had the courage to show what they were doing publicly. They became terrible.

82. I joined the crowd of onlookers and followed Molluvi Zahed Hussein and Molluvi Nurul Hakim (f/Kobir Ahmad) to a mango tree on the bank of a nearby pond, close to the Monu Fara Mazor Mosque. They placed one bomb at the base of the mango tree, which was attached to a long cord that stretched 20 metres. Then they pulled the long cord and detonated the bomb. The bomb made a very big sound that shook the entire town. It caused a lot of smoke but not any damage. Not even the mango tree was scratched. I watched this at a distance standing amongst the crowd. After a few minutes, Molluvi Zahed Hussein and Nurul Hakim (f/Kobir Ahmad) carried the second bomb and walked [redacted] primary school construction site. [redacted]

83. I continued to watch [redacted]. People continued watching the two men as they made their way to the first-floor roof of the school under construction. The crowd was smaller than during the first bomb detonation. The two men spent a lot of time on the roof. There was no blast and I believe that something had gone wrong. They eventually abandoned the roof. Before leaving, the two men and people in the crowd of onlookers, excited with adrenaline, took 2 "*tons*" of wire rod that was sticking out of the windows at the construction site. They used a power tool cutter to take the wire rods. I believe they were planning on using these wire rods as weapons though I also imagine that the villagers in the crowd took the wire rods to simply use at their own homes.

84. After the crowd of people dispersed, I came out of the Mosque compound and saw Mojia, both of the Nurul Hakims, and Molluvi Zahed Hussein walk towards Bodu's compound but did not see them actually enter the compound. I went to my grandfather [redacted] house, where my family was staying. It was getting dark at this time and not long after the *Isha* prayers ended, which was at 8pm, I saw a large crowd of people congregating. The crowd got increasingly exuberant and began to shout "Nar-Ya-Taqbir-Allahu-Akbar", which was a battle cry. Earlier on in the same day, [redacted] I had seen trucks carrying members of *Nay Khra Zound* on the main road travelling away from the *Nay Khra Zound* sub-camp. I could not see the *Nay Khra Zound* sub-camp directly as my view was obstructed by the Madrassa. I assumed that the *Nay Khra Zound* had left and only the military remained in the sub-camp.

107. At that point, there was not much more that I could do. I stayed in Dar Paing Sa Yar at [redacted]'s house, observing survivors coming to the village and learning about who had lived and who had died. I started noting down this information. Many survivors came to [redacted]'s house and spoke with him and I. For example, [redacted] had survived the mass killing of people at Bodu's compound. As I collected more information, I began to send it to well-known activists in Yangon and elsewhere. For example, we were sending this information to Engineer Abu Taher, the nominee for the National Democratic Party for Development; U Kyaw Myint (also known as Master Anwar), the father of Wai Wai Nu; to Sona Ullah from Fortify Rights.

108. I stayed in Dar Paing Sa Yar for 3-4 days collecting information from survivors. I learned that most people had fled Maung Nu towards the east and were sheltering in Ga Zi Ya Mura in Mee Chaung Zay village tract. I learned this because my cousin [redacted] had ended up there after we were separated in Maung Nu [redacted] called me one of these days to ask about the situation. He said that ARSA member Molluvi Nurul Hakim had arrived in Ga Zi Ya Mura and was telling people that the ARSA members from Dar Paing Sa Yar had killed all of the military in Maung Nu and that the villagers needed to return back there to take the military's guns. It was an ARSA motto, "We will take their (the military) guns and defeat them with them." [redacted] had called to confirm if what Molluvi Nurul Hakim had said was true. I told him it was fake news. I knew this was false because while I was waiting under the shade of a tree in Sora Fara, I had seen a group of about 30 people dressed in black clothing with *dha* and wire rod weapons. They had crossed the river from Dar Paing Sa Yar and I had assumed they were ARSA members. They stayed in Sora Fara for 5-6 minutes and watched out for military. After that, they crossed the river back to Dar Paing Sa Yar. I told [redacted] not to go back to Maung Nu and not to leave Ga Zi Ya Mura.

Wednesday (30 August 2017)

109. By 30 August 2017, I felt that I had gathered enough "intel" and information about the events that had transpired in Maung Nu and decided I would need to cross the border into Bangladesh. This sense was confirmed once the Dar Paing Sa Yar Chairman Salamat Ullah came to speak with me. Salamat Ullah explained that he had been ordered by the Head Commander ("*Teram Muu*") of the No.564 military base, whose name I did not know, not to shelter anyone from Chin Tha Mar village tract. The Commander had said that the villagers of Dar Paing Sa Yar would "suffer the consequences" if they helped Chin Tha Mar villagers, who the military considered collaborators of the people that attacked and killed people on the No.564 military base and the *Nay Khra Zound* sub-camp in Hpaung Taw Pyin.

110. By this point I had collected a lot of information about people killed on 27 August 2017, which would end up in my spreadsheet, that I describe below in the section on Documentary Evidence. I had forwarded this information onto other activists elsewhere and felt that I had done my work. By that time my cousin [redacted] was also staying at [redacted]'s home. [redacted] and I decided that we would visit our homes in Maung Nu one last time before leaving for Bangladesh.

111. [redacted] and I crossed the Mayu River back into Maung Nu once it was dark and we could more easily avoid detection from the military. As we arrived at the front gate of my home, I smelled a horrible stench. I followed the stench to a location between [redacted]'s house and [redacted]'s house in Maung Nu which I have marked as **"U"** on the Village Sketch**.** At this location, I saw stains of huge blood clots on the ground and a large hole which I believe had been used as a mass grave. Based on what I heard from others and had seen with my own eyes, I believe that the military had taken the bodies of our dead villagers from this mass grave to outside the village by way of military trucks. I was able to see a trail of blood along the road where the trucks would have traveled from the mass grave site. Looking at the hole, I saw hands and legs. I believe that dogs and foxes had already come and dug up the soil that had been thrown on top of the bodies to fill the hole. [redacted] was with me at the time. As he was only 17 or 18 years old, he did not have fear. I was too upset by what I had seen to stay and see more and determine how many bodies were there or who the people were that had died. I left immediately.

112. I later obtained two photographs from someone, maybe from [redacted] though I am not sure, of the mass grave site. I showed the interviewers these two photographs from my mobile phone and provided them with copies. The first photograph, which I was told was registered with **BIN IIMM0019915422**, depicts the hole in which I saw body parts and believed to have been a mass grave. It was located on [redacted]'s compound The second photograph which I was told was registered with **BIN IIMM0019915423** depicts [redacted]'s home and is in the same location of the mass grave.

113. After leaving the mass grave site, I returned back to my home with [redacted] and took some items from there, including important documents such as my family list and photograph, rations as well as clothing for my wife and children. [redacted] and I then crossed the Mayu River back to Dar Paing Sa Yar and spent one final night at [redacted]'s home.

1 September 2017 (Thursday) – 4 September 2017 (Monday)

114. The morning of 1 September 2017, my wife, children, mother, [redacted] and I, set out to make our journey by foot to Bangladesh. I was also accompanied by my brothers [redacted] and [redacted] I had never done hard labour before and needed their help in carrying our rations and belongings. As we were leaving in the direction of Ba Da Nar, I could see across the Mayu River to Hpaung Taw Pyin. It was burning. I saw flames coming from the trees and buildings as well as smoke and heard shooting sounds of *boom boom* and *daung daung*. This was the only time during my journey to Bangladesh that I saw anything on fire or burned.

115. We walked towards Ba Da Nar in a group of 2-3,000 villagers also making the journey to Bangladesh. We had stopped to eat something in Ba Da Nar when we heard a rumour that the army was on patrol and approaching the village from the village tract of Aw Lan Pyin, also known in Rohingya as Morissar Bil. People began running everywhere. My family and I left for Nga Yant Chaung village tract and stayed the night in a place near the police station called Gu Fat which was in Kyee Hnoke Thee village. During our journey, we passed through many abandoned villages and so we stayed in empty village homes each night.

116. While we were stopped in Ba Da Nar, we encountered a young man there named [redacted] whose house is marked as **"J"** on the Village Sketch) who was from Maung Nu. He had been shot in the chest by the military as he was fleeing the compound of Zahed Hussein and Bodu. He was left for dead but had somehow survived and made his way alone to Ba Da Nar. I have a photograph of [redacted] from that day and it shows a bandage over the gunshot wound on his chest. I shared this photograph with the interviewers and was informed that it was registered as **BIN IIMM0019915424.** He was shot at the same time and place as another young man who survived whose name is [redacted] ([redacted]. They both now live in [redacted]. [redacted]

117. On Day 2 of our journey, 2 September 2017, we passed through the village of Kyee Hnoke Thee, which was empty, and walked all day. At night, we arrived in Tin May (Ta Mi) where we stayed in an empty house for three days. The wife of my brother [redacted] was pregnant and gave birth to her baby during this time. While in Tin May, we were able to collect needed medication for the remainder of our journey.

5 September 2017 (Tuesday) – 6 September 2017 (Wednesday)

118. On Tuesday, 5 September 2017, my family and I left Tin May to walk towards Pan Zi in Ba Da Kar (Fati Yaar). It is also known in Rohingya as Bogoli. Normally it would take an hour to make this journey but because we were carrying things and traveling as a family, it took longer. We were by then joined by other people fleeing Buthidaung. We spent the night near the foothills in Pan Zi.

119. The next day we headed out around 5 or 6 am to cross the mountain known as the Fati Yaar Dala, or in Rohingya, Diyal Toli. The mountain crossing was very difficult. I saw horrific scenes where people who had been carried up the mountain had been left behind. They had been wrapped in blankets barely breathing. My mother was on the journey with us and was already quite old. While climbing the mountain, we had no more water with us and my mother was so thirsty. We stopped and begged every passerby for some of their water but they all refused. Finally, some older people stopped and gave my mother some water. She drank it and we were able to continue the journey. It was raining and the mountain side was wet. At one point, the slope was very steep and slippery. As we had reached the top and were coming back down the mountain, we encountered many obstructions along the way such as big stones, logs and fallen trees. We were worried that if we slid down, we would hit one of these obstructions and be hurt so we had to come down with a great deal of caution. It took all day to reach the bottom of the mountain and we arrived at around 5 or 6 pm to the village of Pa Da Kar Day War Nar Li in Maungdaw Township.

7 September 2017 (Thursday)

120. After spending the night in Pa Da Kar Day War Nar Li, we continued our journey towards Bangladesh. As we were walking, we eventually arrived at a bridge at the Fur Ma Khal

(River) which was guarded by the military. I was not familiar with the military units in Maungdaw township so I did not know who these men were or what unit they came from. The military pointed their guns at us and asked, "Where are you coming from?" People in our group answered that we were from Taung Bazar. We did not mention that we were from Maung Nu. The military next asked us where we were going and someone in the group responded that we did not know our destination. The military said that we could not cross the bridge there and pointed in the direction of a crossing further down the river, saying "Go! Go!" This was the only time that we had encountered any military or security forces during our journey to Bangladesh.

121. The other crossing was very far but we were fortunate that there were villagers on the other side of the Fur Ma River in a village called Aiyor Sor who came to rescue our group with rafts made out of *gallons* (plastic containers) and bamboo. We were a group of people continuously traveling over the mountain and towards Bangladesh so at the moment I was at the river with my family, we were not all together as 2-3,000 people.

122. We eventually arrived at the village of Kuwar Bil, also known as Yae Twin Pyin which is next to Zee Pin Chaung (Zee Mon Khali). We spent the night there.

8 September 2017 (Friday)

123. On the morning of 8 September 2017, we left Kuwar Bil village and walked towards the Myanmar village of Shilkhali. We hired a *naw* (boat) for the 15 members of my family and I to cross the river into Bangladesh. I paid 300,000 *kyat* for the *naw* for the entire family. It was not very big but more medium-sized. The driver of the *naw*, which we also refer to as a *mahji*, was in a hurry to cross the river. Once we arrived to the Bangladesh side, he threw us and our belongings out of the *naw*. We otherwise did not encounter any problems during the river crossing.

124. I did not see or encounter any border guards on the Myanmar side of the border. I see did fences but they had already been destroyed, I assumed by people fleeing the country before us. I saw that there were big holes cut into the fence.

125. Once in Bangladesh, we encountered some Bangladeshi border guards and an officer eventually helped us with our stuff. It took a total of fourteen days to make the journey to Bangladesh. When we arrived here over five years ago, I never imagined that I would remain in Bangladesh for this long of a time. I had thought we would stay for a few weeks until things calmed down and then be able to return home. It has been difficult as I was a wealthy man back in Myanmar. Now, [redacted]

VI. Documentary or Other Evidence in the Possession of Witness

126. [redacted]

Annex 132

United Nations Population Fund (UNFPA), *Expanding choices, Ensuring rights in a diverse and changing world, UNFPA Strategy for Family Planning 2022-2030*, November 2022 (extract)

Available at:

https://www.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Strategy%20for%20Family%20Planning%202022-2030.pdf

EXPANDING **CHOICES** ENSURING **RIGHTS**

in a diverse and changing world

UNFPA Strategy for Family Planning
2022–2030



UNFPA

1973 and reaffirmed in 1993. UNFPA is mandated by the United Nations "to build the knowledge and the capacity to respond to needs in population and family planning" and to assume a leading role in the United Nations system in promoting population programmes.* In 1994, United Nations Member States gave UNFPA the lead role in helping countries carry out the ICPD Programme of Action, emphasizing the gender and human rights dimensions of population. In 2010, the United Nations General Assembly extended the ICPD beyond 2014.

2.2 What is family planning?

UNFPA uses the term "family planning" to capture a full range of fertility and contraceptive policies and services. Family planning allows people to attain their desired number of children, if any, and to determine the spacing of their pregnancies.[6] Family planning services must be situated in the broader context of human rights and integrated sexual and reproductive health and rights which, in turn, are delivered in ways that promote equality and empowerment, challenge social and gender norms and enable all women and girls, individuals and couples to realize their reproductive intentions, take charge of their own choices and make decisions about their own bodies.

In the past, family planning efforts centred on the need for married couples to space the timing of births and to limit family size; however, needs, attitudes and practices have changed and continue to evolve. Many people, including but not only adolescents and young people, want to avoid or delay pregnancy and may perceive the terms "contraception" or "birth control" as more relevant to their lives. "Birth spacing" continues to be a widely-used term referring to the use of contraception to space birth to leave an interval of 2 to 3 years between births as recommended for maternal and newborn health.[7]

For some people, family planning is about seeking information and services when they want to have more children. And, for increasing numbers of people experiencing infertility, family planning means something that has nothing to do with contraception, but is focused on addressing the causes of infertility and supporting individuals and couples to become pregnant. "Infertility prevention and management" refers to individuals and couples who are seeking information and services to increase family size.

"Family planning" is not just another word for contraception.[8] Family planning programming supported by UNFPA draws on expertise across the organization to address barriers to bodily autonomy, maternal health, infertility, engagement of men and boys in sexual and reproductive health, and women's empowerment to exercise individual choice about whether, when and how often to become pregnant. The full range of family planning services intersects with services to prevent sexually transmitted infections (STIs) and contributes to quality post-rape care, post-abortion care and menstrual regulation. For many individuals, family planning services offer an entry point to a fuller range of reproductive health services. It should also be noted that unintended

* The mandate of UNFPA, as established by the United Nations Economic and Social Council (ECOSOC) in 1973 and reaffirmed in 1993, is: (1) to build the knowledge and the capacity to respond to needs in population and family planning; (2) to promote awareness in both developed and developing countries of population problems and possible strategies to deal with these problems; (3) to assist their population problems in the forms and means best suited to the individual countries' needs; (4) to assume a leading role in the United Nations system in promoting population programmes, and to coordinate projects supported by the Fund.

Annex 133

IIMM, Witness Statement No. IIMM0019922078, 20 October 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:			
Former names:	NA	Mother's name:	
Other names used:	NA		
		Spouse(s)' name(s):	
Nationality(ies):	Myanmar	Childrens' name(s) and date(s) of birth/age:	
Gender:	Male		
Mechanism person code:	P 1622	[redacted]	
Date of birth/Age:	52 / born in 1970	Place of birth:	Bor fara, Aung Daung (Inn Din)
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya, Rakhine
Religion:	Islam	Language(s) written:	Limited Burmese

Formal educational level:	3rd grade Aung Daung primary school	Prior occupation and employer in Myanmar:	Farmer
School attended:		Current occupation and employer:	[redacted]
Previous address in Myanmar:	Aung Dung (Bor fara)	Current address:	
Date or approximate date of departure from Myanmar if applicable:	September 2017		
Photo ID:	UNHCR	Type of photo ID:	UNHCR
Authority issuing photo ID:	UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:	N/A		

II. Interview Information

Prior screening(s) conducted:	YES		
Place/modality of interview:	In person	Location of interviewer: Location of witness: Location of interpreter:	[redacted]

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS):

16/10/22 [redacted]
17/10/22
18/10/22
19/10/22
20/10/22

Language(s) used in interview: English, Rohingya

CONFIDENTIAL

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0054	
	M0030	
Interpreter:	M0092	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter, and explained that the interpreter would interpret everything the interviewers say in English to me into the Rohingya language and vice versa.
2. The interviewers explained to me the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and explained the purpose of this interview. I have been explained what a tribunal is, and what it means to be a "witness". I understand that my story may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.
3. I was informed that my cooperation with the Mechanism is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that nobody coerced me or made promises to me to participate in this interview. Nobody told me what to say or not to say.
4. The interviewers explained that the Mechanism's investigations are confidential, to protect both work of the Mechanism and the people it interacts with. The interviewers asked that I keep my interactions with the Mechanism confidential. I confirm that only my wife and my children know that I am giving a statement.
5. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others. I told them that I will tell the truth because my religion would not permit to accuse someone falsely.
6. I was informed that I might be shown documents, photos, videos and maps during the interview. The interviewers stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, it will be read to me in the Rohingya language, so that I can clarify and correct it, to ensure that it accurately reflects what I said.
7. The interviewers explained that this statement and any associated material that I have shared with the Mechanism would not be shared without my full and informed consent.
8. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I understood the points raised by the interviewers and confirmed my willingness to proceed with the interview.

68. While walking, around 3 pm we received a call from [redacted] He had been hiding in the bushes and inside one of the latrines. He said that he saw his father [redacted] being slaughtered by the moghs. [redacted] When it was almost 4 pm, I received another call from him saying that [redacted] and two others were being slaughtered by the moghs in front of him. He only mentioned people being slaughtered, not shot.

69. At around 5 pm, we were still walking, and reached an outpost in Shitar Fawrikka (Kyauk Pan Du), where there is a military and Na Sa Ka joint camp. Military and Na Sa Ka were stationed on the bridge and had weapons pointed at us. We didn't hear them say anything. That village is a mogh village. We had to cross that bridge but we were too scared to pass there, so we choose to cross the river by feet. There were sharp stones inside the water and the flow was very strong, everyone got some injuries. It was hard for us to cross and almost everyone lost their belongings.

70. Once we reached Gran Daung and Horou Tilah, which are Muslim villages, we were stopped by the local chairman, I cannot remember his name but he was Muslim. He told us that the region commander ("*Nay Mrae Bo Mu*"), whose name I don't remember, had instructed him that we had to stay there. At some point the chairman and the commander spoke on the phone, and the latter told the chairman to give the phone to someone in my group that could speak. I took the phone and the *Bo Mu* asked me, "Don't you want to stay in this country?" I told him that our houses were burned down and our people were killed, where did he expect us to live? The commander instructed the chairman to let us stay in the village and not go to the other side. We were terrified, we feared that they might burn there as well but the chairman told us that he had paid 17 lahks to the commander, so he would not burn there. At night time we stayed in Horou Tolah, we were given food, clothes and medication for our wounds. At night, the chairman asked us please not to leave without the order of the commander.

71. Nonetheless, on the following morning, at dawn, we left the place. We reached May Rulla, which is mostly a Rohingya village although it may have a few hindu and moghs. There is the main camp number 8 with all security forces. On the side of the camp, we were stopped at a checkpoint. We raised our hands – like we did at any checkpoint we crossed, on our journey we have seen many. They asked where we were going, since the commander had said that we could stay. We gave the same answer given to the commander. The officer [redacted] made a call, I don't know to whom, but after the call he told [redacted] "Kalar, you can go wherever you wish, go go go!"

72. After much walking, we rested in U Daung, which was mostly a Rohingya village - although a Na Ta La village was later built there. It was nearly evening, we prayed, and people from that area fed us. We told those villagers what had happened and asked whether they were planning to migrate as well. They answered no, that they had paid 65 lahks to the military to not burn the village. Still, we had started the journey with 150 families, and at the end we were more than 250, because some people were joining us on the way.

73. After that stop, we arrived in Hassu Rata (also known as Ah Lel Than Kyaw), which is mostly Rohingya although there were maybe 100 moghs. From the main road we could

Annex 134

IIMM, Witness Statement No. IIMM0019629302, 7 November 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name: [redacted]

First name: [redacted]

Former names:

Other names used:

Nationality(ies):
Myanmar (stateless)

Gender: Female

Mechanism person code: P1547

Father's name: [redacted]

Mother's name: [redacted]

Spouse(s)' name(s): [redacted]

Childrens' name(s) and date(s) of birth/age: [redacted]

Date of birth/Age: 1 January 1979 (43 years old)

Place of birth: Gudam Fara, Buthidaung, Rakhine State, Myanmar

Ethnicity: Rohingya

Language(s) spoken: Rohingya

Religion: Muslim

Language(s) written: None

Formal educational level: Unknown.

Prior occupation and employer in Myanmar: Farmer.

School attended: Four years of primary school at Gudam Fara school.

Current occupation and employer: [redacted]

Previous address in Myanmar: Gudam Fara (center of the village)

Current address: [redacted]

Date or approximate date of departure from Myanmar if applicable: After Qurban Eid.

Photo ID: Yes

Type of photo ID: Forcibly Displaced Myanmar National / Person of Concern to UNHCR Card

Authority issuing photo ID: UNHCR

Issuance date on photo ID: [redacted]

Name on photo ID: [redacted]

Registration number on photo ID: [redacted]

Any other form of photo ID: No

II. Interview Information

Prior screening(s) conducted: **No**

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Place/modality of interview: In-person

Location of interviewer: [redacted]
Location of witness: [redacted]
Location of interpreter: [redacted]

Date(s) and times of interview:
05/11/2022, [redacted]
06/11/2022,
07/11/2022,

Language(s) used in interview: English, Rohingya

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0065	
	M0015	
Interpreter:	M0091	
Witness support person:		
Other persons present:		

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter, and explained that the latter would interpret everything the interviewers say in English to me in the Rohingya language and the other way around.
2. The interviewers explained to me the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. I was explained that the Mechanism, and team speaking with me, belong to an organization which is called the "United Nations", in short "UN". I understand the explanation that other organizations like UNHCR and WFP are part of this same big organization, but they all do different jobs. I understand that the team speaking with me is collecting information about the crimes committed in Myanmar. I understand that the mandate of the Mechanism only covers events that occurred in Myanmar and nothing in the Bangladesh territory. I have been explained what a court is, and what it means to be a "witness". I understand that my story may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.
3. I was told that this interview is about the events in Gudam Para. I want to share my story with you and explain what has happened.
4. I was informed that my cooperation with the Mechanism is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that I am cooperating with the Mechanism voluntarily. Nobody forced me, threatened me or made promises to get me to participate in this interview. Nobody told me what to say or not to say.
5. The interviewers explained that the Mechanism's investigations are confidential, to protect both work of the Mechanism and the persons it interacts with. The interviewers asked me to keep my interactions with the Mechanism confidential. Only my husband and my direct family know that I am giving a statement.
6. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others.
7. The interviewers stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, they will read it to me, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.
8. The interviewers explained that this statement and the material that I shared with the Mechanism would not be shared with anyone else without my full and informed consent.

long it took us to cross the mountain but I believe that we arrived to a field at the base of the other side of the mountain around the time of the *Zohor* prayer when the sun was in the middle of the sky.

Maungdaw

77. When we came down from the mountain on the other side in Maungdaw, we came to a field with a cement road. Soldiers were coming toward us on this road and stopped us. The soldiers were on motorcycles. The soldiers split into two groups. Each group had two or three soldiers.

78. The soldiers made us sit on the ground and separated the men from the women. I do not know the place where we were stopped. We were stopped in a big field. I saw rice paddies on that field, all on the ground. I could see some burned houses in the distance. I do not know the villages on the Maungdaw side of the mountain. The sun was right in the middle of the sky at that time. I am not sure but maybe it was around *Zohor* prayer time. I did not hear the *aza'an* (the Muslim call to prayer) at that time.

79. The soldiers were wearing uniforms. The soldiers had uniforms and hats that I identified as colour no. 16 on the colour chart. They had a badge on their shoulder, which I identified as also colour no. 16 on the colour chart. I did not recognize the symbols on their badges and just heard people saying that they had one or two stars. I could not tell what the badges looked like. The soldiers had guns on their shoulders. The guns looked more like the colour of the table in the interview room, a dark brown wooden colour mixed with black, than any colour on the colour chart.

80. These two groups stopped us and started asking our group questions. They spoke to the educated men in our group who could speak their language. The soldiers said to our men, "Don't go. You won't be killed. There will be no harm to you." Our men replied, "We are hungry. Our houses are burned. We have to leave this place as soon as possible." The educated men also told the soldiers, "You have already killed many people in our community. If you kill us, everyone from our community will leave this country."

81. The soldiers were speaking in the *Mogh* language. Because only the educated men in our group could understand what was being said, the men came and told us what was said after they finished speaking with the soldiers. The soldiers did not take anything from us and did not search us. Soon after, the military left. I did not see the direction in which the military left.

82. Then we continued walking. Two or three hours after leaving the field, we reached a burned village. I do not know the name of this village. I saw remnants of burned houses, cooking pots, bones, and burned clothes on the road. This was a Rohingya village. I know this because I saw Rohingya peoples' clothes and personal belongings on the ground. I explained that Rohingya people wear different clothes and use different objects from *Moghs* and I could see Rohingya clothes and objects on the ground. I explained that we wear head scarves and *Mogh* people do not. We use a pot to wash ourselves in the toilet. *Mogh* people do not use these kinds of pots to wash themselves. I saw charred head scarves

and washing pots in this burned village. I did not see whether or not there was a mosque in the village. I did not see anyone in the village. I only saw bones near the road and in fields near the village. I assumed that these bones belonged to humans because I knew that the military had been shooting and saw that the village was burned and no humans were there. The village had already been burned. The fire had already stopped.

83. We kept walking. We did not pass through any other villages on the way to the sea. When it was getting dark, we reached the shore. It was very crowded at the shore. I do not know the name of the place where we reached, just that it was on the shore. People had put up shelters. The shelters were covered in tarpaulin. Different families were under different tarpaulin shelters. The tarpaulins were different colours, which I identified as colours no. 8 on the colour chart as the most common colour of tarpaulin, and colour no. 15.

84. There were people like us from different villages and everyone was Rohingya. I did not see any injured people on the shore, though I did see many women giving birth. People on the shore were waiting to cross the water. People were crossing the water by boat or bamboo raft. I was crying and sitting on the ground. We stayed on the shore overnight. My husband found a tarpaulin on the ground that had been left by a family that took a boat across the river. My family put up the tarpaulin and sat under it on the sand. To lie down, we laid down torn clothing on top of the sand. That night, I had pain in my back and was not able to sleep.

85. I later heard that people had to wait 8-10 days on the shore. We waited two days on the shore before my husband found a boat to take our family across the river. I did not see any military or security forces while we were on the shore. I did not have any food or water with us. My children did not have any food or water. We dug a deep hole in the sand and after an hour, it filled with water. I filled a small water bottle with this water and used our clothes to cover the bottle opening so we could drink the water through it. I did not want to drink this water but we had no choice. Some people were sharing their food with each other, but no one shared their food with me or my children.

86. I heard from other people that foreigners came to the shore and gave people rations including chickpeas, water and other snacks. I did not see them.

87. After two days, my husband found a boat and a few people joined my family in this boat to cross to Bangladesh. We did not have to pay or give anything to cross by boat. I am not sure how long it took us to reach Bangladesh. I was very weak. We crossed at nighttime and did not encounter any problems along the way. I did not see any other boats. This was my first time in Bangladesh.

88. During the interview, I was shown a document registered with BIN **IIMM0001481680**. I remember people coming and taking my photograph two to three days after our arrival. We called this card a 'photo card'. I confirmed it was my photograph on the card. I was also shown a document registered with BIN **IIMM0001481871**, which I recognized as the back side of the same photo card. I explained that I received this card from the Bangladeshi authorities the same day that they took my photograph. I was already in [redacted]

Annex 135

IIMM, Witness Statement No. IIMM0019925094, 12 December 2022 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):			
Gender:	Male		
Mechanism person code:	P1289		
Date of birth/Age:	01 January 1974	Place of birth:	Chor Fara, Tula Toli Village Tract, Maungdaw township, Rakhine State, Myanmar
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya

CONFIDENTIAL

Religion:	Muslim	Language(s) written:	Basic Burmese and some English
Formal educational level:	Up to Class 3	Prior occupation and employer in Myanmar:	Farmer
School attended:		Current occupation and employer:	[redacted]
Previous address in Myanmar:	Sor Fara, Tula Toli village tract	Current address:	
Date or approximate date of departure from Myanmar if applicable:			
Photo ID:	Yes	Type of photo ID: Concern of UNHCR	UNHCR Forcibly Displaced Myanmar National / Person of concern to UNHCR Issuance date on photo ID: [redacted]
Authority issuing photo ID:	UNCHR		
Name on photo ID:	[redacted]	Registration number on photo ID:	[redacted]
Any other form of photo ID:			

CONFIDENTIAL

II. Interview Information

Prior screening(s) conducted: **No**

Place/modality of interview: In-person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview:
04 December 2022, [redacted]
05 December 2022,
06 December 2022,
08 December 2022,
11 December 2022,
12 December 2022,

Language(s) used in interview: Rohingya and English

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0059	
	M0047	
	(Absent 11/12 Dec)	
Interpreters:	M0092	
Witness support person:		
Other persons present:		

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter. The interviewers explained that they would ask questions in English and the interpreter would then interpret the question into Rohingya for me. Equally, the interpreter would tell the interviewers in English what I had said in Rohingya.
2. The interviewers explained the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. They explained that as team members from the Mechanism, they belong to an organization which is called the "United Nations", or "UN" for short. I understand their explanation that other organizations like UNHCR and WFP are part of this same big organization, but they all do different jobs. I understand that the team speaking with me is collecting information about the crimes committed in Myanmar. I also understand that the mandate of the Mechanism only covers serious international crimes that occurred in Myanmar and not in the Bangladesh territory. The interviewers explained what a court is, and what it means to be a "witness". I understand that, with my consent, my statement may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.
3. I was told that this interview is about the events that led me to leave Myanmar and come to Bangladesh. I want to share my experiences with you and explain what has happened.
4. I was informed that I am not obliged to participate in this interview or answer any specific questions. I confirm that I am cooperating with the Mechanism voluntarily. Nobody forced me, threatened me or made promises to get me to participate in this interview. Nobody told me what to say or not to say.
5. The interviewers explained that the Mechanism's investigations are confidential, to protect both the work of the Mechanism and the persons it interacts with. The interviewers asked me to keep my interactions with the Mechanism confidential.
6. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others.
7. The interviewers stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, they will read it to me, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.
8. The interviewers explained that this statement and the material that I shared with the Mechanism would not be shared with anyone else without my full and informed consent.
9. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I did.

IV. Previous statements

10. I have provided several interviews about the attacks in August 2017 but cannot remember exactly how many interviews I have provided. Some of the interviewers told me their names, which I have since forgotten. The majority of the interviews were informal and took place in a bus or in a private vehicle. The interviews normally did not exceed 30 minutes and I recall the longest interviews were those I provided while in a private vehicle. I was not asked about consent to share these interviews nor was I provided with a readback of the interviews.

11. [redacted]

12. [redacted]

13. On another occasion, after the completion of the interview, the interviewer discussed sharing my interview with others and I may have signed some documents to that effect. There was no readback of my interview. Later, the interviewer came to my house and provided an audio summary of how many people were killed in specific villages etc., to show the product of the interviews with me and other witnesses regarding the attacks in 2017. The audio file was transferred to my phone. Since then, that phone has been damaged and the audio file is unrecoverable. Additionally, the interviewer also provided me with two books that contained a summary of my interview. One book is in English, and one book is in phonetic Rohingya. These books and the audio file were provided to me and 71 other households. Since I cannot read English, I do not know what is written in the book. I gave the book to my wife and asked her to keep it in a safe place. I found the book and showed it to the interviewers, and they have noted the title of English version of the book as "Tula Toli Village, We Want Justice, Rohingya Genocide Report, December 2018", by ADI and confirmed that the content in the phonetic Rohingya book is the same as the English version.

Na Sa Ka/ Border Guard

38. It is my understanding that the *Na Sa Ka* was composed of five departments, which were responsible for issuing marriage authorisations, adding or removing people from family lists, settling disputes between villages referred by the chairman, and to maintain a recording cattle owned by Rohingya. As mentioned before, I do not what the composition and tasks of the Border Guard were, and upon reflection I not sure if the *Na Sa Ka* and Border Guard both existed at the same time.

Events Leading to the August 2017 Attack.

39. Prior to 2012, the relationship between the *Mogh* and Rohingya in the villages was peaceful. We interacted and socialised together; whenever the *Moghs* held weddings, they invited the Rohingya, and when Rohingya held weddings, they invited the Moghs to attend. I regularly visited the houses of my *Mogh* neighbours. In 2012, I heard that was there was an incident in Akyab where a *Mogh* woman was killed. Akyab is the Rohingya word for Sittwe. The *Mogh* made public announcements, including with posters placed on rickshaws, that Muslims had killed the *Mogh* woman, which led to fighting between *Moghs* and Muslims in Akyab. This fighting spread to Rakhine State, where *Mogh* and Rohingya fought each other. Three Rohingya men decided to take the blame for the killing of the Mogh woman in order to save Rohingya villages from being attacked. I heard that these three men were killed by the *Moghs*. I did not see these events myself but heard it from my neighbours.

40. Approximately a year before the August 2017 attack, a Border Guard officer, who had two flowers on his epaulettes, came to Sor Fara every Friday to hold a meeting at Nobi Hossein's house. At least one male from each household had to attend this meeting and since I was the only male in my household, I attended all these meetings. The Border Guard officer, who sat on chair while the rest of us sat on the floor, gave us a lecture that we should be peaceful and not have any quarrels, and if we did have quarrels, we should report them to the Border Guard and not to the police, as the police would charge more money to settle the dispute. The Border Guard officer also instructed us to report any people in the village who criticised the government or if we saw anyone in our village we did not recognise.

41. Approximately 10-15 days before the August 2017 attack, 70 members of the Border Guard came to Sor Fara. The sun was just rising when I heard gunfire, which lasted for a short period before it stopped completely. The Border Guard had encircled our village and gathered all the villagers, including me and my family, and took us to the old mosque complex, known as "Puran mosid vita", which had a big tree next to it known as "Gom Gaas". When we arrived at the mosque complex, I saw that the villagers from Mura Fara, Mazor Fara, and La Mar Fara had also been gathered and taken to the old mosque complex. While we were in the old mosque complex, some Border Guard personnel searched some nearby houses. One Border Guard member, while searching the house of Ramatullah, left his rifle in the house, while he proceeded to the garden to pick vegetables, and then left the house without the rifle. Shofique Qur Rahman, saw the rifle in the house and brought it to the old mosque complex and handed

it over to Border Guard officers, who had one and two flowers on their epaulettes. The Border Guard member who left the rifle came to the old mosque complex in a panic that he had left his rifle. Other Border Guard personnel then beat the Border Guard member, who had left his rifle unattended, in front of the villagers. After this beating, the Border Guard Officers, who wore flowers on the epaulettes, told us not to feed bad people, not to be like them, and report any bad people they see to the Border Guard. After this speech, the females and children at the old mosque complex were allowed to go home. Nothing happened to the females and children while they were at the Mosque complex.

42. The remaining males at the old mosque complex were then divided into three groups. The Border Guard personnel also divided themselves into three groups. At this time the Border Guard did not check our identification documents, nor did they check our family lists. Instead, the Border Guard asked the chairmen of the villages to look among the three groups of men and to report any men they did not recognise. The group I was divided into was then taken to the house of Abu Kalam, whose real name is Soyed Hossein. We were ordered to dismantle the house because Abu Kalam was a "bad" person. The other two groups of villagers were made to dismantle the house of Sultan in Mazor Fara, the house of Mohamed Nur in Doin Fara. The house Mohamed Ershadulla, whose father's name is Dorbes Ali, in Mura Fara was also dismantled, but I am not sure it was dismantled on the same day as the other three houses. I remember that prior to the dismantling of the houses, the Border Guard Officer, who wore flowers on his epaulettes, called his superior on the phone and asked five times why the houses needed to be dismantled because he felt the houseowners had done nothing wrong. The Border Guard officer was ordered by his superior five times to dismantle the houses. After the houses were dismantled, the Border Guard Officer sent photographs of the dismantled houses to his superior. The dismantled houses were not allowed to be rebuilt afterwards.

43. After the three houses were dismantled, we were allowed to go back to our homes. The Border Guard singled out the three houses we dismantled because the families were suspected to have been "bad people". In general, we knew the people the Border Guard referred to as bad people were suspected members of Al-Yakin. While we were dismantling the houses, we did not see any weapons in the houses nor did we see family members who had lived in these houses do bad things or carry weapons, so I am confused why they were alleged to have been bad people.

44. Approximately 4-5 days before the attack, I heard shooting in Saadullar Sawr and Wed Kyaung . 28 houses in Wed Kyaung , which were near the road, were burned down. Villages in the centre of Wed Kyaung were untouched. I could see flames coming from Wed Kyaung when the 28 houses were burning. After seeing the houses burn, I felt anxious because we could nothing about it and I wondered what would happen next.

45. On 29 August 2017, the day before the attack on Sor Fara, a group of military personnel had entered the ethnic village of Kui Fara from Diyol Toli. In Mura Fara, a young girl was grazed by a bullet in her abdomen. I do not remember the name of the girl, but her father's name was Abdul Hamid. Me and the other villagers in Sor Fara were tense because of the wounding of the young girl and the nearby presence of military personnel. I spent the night in my house with my wife and four of my unmarried daughters. I did not go to prayers at the mosque during

Annex 136

IIMM, Witness Statement No. IIMM0027992867, 1 March 2023 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Myanmar		
Gender:	Male		
Mechanism person code:	P1495		
Date of birth/Age:	1 January 1985, 38 years old	Place of birth:	Hpaung Taw Pyin village, Buthidaung Township, Rakhine State
Ethnicity:	Rohingya	Language(s) spoken:	Rohinyga, Burmese, Rakhine
Religion:	Islam	Language(s) written:	Burmese and a little bit of English (can sign)

Formal educational level:	Did not finish Grade-10	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Hpaung Taw Pyin, High School		
		Current occupation and employer:	
Previous address in Myanmar:	Hpaung Taw Pyin (Fundu Parang)	Current address:	
Date or approximate date of departure from Myanmar if applicable:	Left his village on 25 August 2017		
Date of arrival in Bangladesh:	Two weeks after leaving the village		
Photo ID:	[redacted]	Type of photo ID:	UNHCR
Authority issuing photo ID:	UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:			

II. Interview Information

Prior screening(s) conducted: Indicate **No**

Place/modality of interview: In person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)

25/02/2023
26/02/2023
27/02/2023
28/02/2023
01/03/2023
[redacted]

Language(s) used in interview: English, Rohingya, Burmese

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0054	
	M0032	
Interpreter:	M0110	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that the interpreter would interpret everything the interviewers say in English to me into the Rohingya language, and vice versa.
2. The interviewers explained to me the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. It was explained to me that the Mechanism, and the team speaking with me, belong to a big organization which is called the "United Nations", in short "UN". I understand the explanation that other organizations known to me, such as UNHCR, WFP and WHO, are also part of this same big organization, although they all do different jobs. I understand that the team speaking with me is collecting information about crimes committed in Myanmar since 2011, and that the mandate of the Mechanism only covers events that occurred in Myanmar.
3. The interviewers explained at length to me what a tribunal is, how criminal proceedings work and what it means to be a "witness". I was informed about the different national or international courts that are looking into serious crimes committed in Myanmar and told that others might do so in the future. I understand that the IIMM can support these proceedings by providing relevant evidence. I understand that if my story is shared with national or international courts prosecuting crimes committed in Myanmar, I may become a witness in these cases.
4. I was told that the IIMM wanted to speak with me about the events in my village in Myanmar, prior to me coming to Bangladesh.
5. I was informed that my cooperation with the IIMM is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that nobody put any pressure on me to attend this interview, I am here of my own will.

6. The interviewers explained that the IIMM's investigations are confidential, to protect both its work and the people it interacts with. The interviewers asked me to keep my interactions with the Mechanism confidential. Only my mother and my employer know that I was absent from the camp due to my engagement with the IIMM.
7. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" or "I don't remember" if I do not know or remember the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others. I was informed that I might be shown documents, photos, videos and maps during the interview.
8. The interviewers told me that they would write down what I said during the interview as completely and accurately as possible, and that they would prepare a written statement. I understand that, before signing the statement, it will be interpreted to me in the Rohingya language, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.
9. The interviewers explained that this statement and any materials that I have shared with the Mechanism would not be shared without my full and informed consent
10. The interviewers asked if I fully understood these issues, I confirmed the interviewers that the explanation was very clear and detailed. When asked if I was willing to proceed with the interview, I confirmed that I understood the points raised by the interviewers and that I was willing to proceed.

IV. Documentary or Other Evidence in the Possession of Witness

11. I do not have any document to share with the IIMM. I couldn't bring anything from Myanmar. I did have a green card in Myanmar, but I couldn't bring anything with me when I fled. I couldn't even bring a pair of clothes with me. I had some pictures of my village from before the attack in my phone. During the attacks I couldn't even think about my phone. In the state I was, I could hardly turn it off, to avoid it making any sound that would get me caught and killed. I was running and hiding for my life. Eventually I lost that phone.
12. On the last day of this interview I shared two pictures with the interviewers:
    a. A photo of my brother [redacted] alone and
    b. one image with the photos of (1) my brother [redacted] (2) my brother [redacted], (3) my father [redacted] and (4) my brother [redacted]
13. I lost these family members in the attack of August 2017. The IIMM recorded these images respectively with BIN No. **IIMM0025673144** and **IIMM0025673145**.
14. On the last day of this interview I also brought to the interviewers two booklets, one in English and the other with a Rohingya translation, made by the international organization

1. Hpaung Taw Pyin
2. Maung Nu (Monu Fara)
3. Sawr Fara
4. Gonnya Fara
5. Hadur Fara
6. Zay Ti Pyin (Zar Di Farang)
7. Pa Da Nar
8. Kyee Note Thee
9. Nga Yant Chaung
10. Boiddaw Fara
11. Kat Thit Lit
12. Gu Fi Fara (Saung Oak Su)
13. Ta Mi
14. Shidar Fara
15. Bo Seik Kaung
16. Fati Yaar

97. Then we moved from Buthidaung township to Maungdaw township. From Fati Yaar to Maungdaw, we walked for a day to cross the mountains in the east. These were the villages we crossed through to get to Bangladesh from Maungdaw Township:

    1. Ku Mi village (Mro ethnic village)
    2. Diyal Toli
    3. Gara Tol Bil
    4. Saak Fara
    5. Lo Boi Dala
    6. Sum Beylah
    7. Joitta Khali
    8. Kwanse Baung

98. And then finally we arrived at Ang Zi Bang village in Bangladesh. It was 4 September. The next day, 5 September, I settled in [redacted] The whole journey took around 2 weeks.

99. During our journey, we did not bump into any security forces. We could see them inside their bases, but they didn't come to us. On the way, we did not go inside any village, we were staying on the side road. We were following our villagers. I was not good with the road. At first, we had taken the main roads because the hills had small police check points.

100. After passing Gu Fi village, near Saung Oak Su (the Mogh side of the village), while walking along the main road, we came across a group of Muslim people from that area. They told us not to continue on the main road because it had landmines. They had seen the militaries planting them while herding the animals. In fact, they pointed at some holes on the ground. I didn't know what they were until then. I remember by that time seeing around

six. They were small holes covered by some green leaves. We had to think about alternative ways, so we chose the jungle. This is when we crossed the hills and jungle.

101. When we arrived in Maungdaw near Diyal Toli we found the dead body of a woman, but we didn't know who killed her or how.

102. When we reached Shidar Fara in Kyaing Taung, we stayed for a few days. We spent Eid there. That Eid was the second Eid of the year and we were supposed to perform the sacrifice of the animal. Some villagers managed to find animals to sacrifice. But after that, it was time to reach Bangladesh. In Shidar Fara we decided that we would never go back, because we met many people from different villages who told us that all Rohingya Muslim villages had been destroyed. My mother's legs were swollen. I hadn't told my mother that we were going to Bangladesh, otherwise she would not have moved to Bangladesh without my father and brothers.

103. When we reached Bangladesh, the first thought I had was "Now I'm free". And I was feeling safe. Because it was the first time that we were meeting soldiers who were helping us, and the host community was supportive.

Closing remarks

104. I would like to share that my father and brother, I still don't know what happened to them. I seek justice for them.

Comment

105. The interviewers told me that some of the information I provided in my account during this interview differs from what [redacted] I don't know why these differences exist. My interview [redacted] lasted about 2-3 hours and I can't remember everything I spoke about. It wasn't nearly as detailed as the current one. I was not asked questions in the same way and did not review what was recorded [redacted]

106. At the time [redacted] it was just after I arrived in Bangladesh. It was a very difficult time. I don't recall whether I was told about making distinctions as to what happened to others and what happened to myself as I just wanted to give as much information as I could. After reaching Bangladesh, those of us who made it were still looking for missing family members, talking to each other and putting the pieces together of what had happened in our village. Back then, many foreign people were coming to interview us and I was trying my best to make sure to talk about everything I knew about from family, from friends, from everyone in the community.

107. [redacted] I don't recall what I said about the injury on my hand. It was recorded that I said this injury was from the military, but now I don't remember saying that, nor I recall this being the way in which I injured my hand. I actually recall that I only noticed it once in Bangladesh, when some other villagers made me realize that I was bleeding.

Annex 137

IIMM, Witness Statement No. IIMM0027992306, 9 March 2023 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Rohingya from Myanmar		
Gender:	Male		
Mechanism person code:	P2300		
Date of birth/Age:	01/01/1959	Place of birth:	Mee Chaung Zay, Buthidaung Township
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya, Burmese
Religion:	Islam	Language(s) written:	Burmese, English

Formal educational level:	[redacted]	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Buthidaung Taung Bazar middle school	Current occupation and employer:	
Previous address in Myanmar:	Nga Yant Chaung, [redacted] Buthidaung township, Myanmar	Current address:	
Date or approximate date of departure from Myanmar if applicable:	2019		
Photo ID:	[redacted]	Type of photo ID:	UNHCR
Authority issuing photo ID:	UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	[redacted]
Any other form of photo ID:			

II. Interview Information

Prior screening(s) conducted: Indicate **Yes**

Place/modality of interview: In person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)
01/03/2023 [redacted]
02/03/2023
04/03/2023
06/03/2023
07/03/2023
08/03/2023
09/03/2023

Language(s) used in interview: Rohingya, English, Burmese

Names and signatures of persons present during interview:

Interviewer(s): M0092

M0032

Interpreter: M0079

M0092

Witness support person: N/A

Other persons present: N/A

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that the interpreter would interpret everything the interviewers say in English to me into the Rohingya language, and vice versa.
2. I was provided with an explanation of the mandate of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of the interview. It was explained to me that the IIMM belongs to the United Nations ("UN"). I understand the explanation that the UN comprises many organisations such as UNHCR and WFP, which all do different jobs. I understand that the team speaking with me is collecting information about crimes committed in Myanmar since 2011, and that the mandate of the Mechanism only covers events that occurred in Myanmar.
3. The interviewers explained to me what a tribunal is, how criminal proceedings work and what it means to be a "witness". I was informed about the different national or international courts that are looking into serious crimes committed in Myanmar and told that others might do so in the future. I understand that the IIMM can support these proceedings by providing relevant evidence. I told the interviewers that I know what a court is, and that I had heard of the ICC and the ICJ. I understand that if my story is shared with national or international courts prosecuting crimes committed in Myanmar, I may become a witness in those cases.
4. I was informed that my cooperation with the IIMM is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that nobody put any pressure on me to attend this interview, I am here of my own will.

100. It came to my mind that these restrictions were impacting my freedom to practice my religion. The practice of Tabligh, which is the preaching of Islam, was impaired, sometimes mosques were locked by the authorities with locks, children were prevented from studying Arabic: if these things had not been in place, it would have been better.

Movement

101. The Rohingya people needed a permission in order to be able to travel. It was possible to move from one village to another village in the same Buthidaung township with the temporary (ID) card. To go beyond that area, it was necessary to go with the temporary card to the Immigration official and ask for permission to go from one location to the other. Upon providing certain information, *Na Sa Ka* would give a permit ("*Pon San Lay*"). To stay more than one night, one also had to inform the chairman of the destination area. Obtaining a *Pon San Lay* would cost 1000 to 2000 *kyats*. In addition to that, at every checkpoint manned by police or *Na Sa Ka*, we used to pay approximately 1000 *kyats* every time. At checkpoints they would interrogate us and ask for the permit we were not treated well.

The *Htar Na Choke* incident

102. The *Htar Na Choke* was the big *Na Sa Ka* headquarters responsible for all eleven *Na Sa Ka* camps, and where all directions came from. It was 15 miles away from my home, in Maungdaw. As I said, in 2012 the *Na Sa Ka* was renamed by the government as BGP - Border Guard Police ("*Nay Khra Zound*"), but the composition remained the same.

103. On 9 October 2016, the *Htar Na Choke* was attacked. The day of the attack, I was in Taung Bazar. I learned about this incident when I was at the bazaar: it was announced that an attack in *Htar Na Choke* had been carried out by ARSA. Like the RSO that I already mentioned, ARSA was a Mujahid group, made mainly of Rohingya and allegedly created for the wellbeing of the Rohingya. There was nobody affiliated with ARSA in my village. In our village we didn't provide help to such groups.

104. Soon after that attack, a curfew was imposed, and everybody had to shut everything down and stay inside. Before the *Htar Na Choke* incident, in Buthidaung everything was peaceful and there was no curfew. In addition to the curfew, the movement of the Rohingya people was completely halted: if you went out between 6 pm and 5 am, you'd be warned that you could get shot. We were not able to move from one village to another nor inside the village. We were not given the opportunity to guard our rice paddy banks and we weren't able to graze our cattle, which – at that time – were often stolen. My cattle grazed at a 15-minute distance from my house and to do that I needed a permit from the chairman. If we breached the curfew, we were tied, beaten, and put inside Camp 10 in Taung Bazar for two or three weeks, and had to pay a huge amount of money to be released.

105. On top of that, the authorities ordered us to remove the fences surrounding our houses, which ensured privacy, were uprooted so that they could see inside. My fences, I removed myself. The military issued this order, and the BGP enhanced it. Then, they also gave me the order to take down the walls of the first floor of my house, but, you know, nobody likes to break their own walls, so they did it. While they were doing this, BGP and Captain Tun Naing were there, he said he was following orders. There were three or four of them, and

they held weapons. I had hidden things made of iron, such as axes and shovels, in a hole in the ground because if they had found them, they would have killed us. It was after the *Htar Na Choke* that we were not allowed to keep objects made of iron. Before then, we were able to keep an arm-length knife, whereas other non-Rohingya could have bigger knifes or even swards and carry them on their back. I know it because west to my village there was a *Mogh* village that I could see very easily.

106. All these measures were announced by loudspeakers to all villages in the area. Also the chairman came to my home and told us about the new measures. He was very sympathetic toward me.

107. None of these measures applied to non-Rohingya. There are 135 ethnic communities in Myanmar but we are seen as not being part of them. We made our houses by ourselves and they used to say, "*Why are you making a house on our land?*". After the *Htar Na Choke* incident, my work stopped completely: I stayed inside my home with my family, eating from the stockpile, in constant fear, with the government coming to the village for a lot of meetings.

The arrest on 10 January 2017

108. On 10 January 2017, in the early morning, I was at the mosque with four to five other people, and, after the prayer, I heard two people saying that from Prang Daung (West) some militaries were gathering in our teak plantation. I rushed to my house and, thinking something fishy was happening, I prepared some clothing. I barely went outside and I saw six people with civilian clothes coming.

109. Among them there was BGP officer Maung Maung Htay. That day Maung Maung Htay had no cap nor BGP clothing, all six were wearing a top and a *longyi*. Maung Maung Htay swiftly rushed toward me and told me to stop me; then they all came and asked me: "*Can you come with us? we need to ask you about the situation in the village, do you know why all shops are closed?"* I told them the reason was that military was gathered in the teak plantation. They said: "*The military won't do any harm. Tell them to open the shops, we need to drink tea and buy some things for the military*". [redacted] Maung Maung Htay told me that the commander of the military group wanted to see me. I said I was not a member of the village administration, so I didn't understand why he would want to talk to me. Maung Maung Htay called someone on the phone and said in Burmese that I was refusing to go. They took out their pistols and pointed them at me. All five of them had one. They then grabbed me by the shoulders. I was terrified.

The teak plantation

110. They took me, on foot, to the teak plantation where they were gathered. This plantation was three to five minutes far from my house, walking distance. I realized they were captains *("Bo Gyi")* because only captains have pistols. When I arrived at the plantation, nearly a hundred men were there; everyone was wearing a military uniform, except for a

Annex 138

IIMM, Witness Statement No. IIMM0027995869, 25 June 2023 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:	-	Spouse(s)' name(s):	
Other names used:	-	Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Rohingya from Myanmar		
Gender:	Male		
Mechanism person code:	P1492		

CONFIDENTIAL

Date of birth/Age:	[redacted]/1973	Place of birth:	Monu Fara/ Maung Nu Buthidaung township, Rakhine State, Myanmar
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya and Burmese, some Bangla and some English
Religion:	Muslim		
		Language(s) written:	Burmese
Formal educational level:	[redacted]	Prior occupation and employer in Myanmar:	[redacted]
School attended:	[redacted]	Current occupation and employer:	Unemployed
Previous address in Myanmar:	Monu Fara, Buthidaung Township, Rakhine State, Myanmar	Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:	8 September 2017		
Photo ID:	Yes	Type of photo ID:	UNHCR Forcibly Displaced Myanmar National / Person of concern to UNHCR
Authority issuing photo ID: Name on photo ID:	UNCHR [redacted]	Issuance date on photo ID: Registration number on photo ID:	[redacted]

Any other form of photo ID: No

II. Interview Information

Prior screening(s) conducted: No

Place/modality of interview: In-person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)
19/06/2023 [redacted]
20/06/2023
21/06/2023
22/06/2023
24/06/2023
25/06/2023

Language(s) used in interview: **Rohingya and English**

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0102	
	M0047	
Interpreters:	M0108	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter. The interviewers explained that they would ask questions in English and the interpreter would then interpret the questions into Rohingya for me. Equally, the interpreter would tell the interviewers in English what I had said in Rohingya.

2. The interviewers explained the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. They explained that as team members from the Mechanism, they belong to an organization which is called the "United Nations", or "UN" for short. I understand their explanation that other organizations like UNHCR and WFP are part of this same big organization, but they all do different jobs. I understand that the team speaking with me is collecting information about the crimes committed in Myanmar. The interviewers explained what a court is, and what it means to be a "witness". I understand that my statement may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.

3. I was told that this interview is about the events that led me to leave Myanmar and come to Bangladesh, including events in my home village of Monu Fara. I want to share my experiences with you and explain what has happened.

4. I was informed that I am not obliged to participate in this interview or answer any specific questions. I confirm that I am cooperating with the Mechanism voluntarily. Nobody forced me, threatened me, or made promises to get me to participate in this interview. Nobody told me what to say or not to say.

5. The interviewers explained that the Mechanism's investigations are confidential, to protect both the work of the Mechanism and the persons it interacts with.

6. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others.

7. The interviewers stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, they will read it to me, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.

8. The interviewers explained that this statement and the material that I shared with the Mechanism would not be shared with anyone else without my full and informed consent.

9. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I did.

IV. Previous statements

10. I gave an account of my time in Myanmar to people from an organisation, which I think was [redacted]

[redacted] I drew the map and handed it to [redacted]. The map represents Monu Fara and the surrounding area, including places that are relevant to my story.

11. Using this map, I have indicated various locations to the Mechanism interview team, and they have marked these locations with numbers. I have been shown that it is assigned BIN **IIMM0027995085** and I will refer to this version as "map" throughout this statement.

12. I remember speaking to other organisations about my time in Myanmar, but I did not sign any of the records. I cannot recall the names of the organisations or their representatives.

V. Documents in the possession of the witness

13. I am in possession of the Myanmar identity document for [redacted] my paternal grandmother. The interviewers took photographs of the document and explained that it has been assigned BIN **IIMM0027995082**.

VI. Statement

14. My name is [redacted] and I lived in Monu Fara until I left Myanmar in 2017. Before the events I will describe in this statement, I lived with my wife and some of my children in our family home. My house is marked on the map as **"1".**

15. My life in Monu Fara was relatively good. I was employed, I had some money, I was healthy, and my family and I had enough food to eat. In my village, the IOM funded the building of a primary school, made of brick and concrete, [redacted]

16. [redacted] When my father died there was nobody to oversee the farming for our family, so I returned to this work. [redacted]

Monu Fara and the surrounding area

17. Monu Fara was in the Chin Tha Mar village tract, Buthidaung Township. The following is the geography in the surrounding areas of Monu Fara, including prominent buildings and locations, which are relevant to later events in 2017:

    - To the north of Monu Fara is a large Rohingya graveyard, marked as **"2"** on the map.
    - To the northwest of Monu Fara is Fundu Farang. On the map there is a small green dashed line (marked as **"3"** on the map) above the blue "car road". This line represents a path and is also the border between Monu Fara and Fundu Farang.
    - To the east of Monu Fara are fields and beyond that there are hills. They are called "Andhari Ghuna", which means dark valley due to the thick foliage in the forest, it blocked out light and it was dark when walking under the canopy of the forest.

34. Mohamed Arof was the chairman for Chin Tha Mar village tract, which contained the villages of Chin Tha Mar, Monu Fara, Pale Taung and Fundu Farang. Mohammed Arof's house is marked as **"9"** on the map.

35. I was asked whether there was any fighting between ARSA or any other group, and the police and military. There was none that I heard of.

36. I did hear that some people were being arrested in Maung Gyi Taung (Shab Bazar). The military would just refer to them as "bad people". I did not hear the name "ARSA" until I arrived in Bangladesh.

37. At dawn I could see Rohingya people arriving in Monu Fara from Fundu Farang, including women, children and men.

38. Between 08:00hrs and 09:00hrs, I was in my village when I saw about 10-12 military personnel drive past in a truck. They came from the direction of military base 564. I later learned that the personnel from military base 564 had replaced the BGB personnel at their outpost. The BGB personnel went to Taung Bazar.

39. Shomim, son of Soyod Alam, and Soyod's brother (I cannot recall his name), told me that Soyod Alam had been shot while they fled towards our village from their home in Fundu Farang. They said that the BGB fired indiscriminately towards them and hit Soyod Alam. His body was recovered by some of the men using a blanket to carry him.

40. Shomim was between 12-15 years old and [redacted]. Shomim was the eldest of his siblings. I do not know the names of Shomin's other siblings.

41. In my previous, signed, account (BIN **IIMM0001557498)**, it was pointed out that "BGP" was referred to. I only knew them as "BGB" and this is what I had written on the map when I prepared it. I do not know what the acronym means.

42. Regarding the shooting of Soyod Alam. In my previous signed account (BIN **IIMM0001557498,** there is a line, in paragraph 5, that states "I helped him but he died". This is incorrect. Others saw him where he fell, and I was only informed of the killing later.

43. I saw Soyod Alam before he was buried. I recognised him as I knew him very well. Soyod had a bullet wound through his chest and his back. I have seen bullet wounds on villagers who survived, and this is how I know what a bullet wound looks like. Soyod Alam was buried in Monu Fara cemetery (marked **"2"** on map).

44. I heard the next gunshots between about 20:30hrs and 22:00hrs that evening. The sound was coming from the direction of the BGB camp. I was near Monu Fara school when I heard the gunshots. My family and I, and other villagers, moved out of the village as we feared it would be burned.

45. I later learned that two or three people died that night. One of them was called Sanaullah, he was about 13 years old. His father, Toyob lives in [redacted] Sanaullah was [redacted] I saw Sanaullah before he was buried.

46. The other people killed were from Noya Fara, Mee Chaung Zay village tract. I do not know their names.

27 August 2017

47. We stayed on the outskirts of Monu Fara until the morning of 27 August 2017. I would estimate there were 100-200 villagers hiding there. It was just a few minutes' walk to Monu Fara. The place we hid was in a valley with a dense area of trees.

48. I entered the wards of Monu Fara but did not return to my own house. Some of us returned just to get some food. I remained, with others, close to the mosque (marked **"10"** on the map). I did not return to my house because my family were with me, and we wanted to stay safe.

49. At around 11:30hrs, I was at the cinema (video hall), in ward 4 (marked **"11"** on the map), when I saw the military arrive in Monu Fara on a small path (marked **"3"** on the map). I noticed that two of them were wearing helmets – Tha Hla and Kain San Shey. I will provide more information about them later in this statement.

50. It was pointed out that my previous account (BIN **IIMM0001557498)** stated that "BGP" (BGB) arrived. This is not correct, it was military. When I was spoken to by the people recording my previous signed account, the interviewers were doing things very quickly and not as thoroughly as it is being done now. They did not ask follow-up questions to my answers. They did read a document back to me, but there was no time for me to provide any clarifications. My thoughts are clearer now.

51. I left the video hall and quietly made my way to a raised area in ward 5 (marked as **"12"** on the map), close to where I lived. I used houses and other structures to hide behind as I moved. I was afraid I could be shot.

52. From the raised area, I watched the military moving through the village.

53. It was pointed out that in paragraph 8 of my previous signed account (BIN **IIMM0001557498)** it states I was positioned in Mohammed Talik's house. I can only think that this is a reference to Maulana Abdul Khalek's house. However, I was not in his house during the events I witnessed. I did not indicate his house on the map I provided to the interviewers when my previous account was taken. There was no reason to draw his home on the map. Maulana Abdul Khalek's house was adjacent to Shuna Ali's house. If I had hid in Maulana Abdul Khalek's house, I would have placed myself in danger.

54. Master Solim and Zahid Hussein both lived at the bottom of some raised ground in ward 6, [redacted]

55. I could see Master Solim's house from the raised area I was in. The military arrived and I heard them shout something, but I did not hear what they said. Master Solim came out of his home, and I saw them escort him to the house of Zahid Hussein (marked as "**13**" on the map).

56. A military person called Ba Kyaw shouted, "Zahid Hussein" and Zahid came out of his home. Zahid was a businessman and often travelled to military base 564. Military personnel from the base often visited his house.

57. I could see Ba Kyaw and Zahid facing each other and it looked like they were having a conversation. I could not hear what they were saying but they appeared to speak for a few minutes. I then saw Ba Kyaw remove a dagger from his waistband, with his fist clenched around the handle, the shape of the fist indicating his thumb was at the base of the dagger with the blade pointed down. I saw Ba Kyaw raise the dagger above his shoulder and stab Zahid in the stomach once, in a downward motion. He dragged the dagger down and pulled it out a single time and I saw the contents of Zahid's stomach fall out. Zahid then fell to the floor.

58. The dagger was about half the length of my forearm. I cannot say which colour it was.

59. The *Bo Muu,* San Zaw Oo, was about two bamboo lengths away from Ba Kyaw when he stabbed Zahid. San Zaw Oo was sitting on a red plastic chair in Jahangir's yard, and facing the two men. There were no obstructions or people between him, Ba Kyaw and Zahid when the killing happened. I did not see any reaction of the *Bo Muu* when Zahid was killed.

60. San Zaw Oo had a pistol on his belt and was holding a wireless. A wireless is a handheld device that the military speak into to convey a message. It is black and shaped like a mobile phone, but bigger. It has a keypad, and two dials on the top, one of them to increase and decrease volume, and it has an antenna.

61. The wireless was very loud, and I could see that the *Bo Muu* San Zaw Oo was holding it close to his ear. I did not see any other military carrying or using a wireless at that time.

62. Jahangir's yard was adjacent to Zahid Hussein's yard and there was no fencing separating the two properties. I do not know any other names for Jahangir.

63. I was approximately 30 bamboo lengths away when I saw Zahid Hussein being stabbed. A bamboo is equal to ten lengths of my forearm. It was daylight at the time and the visibility was good, with nothing obstructing my view. I was with [redacted], and another person but I cannot recall his name.

64. [redacted] currently lives in [redacted], lives in [redacted], and [redacted] lives in [redacted]

65. It was pointed out that in my previous signed account (BIN **IIMM0001557498)**, there is no mention of the killing of Zahid. I saw this incident with my own eyes. I think it was not in my mind when I spoke to the previous interviewers.

66. I saw Zahid's son, Shomshu, come out of Zahid's house. I saw a military person strike him with an object, but I could not see clearly who the person was, as other military were standing around him and blocked my view. Shomshu was about 18-19 years old and was a grade 10 student.

67. Zahid Hussein had a very large home and there were two families living there – the families of Zahid Hussein and Bodurul Doza, son of Abdul Salam. I had marked their home on the

map when I prepared it, using "BH" to signify Bodurul and Hussein. There were also others taking refuge at the house from the previous shootings. I have been to Zahid's house many times. It was a two-storey structure made from mud. It had eight rooms on the ground floor and eight on the floor above. There were two wide verandas on each floor.

68. I saw about 10-15 women taken from Zahid Hussein's house to Zahid's courtyard. The women were then made to sit on the ground and the military snatched their head scarves from them. Their ages ranged from about 13 to around 60.

69. I watched as one woman was led away to Shuna Ali's house (marked **"14"** on the map), a neighbouring property. I was occasionally hiding behind trees, and I did not see the face of the woman clearly.

70. I watched as more women were called to Shuna Ali's house every few minutes. They were escorted by one military person who would then return to the yard where the remaining women were. Sometimes I saw more than one woman being led away at a time.

71. I recognised one of the women as [redacted]. Some of the women were from other villages and I did not know them.

72. [redacted] live at [redacted]

73. One of the women looked like [redacted], but I am not completely sure if it was her.

74. Whilst this was happening, I could see the *Bo Muu*, San Zaw Oo, still sitting in the Jahangir's yard, watching the women taken away.

75. Eventually all the women in the yard were taken into Shuna Ali's house. I did not see any of the women return. I then saw men being called out of Zahid Hussein's house. The military did not enter Zahid Hussein's house.

76. It was pointed out that in my previous signed account (BIN **IIMM0001557498)** it stated that women were screaming from Shuna Ali's house. This is incorrect. When Zahid was killed, women were screaming from inside Zahid's house

77. I saw seventeen men leave Zahid Hussein's house. I counted each man as he came out of the house. This is how I know there were seventeen. I only know some of their names, which are the following:

- Mohammed Hason, son of Habiullah. He was about 46-47 years old.
- Mohammed Jaber, son of Mohammed Hashim. He was about 52 years old.
- Haroun (I do not know the rest of his name), son of Habiullah. He was about 23-24 years old.
- Zahidullah (I do not know the rest of his name), son of Rashid Ahmed. He was about 16-17 years and a distant relative of mine.
- Mohammed Ayoub, son of Holi Rahman. He was about 50 years old.

- Naser (I do not know the rest of his name), son of Abul Boshor. He was about 26-27 years old.

78. The men came out of Zahid Hussein's house one at a time. The military bound their wrists behind their backs with rope and sometimes used the scarves they had taken from the women. The men were made to sit on the floor with their heads bowed and foreheads touching the ground. Master Solim was also placed on the ground in the same manner. I never saw him after that day.

79. I heard a single gunshot and saw Naser roll away down a slope. He got to his feet, still with his wrists tied, and ran away. The other bound men remained in the yard.

80. I stated in my previous signed account (BIN **IIMM0001557498)**, that the men were blindfolded. This is correct, but not all of them were blindfolded. The military used the head scarves of the women to blindfold them, but not every man was blindfolded.

81. In my previous signed account (BIN **IIMM0001557498)**, I described how the men were shot and stabbed. I did not see this myself, but I did tell the interviewers this happened, based on what I heard from others.

82. When I heard the single gunshot, I ran. I thought there would be more shooting. It was just before *Dhuhur* prayer and I had my mobile phone, so I knew the time.

83. I cannot better estimate the times of the events I witnessed other than to say they happened between about 11:30 and just before *Dhuhur*, about 13:25hrs.

84. I was asked about the following names, provided in my previous signed account (BIN **IIMM0001557498)**:

    - Mohammad Rashid, son of Islam. I do not remember this person. It has been a few years since I provided this account.
    - Gura Futia, son of Chairman, Mohammed Arof. Gura Futia was a nickname and I do not recall his actual name. He was about 15 years old.
    - Saiful, son of Lal Mohammed. His actual name was Saifullah. He was married and about 23-24 years old.
    - Solim, son of Bodiya. He was married and about 26 years old.

85. It is stated in my previous signed account (BIN **IIMM0001557498)**, paragraphs 4 and 5, that Solim, Saifullah, and Guria were hanged and shot from below. On 27 August 2017, I heard from [redacted] that he had seen them hanging inside the BGB outpost. I did not see this incident myself.

121. We stayed at Noya Fara for about a further two nights. I decided to take my family and leave for Bangladesh. My village had been burned down, and we thought we would be killed.

Leaving Myanmar

122. I left Noya Fara after *Maghreb*, a few days before *Qurban*, with nine family members. Ten other families also travelled with us. These were all members of my extended family. We travelled west to Ba Da Nar Fara, crossing the Mayu river in small, motorised boats. We arrived in Ba Da Nar Fara at around 21:00hrs. The village was packed with people. There was a school under construction, and we took shelter on the ground floor. We stayed until the following day. Ba Da Na Fara was intact when we were there.

123. The next morning, we travelled to Boiddaw Fara, crossing the Mayu river again, arriving after *Maghreb* prayer time but before *Isha*. The journey would normally take about four hours but because we were travelling with women and children the journey took much longer.

124. When we arrived in Boiddaw Fara, there were families from many different villages. I heard from people there that they had been robbed by the military whilst travelling. The village was intact and there were no signs of any attack. We stayed in Boiddaw Fara for three nights and observed *Qurban* there.

125. We left Boiddaw Fara at dawn, two days after *Qurban* and packed meat to take for the journey. My family and I travelled to Fati Yaar Fara, crossing the Mayu river a third time using a rowing boat.

126. We arrived at Fati Yaar Fara just before *Maghreb*. All I could see were people. There were many thousands. Fati Yaar Fara was intact and there were no signs of fighting. The villagers of Fati Yaar Fara had already left the village. I know this because we stayed in empty houses, and we were told they had already gone.

127. We stayed one night in Fati Yaar Fara, and just after dawn we set off, arriving in Tula Toli village tract at about 17:00hrs. Our journey there was difficult. We travelled along a mountainous area with rugged terrain and the roads were very muddy. It was the rainy season, and many people were travelling on the same road. Our children could not walk anymore so we laid a tarpaulin in a field and stayed at a place about 30 minutes' walk from Tula Toli village.

128. We entered Tula Toli village the next day, walking on a road that cars could use. I saw that the village was blackened and burned, for as far as I could see.

129. We travelled south towards Boli Bazar and then took a road leading west, to a bridge at that crossed Purma (Phyuma) Hal. There were military (who wore uniform 33A on the chart) and *Mogh* youths in sleeveless tee shirts, carrying long knives, standing on the bridge. They would not allow us to cross.

130. A military person asked where we had come from and where we were intending to go. I said we were from Taung Bazar and travelling to Bangladesh. I said we were leaving because our

brothers and sisters were killed, and our houses burned. I lied about where I had come from because I heard one of them whisper to the person questioning me. He said, "are there people living close to 564 base?". He spoke in Burmese, but I understood what he said.

131. We were not allowed to cross the bridge and were directed along the bank of the river. We stopped at the riverbank after about 10 minutes. We had no means of crossing the river so a family member we contacted in Yangon, arranged for two boats to be sent to us by Mohaddes Saab. He lived on the west side of the river. Two large boats arrived, and we crossed using the boats and three rafts that were already at the riverside – the men wading through the water and the women and children on the boats.

132. We travelled to Shil Khali and stayed overnight in an empty house. The village was not damaged but there were no people living there when we arrived. We stayed in an empty house that contained about 75 full WFP rice bags.

133. The next morning, we travelled to the shore. There were many boats there. We agreed to pay 10,000 *Kyats* per person to cross the river to Bangladesh.

134. We arrived at Unciprang, Bangladesh. We then paid for local transport and arrived at an area which is now within [redacted]

135. On or around 13 September 2017, we moved to [redacted] where we have remained ever since.

Current situation

136. If I compare my situation now in Bangladesh, to that in 2017, I have more troubles now. I had to leave my home and my country. My children are uneducated and do not have access to necessary education. There is no peace here. I cannot even live in the camp. It is a loss for my life. My children's lives are also a loss. I cannot bear to think about my children's lives not moving forward.

137. My ancestors were born in Myanmar. We were born there, and my children were born there. Because of persecution we were forced out and they destroyed our lives.

Other information

138. Men from military base 552 were mentioned in an account I previously gave. They did not come to my village, but I heard they burned Bo Gyi Chaung (Bori Young) and Mar Zir Fara, Min Gee See village tract.

Videos

139. [redacted], recorded videos of Monu Fara after the military operation. He shared these with me via WhatsApp, but I no longer have them as my phone was damaged. I think [redacted] is back in Myanmar.

Annex 139

IIMM, Witness Statement No. IIMM0028059653, 14 October 2023 (extract)

[CONFIDENTIAL - UNITED NATIONS]

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:			
Other names used:			
Nationality(ies):	Myanmar	Spouse(s)' name(s):	
Gender:	Male	Childrens' name(s) and date(s) of birth/age:	
Mechanism person code:	P1239		



Date of birth/Age:	54, turning 55 (01/01/1969 on ID card)	Place of birth:	Ah Htet Nan Yar Village Tract (Razar Bil U-oror Fara), Rathedaung Township
Ethnicity:	Rohingya	Language(s) spoken:	Burmese; Rohingya
Religion:	Muslim	Language(s) written:	Burmese
Formal educational level:	5th Grade	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Primary school in Razar Bil U-oror Fara, middle school in Zay Di Prang. Attended up to grade 5.	Current occupation and employer:	
Previous address in Myanmar:	Ah Htet Nan Yar Village Tract (Razar Bil U-oror Fara)	Current address:	
Date or approximate date of departure from Myanmar if applicable:	3 days after Qurban, 2017		
Photo ID:	Yes	Type of photo ID:	UNHCR/ Govt. of Bangladesh FDMN card
Authority issuing photo ID:	UNHCR / Govt. of Bangladesh	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:	N/A		

I. Interview Information

Prior screening(s) conducted: No

Place/modality of interview: In-person

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)

09/10/2023
10/10/2023
11/10/2023
12/10/2023
14/10/2023
[redacted]

Language(s) used in interview: Rohingya / English (some terms clarified in Burmese)

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0046	
	M0019	
Interpreter:	M0093	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that the interpreter would interpret everything the interviewers say in English to me into the Rohingya language, and vice versa.
2. I was provided with an explanation of what the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") is, and how it operates. It was explained to me that the IIMM belongs to the United Nations ("UN"). I understand the explanation that the UN is a very big organisation, which is made up of many smaller organisations such as UNHCR and WFP, and these organisations all do different jobs.

3. I was informed that the IIMM's work is different from other UN organisations. I understand that the IIMM is collecting information about very serious crimes committed in Myanmar since 2011 up to the present day. It was explained to me that the IIMM is conducting investigations, to determine what crimes were committed and who is responsible for these crimes. I understand that the IIMM only investigates events that occurred in Myanmar and nothing in the Bangladesh territory.

4. I was asked if I understood what a court was, and I answered that the ICC is a court, which I have heard of. I was provided with further explanation of what a court is and how it works. It was explained to me that the IIMM is not a court, but it collects information and provides it to other courts. I was told that none of the information I provide in my interview would be shared with any other courts or other entities unless I give the IIMM consent to share it, which I understand.

5. The interviewers explained that the IIMM's investigations are confidential, to protect the work that it does and the people it interacts with. The interviewers requested that I also keep my interactions with the IIMM confidential.

6. I was informed that my cooperation with the IIMM is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions, and that I am free to go at any time. I confirm that nobody put any pressure on me to attend this interview, I am here of my own will.

7. I was provided with an explanation of what it means to be a "witness". I understand that if I consent to share my account, it may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.

8. I was told that the IIMM wanted to speak to me about the events in and around my village in Myanmar, prior to me coming to Bangladesh.

9. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or if I do not know, or recall, what they are asking about. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from others. The interviewers told me that if I do not want to talk about something, I should say so. I was told that I might be asked questions that might seem obvious, but the interviewers are asking me so that I can explain in my own words.

10. I was told that the interview process could take several days and at times it could be difficult. I was informed that I might be shown documents, photos, videos or maps during the interview.

11. The interviewers told me that they would write down what I said during the interview as accurately as possible and that they would prepare a written statement. I understand that, before signing the statement, this statement will be interpreted to me in the Rohingya

language, and I will have the chance to clarify and correct this statement to ensure that it accurately reflects my recollection of events.

12. I was told that at the end of the interview, I will be asked if I want to share the information that I gave to the IIMM with other courts. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent, which I understand.

13. The interviewers asked if I fully understood these issues and asked if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and that I was willing to proceed.

IV. Documentary or Other Evidence in the Possession of Witness

14. I was able to bring some documents with me when I came to Bangladesh. I brought these to the interview and explained them to the interviewers. The interviewers took copies of them. They informed me that the IIMM will assign these documents unique Barcode Identification Numbers (BIN) numbers, and they would form part of the materials that go with my witness statement. These documents are as follows:

15. Land documents: I have years and years' worth of land documents, for my entire family. They have my name and my family members' names on them. They are the receipts that show that we paid taxes for our land every year. The interviewers informed me that they would take copies of the most recent receipts (2015-2016), as well as the oldest ones, from (1998-1999), which show that my family has been paying tax for these lands for such a long time. The documents relating to land are as follows:

    a. **IIMM0028040822**: Compilation of latest receipts for tax payment of my family's land.
    b. **IIMM0028040823**: Compilation of the oldest receipts for tax payment of my family's land.
    c. **IIMM0028040824**: The receipt for the year 2015-2016 for the tax I paid for the land [redacted] This tax receipt shows the name of the previous owner of this piece of land. We bought this land from this owner during the British government's time. There is a receipt for tax every year, for each piece of land. The tax rate is dependent on the previous rate determined by the British.
    d. **IIMM0028040825**: List of names written by me in Burmese, which I had recorded in a separate notebook at the time of the events.

16. I no longer have the mobile phone that I used to speak with people during the events that I describe in my statement.

and Shun Prang (phonetic), Sin Khone Taing village tract, Rathedaung, resettled in *Na Ta La* villages near Maungdaw.

56. I saw So Farang burning – it was after midnight. The villagers left their houses and took shelter in the mountain for the night. In the morning, they came to our village. In the morning, I went with the Zay Di Prang Border Guard Force (*Nay Khra Zound*) leader to see what happened the night before in So Farang. When we went there, we saw young villagers coming down to their village from the mountains. By the time I went there with the leader from the Border Guard Force (*Nay Khra Zound*), the *Ma Ya Ka* boss, meaning the person in charge of the district administration, also came from Rathedaung by boat.

57. From that time in 2012, Muslims were no longer allowed to go to Rathedaung town.

Monk Visits

58. I heard that in Akyab or Kyauktaw, there was a very special monk who convinced people that the Rohingya are not natives of Myanmar. That monk told people, "Don't mix with the Bengali or Kalar people, they are not from this land, they came from outside". His name was something like "Withura". Later, he was arrested by the Burmese government and put in prison; I saw videos of him getting beaten and tortured by the government. After the Tounggup killings, this monk went to Rathedaung town. There was a big crowd of *Moghs* listening to him. He also went to visit all different towns under Akyab district where he spoke to all the people. I do not recall now if he came to the Rathedaung area in around the time of the big violence in 2017; at that time, we could not move freely so I did not see it. I heard that he came some time in 2016.

Rakhine militia

59. After the events in 2012, we learned that the authorities were providing training and weapons to the *Moghs*, so that they would be prepared for any more violence. I never saw this training take place myself, but as we had good relations with some Rakhine people, it is something that they told us about. There was also an incident where a Rohingya villager named Rofique [redacted], had gone to the fields, and had come across these *Moghs* training, and was beaten by a 3-stripe police officer who was in charge of the training. Rofique has subsequently [redacted] I didn't see any *Moghs* wearing uniforms or in organised groups like this around the time of the 2017 violence.

9 October Attacks

60. A few years after the Tounggup killings, sometime between 2012 and 2017, there was an attack on security headquarters (*Htar Nar Shoak*) that happened on 9 October.

61. After the *Htar Nar Shoak* attack, the military started coming to our villages, saying that the "bad people" who were involved in the attacks on the government security bases were hiding in our villages. The military asked us to remove our fences and would search the houses for

bad people. The government officials said that when the 9 October attack happened, the bad people were hiding behind people's fences and in people's toilets, and that was why we had to take away the fences. The government then appointed some *Mogh* villagers to guard the *Mogh* villages, and Muslim villagers to guard Muslim villages.

Bad People/Al Yakin

62. The attacks on security headquarters (*Htar Nar Shoak*) were done by a militant group that was against the government. Those bad people were called Al Yakin, or ARSA, it's the same group. Similarly, there were other groups that were against the government, like the Pyi Thu Sit, Rakhine party or AA party – they are all insurgents.

63. The 9 October attacks on security outposts did not happen near Razar Bil U-oror Fara. I didn't see any of those attacks or know about them, and I was not aware of any such people sheltering in our village. Government officials who later came to our village talked about the *Htar Nar Shoak* attacks, saying "it doesn't matter whether it's *Mogh* or Muslim, no one can take this country or split the country. All of us are responsible for protecting this land".

Curfews

64. There had been many curfews, or "martial law" imposed in our area. They would usually be imposed for an initial period of 40 days. For instance, curfews were imposed after the events of 2012.

65. In 2017, there was an incident where a military man lost his leg after stepping on a landmine, and the authorities accused the "bad people" of setting the mine. A curfew was imposed after that. More military came to the area and a military outpost was built on my land, which I explain below. This curfew applied to both *Mogh* and Rohingya. We could only go out from 08:00 am to 06:00 pm. The explanation from the authorities was that bad people were hiding somewhere in the mountains, and they suspected the Rohingya villagers of providing them with supplies, so we were not allowed to go out at night. The authorities said that if the bad people were deprived of food, they would be eventually caught.

66. By the time Than Htay went missing, which I explain below, the curfew was already in place. After the disappearance of Than Htay, things only got worse, and as the tensions rose, more restrictions were put in place.

2017 – Military outpost [redacted]

67. After fights broke out in different places, and the incident of the military man losing his leg, the local authorities were fearful of riots between the Rakhine and Muslims, so the military were deployed around the area. About three months before the big attack on my village, around forty to forty-five military personnel came to our area and started staying in locations like schools and the madrassa. Eventually, the commander of that military group came [redacted]

- 00:25: This mountain chain goes all the way to Navy Seik. There are some trees there, and the one furthest to the left looks like a particular banyan tree that can be found on the busy road that goes towards the south.
- 01:58: Behind the pond shown in the video there is a building that looks like the school is on the edge of one of the *Mogh* villages in Shuap Praung, which is on the north of Shuap Praung, towards the mountains.

193. There is nothing else I want to comment upon in that video; I am not really sure where it is. The pond depicted could be the pond in my village tract of Razar Bil U-oror Fara, but I cannot be sure. Also, there were several banyan trees in the graveyard that I am thinking of in Shuap Praung, but they are not shown here; perhaps they had been cut since I last saw them. But otherwise, the vegetation has grown so it is not quite as I remember it. I cannot be sure of this location.

194. As I mentioned in my interview, I buried people on two occasions. On both of those locations, I buried them within my own village of Razar Bil U-oror Fara, in our graveyard. Our graveyard is a very big one, it is on 14 *khanis* of land. I know it well [redacted]. I do not recognise either of the graveyards shown in the two videos as being the graveyard where I buried the bodies during the violence.

Record of my interview [redacted]

195. The interviewers informed me that they wanted to clarify some aspects of my account, noting there were some differences in the information I provided in this interview and the record of my meeting in [redacted] **(IIMM0000026531)**. I explained that the first time I tried to go to that meeting, there was a bad bus accident and 21 people died. When I did have the meeting, it only went for about an hour, and we did not go through things slowly and in detail like we are doing in this interview. Also, I was not really listing things chronologically like we have done in this interview, I was just describing the things I wanted to say.

    a. In my IIMM interview I told the interviewers when the *Mogh* villagers attacked the settlement of people from So Farang, the Rohingya didn't have anything to defend themselves. I was informed [redacted] says that the Rohingya had iron rods. Hearing that, yes, that is correct, there were only a few people who could find something like that to protect themselves.

    b. In my IIMM interview I told the interviewers that about [redacted] Rohingya were able to go inside the meeting at the school, but [redacted] says about 24 people. 24 people cannot be correct; there were maybe three representatives for each of the 14 village tracts so that would be many more than 24.

    c. In my IIMM interview, I told the interviewers – after finding the note I had at home – that the name of the big commander of the school was Aung Aung. I was informed that [redacted] uses the name Aung Mying Zaw. That is wrong,

they must have misheard, or it must have been written wrong in the notes. I don't know anyone by the name of Aung Mying Zaw except one Muslim man from Buthidaung. I know some people with similar names, but they are not the big commander.

d. In my IIMM interview I told the interviewers that 70-85 people were arrested from the temporary settlement. I was informed that [redacted] says we made a count and it was 93, including two from Ah Htet Nan Yar. Hearing this, I do recall the names of two people from our village tract who were arrested; One was the son of [redacted] who came to Bangladesh after [redacted] of imprisonment, and is subsequently in [redacted] Another one was called [redacted]

e. In my IIMM interview I told the interviewers that on the day that my village was surrounded, I buried two bodies, and helped a third injured person get treatment, and no one else died that day. I was informed that [redacted] says I buried three people and seven others were killed that day. This is incorrect, I definitely only buried two, but when I first got to Bangladesh, I had assumed that the injured person [redacted] died – I only later learned that he lived. So, I could have told them that three people died. But the part about seven other people dying that day is incorrect.

f. In my IIMM interview I told the interviewers that some prominent *Mogh* leaders such as businessmen and village administrators were there on the day of the arrests in my village. I was informed that [redacted] reads as if those people were there when my village was set on fire. I did not see them there when the village was set on fire, nor did I see the chairman of Shuap Praung, Aung Thein Mya. I cannot say I saw those people were there when the burning happened; I do not want to say people are responsible for something I did not see.

g. In my IIMM interview I told the interviewers that I buried 19 bodies from Shuap Praung. I was informed that [redacted] mentions 16 bodies. I am sure it was 19, but maybe they got the number 16 because the mother and her three children were buried together in one grave, so there were only 16 separate graves.

Final comment

196. The impact this had on my life and that of my people is that we became a floating group of people who don't have anything; no land, no belongings, no property. Our children have no access to healthcare or education. We are refugees, stateless.

Annex 140

IIMM, Witness Statement No. IIMM0028050361, 15 October 2023 (extract)

[CONFIDENTIAL - UNITED NATIONS]

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:			
Nationality(ies):	Myanmar (Stateless)	Childrens' name(s) and date(s) of birth/age:	[redacted]
Gender:	Male		
Mechanism person code:	P2295		
Date of birth/Age:	01-Jan-1962/61 (as on ID Card)	Place of birth:	All children and wife are currently in the camps in [redacted] Village: Razar-Bil U-oror Fara (R) / Ah Thet Nan Yar (B); Village Tract:

			Razar-Bil U-oror Fara (R) / Ah Thet Nan Yar village tract (B), Township: Rathedaung
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya, Burmese, Rakhine
Religion:	Islam		
		Language(s) written:	None
Formal educational level:	Class 4	Prior occupation and employer in Myanmar:	[redacted]
School attended:	I don't recall the name of the school.	Current occupation and employer:	None
Previous address in Myanmar:	Village: Razar-Bil U-oror Fara (R) / Ah Thet Nan Yar (B); Village Tract: Razar-Bil U-oror Fara (R) / Ah Thet Nan Yar village tract (B) Township: Rathedaung	Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:	End October 2017		
Photo ID:	Yes	Type of photo ID:	UNHCR/GOB FDMN card
Authority issuing photo ID:	UNHCR / GOB	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:			

II. Interview Information

Prior screening(s) conducted: **Yes**

Place/modality of interview: In person

Location of interviewer: [redacted]

Location of witness: [redacted]

Location of interpreter: [redacted]

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)

09/10/2023
10/10/2023
11/10/2023
12/10/2023
14/10/2023
15/10/2023
[redacted]

Language(s) used in interview: Rohingya/English.

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0014	
	M0007	
Interpreter:	M0120	

Witness support person: N/A

Other persons present: N/A

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and explained that the interpreter would interpret everything the interviewers say in English to me into the Rohingya language, and vice versa.
2. I was provided with an explanation of the mandate of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of the interview. It

was explained to me that the IIMM belongs to the United Nations ("UN"). I understand the explanation that the UN comprises many organisations such as UNHCR and WFP, which all do different jobs. I understand that the team speaking with me is collecting information about crimes committed in Myanmar since 2011, and that the mandate of the Mechanism only covers events that occurred in Myanmar.

3. It was explained to me that the Mechanism collect many types of information, including by speaking to people like me, a witness. I was told that the Mechanism also collects photographs, documents, social media posts or videos which the Mechanism considers as "evidence". I was informed by the interviewers that the Mechanism combines and analyses this information to find out whether crimes happened, and who was responsible.

4. I was asked if I understood what a court was and I answered yes, I knew about the process like when a Judge finds out who is responsible for a wrongdoing based on evidence and available information. I was provided with an explanation of what a court or tribunal is, how criminal proceedings work, and what it means to be a "witness".

5. I was informed about the different national or international courts that are looking into serious crimes committed in Myanmar and told that others might do so in the future. I understand that the IIMM can support these proceedings by providing relevant evidence. I told the interviewers that I know what a court is, and that I had heard of the ICC and the ICJ.

6. It was explained to me that the Mechanism is not a court, but it collects information and provides it to other courts. I was told that none of the information I provide in my interview would be shared with any other courts or entities unless I give the IIMM consent to share it, which I understand.

7. I understand that if I consent to share my story, it may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in those cases. I was informed that my cooperation with the IIMM is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that nobody put any pressure on me to attend this interview, I am here of my own will.

8. The interviewers explained that the IIMM's investigations are confidential, to protect the work that it does and the people it interacts with. The interviewers requested that I keep my interactions with the IIMM confidential.

9. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" or "I don't remember" if I do not know or remember the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from

others. I was informed that I might be shown documents, photos, videos or maps during the interview.

10. I was told that the interview process could take several days and at times it could be difficult. I was informed that I might be shown documents, photos, videos, or maps during the interview. The interviewers told me that they would write down what I said during the interview as completely and accurately as possible, and that they would prepare a written statement. I understand that, before signing the statement, this statement will be interpreted to me in the Rohingya language, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.

11. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent.

12. The interviewers asked if I fully understood these issues and asked if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and that I was willing to proceed.

IV. Documentary or Other Evidence in the Possession of Witness

Type and description of evidence:

13. I gave some documents to the interviewers to make a copy of and return to me. These documents are documents I have had in my possession since I was living in Myanmar. The original documents have now been returned to me. I understand that these documents have been given the unique identification numbers by the IIMM. The documents and their IIMM identification numbers are as follows:

    a. Records of my family list with the unique identification number **IIMM0028042024.**

    b. Records of the land/property I owned and other documents before I was forced out of the country. These have been given the unique identification number **IIMM0028042023.**

    I had [redacted] of land. The first page of the documents shows the location and details of [redacted] of land measuring [redacted] Khanis respectively. The second page shows the location and details of [redacted] khanis of land and the third page shows the location and details of [redacted] khanis of land. I was told by [redacted] – a Rakhine man from Kiyan Taung – who carried away tasks assigned from the government *Ma Ya Ka* office that all my lands are now being used by [redacted] – a Rakhine man from Kiyan Taung Mogh village.

Fara. Whoever they found they used to take their signatures to identify the people of So Farang. The villagers used to hide when they came as they did not want to go to camp. The males from So Farang used to hide in nearby villages and the hills. If they didn't find anyone, they used to call villagers of my village for meetings at Kiyan Taung outpost. In three meetings with the *Ma Ya Ka* told us you should "drive the people" from So Farang away from your village as they do not belong there.

Monk Visit to Kiyan Taung (Zay Di Pyin)

59. At one time I heard that a monk (Mogh's Thor) visited Zay Di Pyin. I heard that from Muslim villagers in Zay Di Pyin that a monk visited that area and told Muslims to leave. I only learned this after the Zay Di Pyin villagers came to Bangladesh and told me about it. I do not know that much about this as I was not there, and I don't remember when it happened.

Events Around Time of October 2016 Attack

60. After the October 2016 attack, known as "*Htar Nar Shoak attack",* the military started coming to our area frequently. These were in small groups about 10, 20 or 40. One day, around 10am, a group of about 40 military came to my village. This was about 10-20 days after the October 2016 attack. The soldiers came from military bases 56, 57 and 58. I know this because the head of each these groups known as the *Bo Gyi* who introduced themselves as from these number bases. Each one of them had three flowers on their uniform, on the shoulder. That was the first time they came to my village. When they came, we hosted them in the school and gave them tea and snacks.

61. The military soldiers who came also took two goats. They did not pay for them. The three *Bo Gyi* asked us if we have removed fences around our houses. We told them we had not. We lied and said we did not know that there was such an order to remove fences, although we had learned about this order from the villagers from nearby villages. The three *Bo Gyi* ordered us to remove fences around each house within one hour. I went to remove my own and [redacted] The *Bo Gyi* high officials ordered [redacted] to remove the fences. They did not mention why. I did not know their names.

62. This removal of fences initially started in Maungdaw following the October 2016 attack (*Htar Nar Shoak* attack). In our case they did not tell us why we had to remove the fences, but we understood it was for military to see clearly, so that enemies could not make a sneak attack.

63. Shortly after, the military group divided into several small groups and started to check that the fences were being removed. Some had not yet finished, and these villagers were given

75. When I say 'RSO' group I mean the group who was from Bangladesh, and they had weapons. Once I heard that they were called "IS". I heard an official from *Nay Khra Zound* telling military people they were called 'IS' from Pakistan. I overheard this when the 26 people were arrested from my village which I will describe later. 'RSO' is still in the camps and also Al Yakin.

76. After October 2016 attack *(Htar Nar Shoak)*, I heard that a group called 'Al Yakin' was formed and they were killing educated and/or respectable Rohingya people like me in Maungdaw areas but there was no Al Yakin group in our area or in Rathedaung area. I am afraid of these groups still as they are in the camps but have not seen them. I am afraid to talk about them at this time.

The August 2017 Meeting

77. Then a day or so after the militaries came in the village, [redacted] a three-stripe officer from the Border Guard Police (*Nay Khra Zound)* outpost in Shuap Praung (Chut Pyin) village next to Saak Fara. The *Nay Khra Zound* officer informed me that a meeting was called by the *Byu Har Muu* which as I told you I understand to mean a high military official. The *Byu Har Muu* was staying in Saak Fara and was new to the area.

78. The meeting was to be held at the school in Shuap Praung (Chut Pyin). It was 10-15 days before the Qurban festival in 2017. The *Nay Khra Zound* officer also asked us to bring one big chicken from each village. The meeting was attended by only Muslim [redacted] from eight villages [redacted] The villages were as follows:

    a. Razar Bil U-orer Fara
    b. Firing Daung
    c. Ni Lam Baw Kha Rha
    d. Bay Lar Mi
    e. Razar Bil Lamar Fara
    f. So Farang
    g. Shuap Praung
    h. Say Raw Kha Rha

79. From my Fara, [redacted] attended the meeting. [redacted]

80. The next morning, we were in the school by 8am and the meeting started around 9am. The meeting continued for about two hours. Before meeting we had to sign a register logbook. There were *Nay Khra Zound* and military personnel outside the school.

Annex 141

IIMM, Witness Statement No. IIMM0028048879, 28 October 2023 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	I had five children but two were killed in Myanmar.
Nationality(ies):	Burmese		
Gender:	Female		[redacted] died at age 12 years old (Class 7) [redacted] died at age 9 years old (Class 4)
Mechanism person code:	P2892		
Date of birth/Age:	Exact date unknown as papers with such dates left behind. People have told me I am 42 years old.	Place of birth:	Monu Fara, Chin Tha Mar, Buthidaung, Myanmar
Ethnicity:	Rohingya/Muslim	Language(s) spoken:	Rohingya; a little bit of Urdu studied at Madrassa.
Religion:	Islam		
		Language(s) written:	Reads and writes Urdu

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Formal educational level:	Madrassa study until age 12 years old. 3 years of regular studies until Class 2; (age 8 or 9 years old)	Prior occupation and employer in Myanmar:	Housewife
		Current occupation and employer:	None. I am a housewife and devout Muslim.
School attended:	Fundu Parang School	Current address:	[redacted]
Previous address in Myanmar:	Monu Fara (Maung Nu Ywar), Ward (*Ra Kua*)[redacted]		
Date or approximate date of departure from Myanmar:	Cannot recall exact date. It was in 2017. I left my home in Monu Fara 8 days before Qurban and travelled for 17 days before arriving in Bangladesh.		
Photo ID:	UNHCR	Type of photo ID:	Smart card
Authority issuing photo ID:	UNHCR	Issuance date on photo ID: Registration number on photo ID:	[redacted]
Name on photo ID:	[redacted]		
Any other form of photo ID:	None		

CONFIDENTIAL

II. Interview Information

Prior screening(s) conducted: **No**

Place/modality of interview: **In person**

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)
23/10/2023
24/10/2023
26/10/2023
28/10/2023
[redacted]

Language(s) used in interview: **English, Rohingya**

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer:	M0065	
Interpreter:	M0090 (23-26 October 2023) M0091 (28 October 2023)	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewer and to the interpreter and it was explained that the interpreter would interpret everything the interviewer says in English into the Rohingya language, and vice versa.
2. I was provided with an explanation of what the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") is, and how it operates. It was explained to me that the IIMM belongs to the United Nations ("UN"). I understand the explanation that the UN is a very big organization, which is made up of many smaller organizations such as UNHCR and WFP, and that these organizations all do different jobs.

3. I was informed that the IIMM's work is different from other UN organizations. I understand that the IIMM is collecting information about very serious international crimes committed in Myanmar since 2011 up to the present day. It was explained to me that the IIMM is conducting investigations to determine what crimes were committed and who is responsible for these crimes. I understand that the IIMM only investigates events that occurred in Myanmar and nothing in the Bangladesh territory.

4. I was also provided with an explanation of what a court is and how it works. It was explained to me that the IIMM is not a court, but that it collects information and provides it to other courts and prosecutors. I was told that none of the information I provide in my interview would be shared with any other courts or entities unless I give the IIMM consent to share it, which I understand.

5. The interviewer explained that the IIMM's investigations are confidential, in order to protect the work that it does and the people it interacts with. The interviewer requested that I also keep my interactions with the IIMM confidential, which I agreed to do.

6. I was provided with an explanation of what it means to give a statement and potentially act as a "witness" in a future proceeding. I understand that if I consent to share my account, it may be shared with national or international courts or prosecutors investigating crimes committed in Myanmar, and that I may become a witness in these cases.

7. I was told that the IIMM wanted to speak to me about the events in and around my village in Myanmar, prior to me coming to Bangladesh.

8. The interviewer explained how the interview process would work. She asked me to try and be as detailed and accurate as possible, and to indicate if I did not understand a question, or if I did not know or could not recall what she was asking about. She explained the importance that I tell the whole and complete truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from others. The interviewer told me that if I do not want to talk about something, I should say so. I was told that I may be asked questions that seem obvious or broad, but that such questions are asked so that I can explain things in my own words without influence or suggestion from the interviewer.

9. I was told that the interview process could take several days and at times it could be difficult. I was informed that I might be shown documents, photos, or videos during the interview.

10. The interviewer told me that she would write down what I said during the interview as accurately as possible and that she would prepare a written statement. I understand that, before signing the statement, this statement will be interpreted to me in the Rohingya language, and I will have the chance to clarify and correct this statement to ensure that it accurately reflects my recollection of events.

11. I was told that at the end of the interview, I would be asked if I want to share the information with jurisdictions that have sharing arrangements with the IIMM. The

interviewer explained that this statement and any referenced materials would not be shared without my full and informed consent.

12. I was informed that my cooperation with the IIMM is entirely voluntary and that I was not obliged to participate in this interview or answer any specific questions, and that I was free to go at any time. I confirm that I was not promised any benefit in exchange for agreeing to speak with the Mechanism, nor was I threatened or pressured to do so.

13. The interviewer asked if I fully understood these issues and if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and that I was willing to proceed.

IV. Previous Statements

14. For the first two years after my arrival in Bangladesh, many different people came to the camps to talk to us about what we had experienced in Myanmar. Since then, it has been quieter.

15. I do not remember the exact date but there was one occasion during approximately my first year in Bangladesh that [redacted] news reporter named [redacted] came to the camps to speak to me. [redacted] went to mosques, madrassas and spoke with Mahjis in order to identify people who had been victimized back in Myanmar. He came to speak with me at my home in [redacted] He asked me to sit in my kitchen and placed an instrument that may have been a video camera or a microphone between me and him. He sat in the living room and asked me questions. I do not know who [redacted] worked for but I understood at the time that he was speaking to me in order to get justice for my people and to share my story with the "ICC" and let others around the world know what had happened to the Rohingya. I told him that my sons and other people had been killed by the military back in Myanmar. [redacted]

16. On another occasion, perhaps before my interview with [redacted], I spoke with people working for Mohib Ullah, who was a Rohingya leader in our community. I understood that Mohib Ullah took information from us in order to bring this information to other countries and seek justice on our behalf. I believe that this was the reason why he was later killed.

am not sure what religion Ba Kyaw practiced but people told me he was *Chakma* and was a very bad person. I really did not have many interactions with him. Ba Kyaw was able to speak the Rohingya language because he came to our village frequently and learned it. He often used to come to our homes to ask why someone had not reported for work duty at the base and used to ask us to give him things like chickens. If we refused, he would kill the chicken and take it anyway. Whenever I personally saw Ba Kyaw in our village, he was dressed in a uniform with a solid olive green colour similar to number 17 on the colour chart that the interviewer showed me and told me was registered with the unique Bar Code Identification number ("BIN") **IMM0019627965** ("colour chart"). I also noticed a flower or star-like shape on his epaulette which people told me meant he was a boss in the military. I believe this flower or star was a different colour than his uniform but I cannot describe it any more than that. I was not focusing on such things at the time I saw him. If I knew I would later give a statement like this, I would have tried to notice and remember these details.

28. Ba Kyaw was very close friends with a rich businessman in our village named Zahed Hossein. Zahed Hossein often went to the base in Pale Taung to visit with him and Ba Kyaw used to visit Zahed Hossein's house with other people from the military. Zahed Hossein ran businesses related to trees and cows and it made sense that he would maintain good relationships with the military to ensure they did not give him any problems in his work. The village believed that the military and Zahed Hossein had a good relationship and that the military would not do any harm to Zahed Hossein or his home.

29. About one year before this incident, the military ordered the village administrators to tell all villagers to remove the fences in our homes. People kept fences around their houses to maintain the privacy of the women, which is important in our culture. In general, people complied with this order. [redacted]

Pre-Attack Period and Gunfire in Fundu Parang - Friday

30. A few days before the attack on our village, I went to sleep on a Thursday night and awoke in the middle of the night to the sounds of gunshots going back and forth from the direction of Fundu Parang where the small military outpost was located. My family and I were all awake and terrified that the military was going to come into our village. My daughter [redacted] youngest son [redacted] and I all gathered together and sat in one room of our house while my husband and three other sons went outside to keep watch on whether any military was coming to our village.

31. We did not sleep all night. I think we heard gunshots and voices between the hours of midnight and around 3 a.m. People from Fundu Parang began arriving in our village to take shelter. My husband's second or third cousins from Fundu Parang came to stay at our house after they were unable to find another place to stay. There were about eight people and I remember the mother's name was [redacted] her sons were named [redacted]

[redacted] and her daughter was [redacted] We asked them why they were fleeing their village and they told us that the son of village administrator Mohamed Arof, whose name and age I do not know, had been taken away by the military and there was fighting. They only told us that the military started firing but not who they were fighting with. They said the military had fired on the big madrassa in Fundu Parang all night and that villagers were being killed in our area. They also told us that some of their villagers were going to take shelter on the other side of the river in a village called Zar Ti Pyin as well as in a village to the west called Maung Gyi Taung. I do not know if the people who were fighting the military in Fundu Parang ever came to or were from Monu Fara.

32. Once the fighting stopped Friday morning, things were quiet. Nothing more happened until Sunday.

Attack on Village (Monu Fara) - Sunday

33. On Sunday, eight days before Qurban in 2017, around 7:00 or 8:00 a.m. in the morning, I was preparing food for my family and completing household chores in my house in Monu Fara. I heard the sounds of gunshots and went outside the house to see what was happening. The villagers from Fundu Parang were still sheltering in my home and also heard the gunshots. I then saw that the military was coming and people from our village were running towards the forest.

34. From a distance, I saw two military vehicles with an olive green colour similar to number 17 on the colour chart, stop next to a big open space on the main north-south road between Chin Tha Mar and Monu Fara, arriving from the southerly direction of the military base in Pale Taung. The other villagers around me saw this too. I then saw three soldiers with my own eyes descend from one of the vehicles and start firing an object in the direction of terrified villagers that were fleeing towards the hills. It was difficult to see details from such a far distance but I saw that the soldiers removed an object from the vehicle and several soldiers held this object and fired something at the fleeing villagers. I mostly just heard the sounds of firing. I could not see if anyone was hit as I ran back inside my house to collect my children and leave.

35. Inside my house, I quickly collected some money that I estimate was about 5 *lakh* 1,500 *kyat* as well as some gold items which included a gold chain, two pairs of gold earrings belonging to myself and my daughter, respectively, and a gold nose pin. I wrapped the items in a cloth and hid them inside my bra, under my clothes. My husband decided to flee into the forest with my two eldest sons, [redacted] while I decided that I would take my younger three children with me to Zahed Hossein's house. As we knew he had a very good relationship with the military, we believed the military would not go to his house and we would be safe there. It seems that many other villagers believed the same thing as they too fled to Zahed Hossein's house. I do not know what the family sheltering with us from Fundu Parang decided to do or where they went.

her arms and quickly went to grab and comfort her child who was crying but not visibly injured. My sons were holding on to me tightly, screaming and kissing me on the cheeks. The soldiers then snatched them away, taking the scarf off of my head and using it to bind the hands of my son [redacted] behind his back. I did not see if they also bound my son [redacted]'s hands. I last saw my two sons when they were made to lie face-down on the ground in a row with the other men. The soldiers led us women away towards another house and I never saw my two sons again.

51. As I was being led away past the rows of men and boys, I saw villagers that I recognized. I saw Zahed Hossein's uncle *Maulana* Abdul Khalek, Ayoub and Shuna Ali being led with their hands bound behind their backs and made to lie face-down on the ground in a row in the front yard. Since I was walking away from where the men were lying on the ground, it was difficult to see exactly who all of the men were. I recognized these three men, in particular, because they were made to lie down on the side of the rows closest to where I was walking.

52. After a short two-minute walk to another house across the property which belonged to Mujamal, the soldiers stopped and searched me and the women at a spot where the house's fence once was before the military had come in and taken away all fences a year earlier. There were four or five soldiers searching the large group of women which would eventually fill Mujamal's house. When a soldier came to search me, he put his hands on my whole body to see if I was hiding anything anywhere. The soldier touched me on top of my underclothes and did not touch any skin. He touched me inappropriately on top of my private parts on my upper and lower body. In doing so, the soldier found the hard gold items in my bra and pressed on them. I then opened up my clothes and took the items from within my bra and handed it all over to the soldier, including the gold chain, two pairs of gold earrings and gold nose pin. I wanted to stop him from touching me more. I also had to hand over the 1 *lakh* 1500 *kyat* of cash that I carried in a bundle together in my bra. At one point, a soldier hit me in the back with the slender front-part of his long gun, causing me to fall onto the ground. I was in pain and the other women around me, including my sister [redacted] helped pick me up and supported me to walk into Mujamal's house.

53. Mujamal was not at his home on the day that this happened, only his wife and children, who survived. I have been told that Mujamal was living in [redacted] at the time and did not return to Monu Fara after this incident. [redacted]

54. I do not know exactly how the other women in my group were touched on their bodies but everyone was searched inappropriately by these soldiers who touched their private parts searching for valuables. The soldiers had a large bag that they filled with all of our belongings. Many women had taken valuables with them when they left their houses. I saw that the soldiers were putting items into the large bag but did not notice what exactly these things were as I was still in pain after being hit with the soldier's gun. I felt very unwell.

able to see smoke and flames coming from the other side of Hang Sar Fara. We realized it would not be safe to go back to our home and we would need to flee to Bangladesh. I felt that I could no longer stay in Bangladesh because the military was burning our villages and killing people. I feared that if my family and I stayed in Myanmar, we too would die. [redacted] gave us scarves for our heads and clothes to wear along with snacks before I left with my sister, sister's family and my daughter. [redacted]

71. The day we left Monu Fara, we heard rumours from other villagers that the military had set a bomb on the main road that runs north-south from Taung Bazar to Buthidaung. As a result, the group decided to avoid the main road and instead travel over a long, difficult route through open fields, smaller roads and across many rivers. I followed the group of people.

72. We walked past several villages after leaving [redacted]'s house. Chin Tha Mar village has two parts – one part close to Monu Fara and the other part which is separated by a small river. We continued through the village of Zar Ti Pyin. The villagers there were also starting to flee. Some had already left their houses and joined our walking group. I did not see any fire in Zar Ti Pyin. At that point we were walking on a main road (different from the north-south road between Taung Bazar and Buthidaung) which had open fields on one side and villages on the other. I continued on this road because I did not know how to get to Bangladesh and wanted to stay with the large group. I felt very weak and my sister [redacted] was helping me to walk. I also used a wooden stick to aid with my walking. I was still in pain from being hit in the back with the soldier's gun in front of Mujamal's house. I was feeling very stressed and did not want to continue to walk but my fear of the military told me to continue. I was towards the back of the group of people walking. So many people joined us along this route after Zar Ti Pyin, many emerging from the villages we passed. I do not know the names of any of the villages. I think there were eventually thousands of people walking along this same road together in a group.

73. We eventually reached a small river that we crossed in a small boat made of wood called a *naw* that fit 8-10 people. We paid 500 *kyat* for our family group to cross in the boat and arrived in the village of Daw In Sarah (*Dar Paing Sa Yar*). There were so many people doing the same thing at that time. We continued walking for the entire day and eventually stopped for the evening in Nga Yant Chaung, staying at the home of my husband sister, [redacted] Some of the many villagers in our group that were able, continued walking forward while others like us stayed in the village for the night. Our relatives prepared food for us and we slept. I saw so many people sheltering in Nga Yang Chaung that were from so many different villages – not just Chin Tha Mar and Monu Fara but many other villages too. My relatives in Nga Yant Chaung told me that the security forces had also been in their village in the previous days and there were problems but there was no time to get any more details. At that time, other family members had joined us at [redacted]'s house including my mother-in-law [redacted] (stepmother of my husband), my step sister-in-law [redacted], her husband [redacted], my brother-in-law [redacted] and his wife

[redacted] my other sister-in-law [redacted] whose husband was in Malaysia at the time, and my ill father-in-law [redacted] Many children accompanied them as well.

74. The following day, we rose early in the morning and left Nga Yant Chaung together in our family group of 11 adults and many children. As my father-in-law was not well, his two younger sons aged 15 or 16 years old, had to carry him wrapped in a blanket hung from their shoulders. We continued walking north for about eleven days, passing so many villages, the names of which I did not know. All of the people I saw were Rohingya. I heard that they were abandoning their villages as there were other incidents with the military, though I do not know more details. Along the way, we slept where we could when night arrived each day. We stayed about five nights in different homes in abandoned villages. If we found food inside, we might have a little food to cook and eat. Those that were very hungry might take some rice and water in order to have the strength to keep walking though not everyone was always able to eat. We otherwise found no shops along the way and had no money with us to buy anything. If there were banana trees along the way, people used to take the bananas to eat and squeeze it for juice to drink. At times, we had to cross rivers to continue walking. I remember many times I had water up to my neck and the adults were carrying the children across. Other days, we had no other choice but to sleep in open fields.

75. After leaving Nga Yant Chaung, our group passed through the village of Ta Mi (*Tin May*) and there I was reunited with my husband and two eldest sons. As many people in our group had seen me but were walking much faster, they had told my husband where I was and he had decided to say in Ta Mi to await my arrival.

76. After the village of Ta Mi, I continued walking in a large group along with my family members and we eventually reached a large, forested mountain, the name of which I do not know, that separates Buthidaung and Maungdaw Townships. It took our group two days to climb, cross and descend the mountain. The crossing was difficult so my family group became separated during these two days, as some people were able to move faster than others. It was very hard for the teenage boys who were still carrying my father-in-law [redacted] After spending one night on the mountain, they could not continue any longer and were left with no choice but to leave their father behind on the mountain trail. The cloth in which their father was wrapped had dug into the boys' shoulders, leaving them swollen and bleeding, worsened by the boys' hunger from walking so many days without food. I do not know what happened to [redacted] since we have not seen he was left behind on the mountain. His two teenaged sons went back to the mountain the following day to look for their father but were unable to find him. The family believes that [redacted] may have died during this time. The man was old and weak and the family have not heard from him since this time.

77. It was raining off and on during the two days that we crossed the mountain. The mountain was very slippery, and I saw many of the Rohingya villagers slipping and falling down the mountain. I too fell as I felt so weak. It is indescribable to say how many people were injured and how many people we had to leave behind on that mountain.

78. Once our group arrived in Maungdaw Township to continue walking to the border with Bangladesh, I saw many burning and burnt villages during my journey. I had never been to Maungdaw Township before so I do not know the names of any of the villages I saw. I do not know to whom the burnt and burning houses belonged, whether *Moghs* or Rohingya. I saw *Moghs* along the road next to the burning villages that were carrying items away from the burning homes such as trunks of clothes, chairs, sacks filled with items and domestic animals like cows and goats. People told me that the *Moghs* had burnt down the houses after taking items from them, but I never saw this with my own eyes. All of the Rohingya I saw fleeing with me had left everything behind in their homes. I never saw any Rohingya taking belongings from houses that were on fire. The people I was traveling with told me not to look too much at these *Moghs* as they thought they were dangerous and would harm us if we paid them too much attention. I did not see how the houses were set on fire, I only saw the flames and smoke. I also saw coconut trees that were burnt. In some villages I passed, everything had been burnt to ash. I heard from people who stayed behind in Myanmar that my village was burnt to ash after we fled but I did not see it with my own eyes.

Military Encounters along the route to Bangladesh

79. After leaving my home in Monu Fara, I saw the military forces two times at outposts along the way to Bangladesh. I cannot remember which days we encountered them.

80. The first time we encountered military was at an outpost on a road. There were four or five soldiers up in the hills nearby and two or three soldiers on the road at the outpost. The soldiers in the hills gestured to us that we should keep walking. When we saw the outpost and soldiers, we stopped. The soldiers then gestured for us to move forward and gestured that we should move east in the direction of the border with Bangladesh. There were literate people in our group of fleeing Rohingya who understood the soldiers' language. The educated people told us to continue walking to Bangladesh. The soldiers said things in their own language and our educated people translated what they were saying for us. The educated people told us we should keep walking forward slowly and that the soldiers said they would do nothing to us if we continued walking to Bangladesh. As a gesture of respect, we held our hands in the air as we walked past.

81. The second time I encountered military before arriving in Bangladesh was at the Ful Mahal River in Maungdaw Township, which we reached after crossing over the large, forested mountain for two days. At that point, we were so many Rohingya walking that I could not count. I saw people's heads as far as I could see. We were thousands on both sides of the river, with people crossing the rivers swimming, or on rafts, or on boats, approaching from all different directions. We heard that people were killed along the way by military at Ful Mahal River so we were very afraid to see the military there. There were 40 or more soldiers occupying the bridge over the Ful Mahal River, holding their guns. A few were manning the entrance to the bridge. They were dressed in uniforms of an olive green colour similar to number 17 on the colour chart. As far as I remember, it was one plain colour but I was too scared to look at them too long. They may have had flowers on their shoulders

too but I do not know. They had long guns that were narrow in the front and wider in the back. The soldiers also had belts around their waists with a lot of bullets. We were too scared to use the bridge once we saw them so we hid in a nearby field and saw that Rohingya were crossing the river at a point in the distance. We were praying our last rites worried we might be killed. The soldiers did not say anything or do anything to us there. They stopped us and simply gestured for us to go over to the point in the distance where we saw other Rohingya people crossing the river.

82. My family and I decided to cross the river at the point indicated by the soldiers and walked over. Upon arriving at the banks of the river, I saw three dead bodies of Rohingya men, one of whom I recognized was Amir Hakim, a farmer [redacted] and who was married to [redacted] who now lives in [redacted] I did not look long and could not tell if he had any injuries that might explain how he had died. I was in no state to know more as I felt very ill. My legs were badly swollen and my body hurt so much that even the nails on my fingers hurt me. I had many injuries from falling while crossing rivers and slipping on rocks.

83. I crossed the Ful Mahal River with my family members in a long narrow boat that fit about one hundred people. It was loaded full of people with women carrying their children in their laps. Many men were crossing the river by swimming, some with the aid of *gallons*, empty plastic containers that were usually a yellow colour similar to numbers 2 and 3 on the colour chart, and which we used to fill with oil. The men used them to stay afloat as they crossed the river. Others crossed in bamboo rafts. The soldiers simply watched us crossing the river from the bridge.

84. As I was sat in the boat crossing the river, I saw two black-coloured "planes" flying overhead, going round and round. I was scared they would fire upon us and kill us. People said the planes were seeing if we were crossing the border and maybe that they came from other countries. I cannot describe much about how the plane looked like as it was quite high in the sky but I did see that each plane had a round-shaped fan on the top making circles. The planes each made a quick consecutive sound like "*goong-goong-goong-gooong*". I did not see any people inside. People were making a lot of assumptions about these planes and we were very scared to see them.

85. We stayed one night on the other side of the Ful Mahal River. My younger sister [redacted] was waiting for me there. Her husband [redacted] was with her along with her three children. They normally lived in Monu Fara and had left on their journey to Bangladesh before me. Many people that knew me had passed me along this journey. I was going slowly so these people moved ahead of me and eventually found my sister [redacted] and told her that I was behind them in the group with my sister [redacted] decided to wait for us to show up on the other side of the Ful Mahal River. We slept in an open field that night. We had no tarpaulin or blankets with us as it was too much to carry anything along the journey. May people that had initially brought items with them had already abandoned them on the way. People had no food to eat and were not sleeping well. Many people were crying and suffering a lot.

delivered us water, biscuits and banana as well as 100 *taka* to each woman in our group. We crossed the road and stayed the night in a school next to a big pond. People came with food loaded onto vehicles and provided our children and us with fried rice to eat. We stayed two days in that school before arriving in [redacted]

91. [redacted]. They used to live in Monu Fara but after so many people fled, they now live in [redacted] My brother has worked for [redacted] His wife also volunteers in this same area of work. My mother lives in the house with my brother and his wife. My two sisters [redacted] are here in Bangladesh and [redacted] is still in [redacted]

92. I speak with [redacted] regularly. They have told me that [redacted] and no one is doing anything bad to them. [redacted] calls me every day. [redacted] has told me that part of Chin Tha Mar village was burnt and other parts left alone. [redacted] She tells me that some of the people who initially fled the village, but had not yet crossed into Bangladesh, returned back to the Chin Tha Mar village tract once things had calmed down. She told me that only some houses in the middle of the village of Monu Fara were burned down but that many remain in Monu Fara, Fundu Parang and Pale Taung.

93. About one month after I left Myanmar with my family, [redacted] heard from people in her village that the government was sending news out to the community that the Rohingya people in hiding could return to their villages and would not be harmed. She decided to visit my home in Monu Fara to check on it and told me about its condition when I was first able to reach her about 5-6 months after arriving in Bangladesh. She told me that she saw that there were no belongings left inside my house. Someone had taken all the furniture including our chairs and beds, as well as our food. We had one year of food stocks of rice kept in big baskets that were no longer there. I had five cows, more than 20 hens and four goats and none of them remained. While my home was not burned, [redacted] visit it from time to time when attending [redacted] and tell me that it has fallen into disrepair after so many years without maintenance. [redacted] have also told me that the military has since built a second military outpost on top of where the houses of Zahed Hossein and his neighbours used to be.

94. [redacted]

Annex 142

IIMM, Witness Statement No. IIMM0028123039, 6 November 2023 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name: [redacted]

First name: [redacted]

Former names: [redacted]

Other names used:

Nationality(ies): Myanmar

Gender: Female

Mechanism person code: P2894

Date of birth/Age: 20

Ethnicity: Rohingya

Religion: Islam

Formal educational level: Class 4

School attended: Shidda Fara School, Maungdaw

Previous address in Myanmar: Nol Boi Na/ Pan Taw Fara, Maungdaw, Rakhine State

Father's name: [redacted]

Mother's name: [redacted]

Spouse(s)' name(s): [redacted]

Childrens' name(s) and date(s) of birth/age: [redacted]

Place of birth: Nol Boin Na/ Pan Taw Maungdaw, Rakhine State

Language(s) spoken: Rohingya

Language(s) written: N/A

Prior occupation and employer in Myanmar: none.

Current occupation and employer: None

Current address: [redacted]

Date or approximate date of departure from Myanmar if applicable: When P2894 was 14 yrs

Photo ID: [redacted]

Type of photo ID: UNHCR ID

Authority issuing photo ID:UNHCR

Issuance date on photo ID: [redacted]

Name on photo ID: [redacted]

Registration number on photo ID: [redacted]

Any other form of photo ID: None.

II. Interview Information

Prior screening(s) conducted: No.

Place/modality of interview:

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)
01/11/2023 [redacted]
02/11/2023
04/11/2023
05/11/2023

Language(s) used in interview: **English, Rohingya**

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0004	
	M0032	
Interpreter:	M0091	
Witness support person:	N/A	
Other persons present:	N/A	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter. It was explained to me that the interpreter would interpret everything the interviewers say in English to me into the Rohingya language, and vice versa. I confirmed that I understood the interpreter clearly.

2. The interviewers told me that they work for the Independent Investigative Mechanism for Myanmar ("IIMM") and they explained to me what the IIMM does. I was told that the IIMM was established in 2018 and was part of an organization called the "United Nations", in short "UN". I have heard the word UN but I do not know what it does. The interviewers explained to me what the UN is and that the IIMM is one of many offices within the UN. I had heard about UNHCR when I first got here but I did not know what the UNHCR's work entailed. I was told that UNHCR deals with refugees and that the IIMM is different from UNHCR and other UN organisations. The IIMM does not have anything to do with refugee issues and cannot provide any assistance for the Rohingya refugees in the camps.

3. I was informed that the IIMM was collecting information about serious international crimes that were committed inside Myanmar since 2011 including what happened to the Rohingya people in Rakhine State. I understand that the IIMM is only investigating crimes that happened within the territory of Myanmar and is not investigating anything which may have happened within the territory of Bangladesh or any other country. I also understand that the IIMM is not investigating any incidents which may have happened after I left Myanmar and during my journey to Bangladesh.

4. The interviewers explained to me that the IIMM is not a Court, a police force or a prosecution authority but that it collects information and prepares case files to share with national, regional or international courts or prosecutors who are or will in the future be investigating crimes committed in Myanmar. I was told that this information can be used to prosecute perpetrators. I was provided with an explanation about the processes currently taking place at the International Criminal Court (ICC), the International Court of Justice (ICJ) and by the Federal Prosecutors of Argentina. I was assured and I understand that the IIMM will not share my information, including details of my identity, without my informed consent.

5. The interviewers explained to me how the information I will provide during the interview will be used. They explained to me that I may be called as a witness in future criminal proceedings that may happen in any national, regional or international court. The interviewers explained to me what a court is, how trials are conducted and what it means to be a witness in such proceedings. The interviewers told me that the IIMM cannot guarantee that I will be called as a witness if my information was shared and that it would be entirely the decision of the respective prosecution or judicial authorities how they will use the information provided by the IIMM and whether they would call me to testify as a witness.

6. The interviewers explained to me that when answering their questions and providing information I must only say what is accurate and I must tell the only the whole truth. I

confirmed that I understood the importance of telling the truth. I was told to provide information about what I directly experienced, what I saw with my own eyes and heard with my own ears. I was told to distinguish between information that I saw myself and information which I heard from other persons.

7. The interviewers explained that the IIMM's investigations are confidential, to protect the security and welfare of the people that it may come into contact with in the course of its work and also to protect the integrity of the information it receives. The interviewers requested that I keep my interactions with the IIMM confidential. I confirmed that only my brother [redacted] is aware that I am meeting with the interviewers.

8. The interviewers explained the interview process to me and they told me that at the end of the interview, a written statement of what I have told them during the interview will be prepared. They told me that the statement will be read to me before I sign it, and that I can make any additions, corrections or clarifications to that statement. I will also be asked to confirm if the contents of the written statement accurately reflect what I told the interviewers during this interview. Once I am satisfied with the statement, at the end, I will sign the statement. The interviewers explained that this statement will not be shared without my full and informed consent.

9. I was informed that my cooperation with the IIMM is voluntary and that I am not obliged to participate in this interview or answer any specific questions. I understand that I am free to end the interview at any time. I confirm that nobody has pressured me to attend this interview and that I am here out of my own free will. I want to tell the IIMM what happened to me. Nobody has told me what I should or should not to say to the IIMM interviewers. I also confirm that nobody has promised me any kind of benefit in exchange for the information I will provide to the IIMM. I told the interviewers that I wanted to speak with them because I was tortured and beaten in Myanmar and I wanted to share my story with them.

10. The interviewers asked if I fully understood these issues and if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and that I was willing to proceed.

IV. Previous Interviews

11. I was asked if I had been previously interviewed or if I have told my story to any organisations or individuals. I confirmed that I have not been interviewed by anyone before about what happened to me in Burma. Burma is also known as Myanmar. I have also not talked to anyone about what I experienced when I was in Myanmar. I confirmed that I have not spoken to any journalists.

12. I was asked if I belong to any community groups, for example women's groups, in the camps and I confirmed that I am not involved in any groups and that I have not participated in any activities of any such groups. I have only been to a mental health centre in the camp

don't understand their language. I don't know if they are known by any other name, I only know them as "Mogh".

23. I was asked how the military stopped me from going to school. These military men would sit by the side of the road opposite my school, and they would be holding their weapons. I was afraid that they would shoot me and kill me and so my parents stopped me from going to school. They were holding their guns as if they were pointing in our direction. I feared they would kill me as I had heard from people in my village and my neighbours that the military used to kill Rohingya people. I have never seen anyone being killed with my own eyes. I only heard from villagers that the military were taking people away in order to kill them.

24. I saw Al-Yaqin taking [redacted] Sultan away from his house and I heard from others in my village that they had cut him into pieces. The ones who were taking him away had a full mask covering their head and face with only their eyes visible. They were all wearing black pants and black full sleeved shirts. I saw three to four of them dressed that way. The Al-Yaqin are Rohingyas. I was in Class 4 when I saw this happen. I know these were Al-Yaqin people because the others in the village were saying this. I was standing at a distance when I saw this happen but I saw them clearly. I could not hear if they were saying anything to him. I heard from the villagers that Sultan used to report to the BGP and the "Mogh" people about the Rohingya. For example, if any Rohingya from the village would go to Bangladesh, Sultan would report this to the BGP and "Mogh" people immediately. Sultan was an old man. When I saw this, I felt so afraid, and I ran away to the river to hide. My family also ran with some other people from the village to hide. I initially told the interviewers on the second day of the interview that it was the military who took Sultan away and chopped him into pieces. I had forgotten this detail and now I remember more clearly that in the case of Sultan it was the Al-Yaqin people who took him and not the military. I remembered how these men who took Sultan were attired and I remember I was told at that time that these men belonged to Al-Yaqin. This was the only occasion that I saw Al-Yaqin members in my village, I only saw them once and never again. I did not see them in my village at the time I was taken away from village by the military and I did not hear that they were ever in our village.

25. These military men who were sitting opposite my school were wearing dark camouflage. I was shown a colour chart by the interviewers (BIN **IIMM0019627965**) ("colour chart") and I indicated the colour of their uniform as colour number 40 mixed with colour number 9 and colour number. 27. All these colours were mixed in the camouflage on the uniforms they wore. I did not notice any kind of markings on their uniforms. They also wore the same camouflage patterned hats as part of their uniforms. They carried weapons that were used to shoot at people. I knew these weapons because I saw them use the same kind of weapon as they shot people. They were long weapons.

26. I have seen an incident where [redacted] was shot while he was running towards our house. They shot him with this weapon from afar. They could shoot people with this weapon from a distance. The bullet went through the palm of [redacted]'s hand.

Annex 143

IIMM, Witness Statement No. IIMM0028059734, 10 November 2023 (extract)

[CONFIDENTIAL - UNITED NATIONS]

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Myanmar (stateless)		
Gender:	Male		
Mechanism person code:	P2967		
Date of birth/Age:	01-01-1980	Place of birth:	Bor Fara, Inn Din, Maungdaw
Ethnicity:	Rohingya	Language(s) spoken:	Burmese, Rakhine, Rohingya, some English
Religion:	Islam	Language(s) written:	Burmese
Formal educational level:	[redacted]	Prior occupation and employer in Myanmar:	[redacted]

School attended:	[redacted]	Current occupation and employer:	
Previous address in Myanmar:	Bor Fara	Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:	September 8 2017		
Photo ID:		Type of photo ID:	GOB/FDMN ID Card
Authority issuing photo ID:	GOB/UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:			

II. Interview Information

Prior screening(s) conducted: Yes

Place/modality of interview:	In person	Location of interviewer: Location of witness: Location of interpreter:	[redacted]

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)

09/11/2023
10/11/2023 [redacted]

Language(s) used in interview: Rohingya and English

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0102	
	M0032	
Interpreter:	M0091	
Witness support person:	Not applicable	
Other persons present:	Not applicable	

III. Introductory Matters

1. I was introduced to the interviewers and to the interpreter and it was explained that the interpreter would interpret everything the interviewer says in English to me into the Rohingya language, and vice versa.
2. I was provided with an explanation of the mandate of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of the interview. It was explained to me that the IIMM belongs to the United Nations ("UN"). I understand the explanation that the UN comprises many organisations such as UNHCR and WFP, which all do different jobs. I understand that the team speaking with me is collecting information about crimes committed in Myanmar since 2011, and that the mandate of the Mechanism only covers events that occurred in Myanmar.
3. It was explained to me that the Mechanism collects many types of information, including by speaking to people like me, a witness. I was told that the Mechanism also collects photographs, documents, audio recordings, social media posts or videos which the Mechanism considers as "evidence". I was informed by the interviewers that the Mechanism combines and analyses this information to find out whether crimes happened, and who was responsible.
4. I was asked if I understood what a court was. I explained my understanding that a court is a place where you get justice, and that in Myanmar it is called a *Tayayone.* Whomever

does something wrong is sentenced in a court. I was then provided with an explanation of what a court or tribunal is in international and domestic systems, how criminal proceedings work, and what it means to be a "witness".

5. I was informed about the different national or international courts that are looking into serious crimes committed in Myanmar and told that others might do so in the future. I understand that the IIMM can support these proceedings by providing relevant evidence. I told the interviewers that I heard of the ICJ (Gambia case), ICC and Argentina. I don't exactly know the what the name ICJ means, but I know the ICJ and ICC are courts.

6. It was explained to me that the Mechanism is not a court, but it collects information and provides it to courts. I was told that none of the information I provide in my interview would be shared with any courts or entities unless I give the IIMM consent to share it, which I understand.

7. I understand that if I consent to share my account, it may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in those cases. I was informed that my cooperation with the IIMM is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that nobody put any pressure on me to attend this interview, and I am here of my own will.

8. The interviewers explained that the IIMM's investigations are confidential, to protect the work that it does and the people it interacts with. The interviewers requested that I keep my interactions with the IIMM confidential.

9. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" or "I don't remember" if I do not know or remember the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from others.

10. I was told that the interview process could take several days and at times it could be difficult. I was informed that I might be shown documents, photos, videos, audio recordings, or maps during the interview. The interviewers told me that they would write down what I said during the interview as completely and accurately as possible, and that they would prepare a written statement. I understand that, before signing the statement, this statement will be interpreted to me in the Rohingya language, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.

11. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent.

12. The interviewers asked if I fully understood these issues and asked if I was willing to proceed with the interview. I confirmed that I understood the points raised by the interviewers and that I was willing to proceed.

Limited nature of statement

13. I have discussed my availability with the interview team and explained that I was only available for two full days [redacted]

14. The interviewers said that they wanted to ask me some questions limited to specific topics. I agreed to this, but I am willing to be interviewed again in the future, if necessary.

IV. Previous statements

15. I was asked whether I had previously given any statements or interviews about my experiences in Myanmar to other individuals, organisations, or media entities. I have not.

V. Documentary or Other Evidence in the Possession of Witness

Type of evidence and description of evidence:

None

VI. Statement

Location and layout of Inn Din (Aung Dung)

16. I am from the village tract of Inn Din, which is located 29 miles to the south of Maungdaw Town.

17. To the south of Inn Din was a village (tract) called Gwa Son, and to the north Kul Long.

18. To the west of Inn Din was the sea, and to the east were mountains.

19. Inn Din was a very significant location. People travelling from Maungdaw town and Sittwe often stayed in Inn Din.

20. There were five Rohingya villages in Inn Din village tract - Bor Fara, Maazor Fara, Posim Fara, Ula Mia Fara and Gailla Fara, also known as Noya Fara.

21. Bor Fara was located to the east of Inn Din, closest to the mountains. Maazor Fara was in the center of the village, between Bor Fara and Posim Fara. Posim Fara was to the west next to the sea. Ula Mia Fara was to the south, very close to Gwa Son. They were separated by a river. Gailla Fara and Posim Fara were both situated at the seashore, with Gailla Fara further to the north. Both were across a river from Kul Long.

- *Nay Mrae Muu*: "Ok. What's your name again?"
- [redacted] "My name is [redacted]."
- *Nay Mrae Muu*: "Ok, [redacted] keep your phone on. If there is anything report it to me."
- [redacted] "Yes, yes."
- *Nay Mrae Muu*: "Good, good, I will ask about."
- CALL ENDS

59. When I called the *Nay Mrae Muu*, I was scared. When I became more at ease, I made the error of saying that [redacted] had given me his number. Fortunately, the *Nay Mrae Muu* did not notice that I was pretending to be [redacted]

60. The expression "lay zar bar dal" means I give my respect to you.

61. [redacted] was the [redacted] in Inn Din. When we were in Myanmar, we had to pay the border guard police to use our mobile phones, and he was [redacted] It was why I think he had the number for the *Nay Mrae Muu*.

Recording

62. I later provided the recording to [redacted] He is also known as [redacted] or [redacted], I am not sure which, but he has two names. I gave him this recording 5-6 months after I arrived in Bangladesh. He said there was a foreigner that wanted to know about Inn Din and asked for a copy of the recording. I cannot be sure how he knew that I had the recording, but it is possible he was present when I made the call.

63. I gave him my phone and he transferred the recording from my phone to his phone. I do not know how he did this.

64. I only shared the recording with [redacted] and I do not know if he shared it further.

65. I showed the interviewers my [redacted] phone. This is the phone with which I made the call. I recorded the call directly on to my phone using the record function.

66. Since the meeting with [redacted] I have not accessed or listen to the recording that he copied. I was unable to find the recording on my phone when I met with him, but with his help we were able to listen to it on my phone before he transferred a copy to his.

67. I am not skilled at using the options on my phone and I needed [redacted] to help me. It is possible I deleted the recording because it is not where I thought it should be on my recordings list in the phone.

Annex 144

Annex not reproduced

Annex 145

United Nations Independent Investigative Mechanism for Myanmar, *Evidence of ARSA Weapons Possession and Use* (29 April 2024)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

EVIDENCE OF ARSA WEAPONS POSSESSION AND USE 29 APRIL 2024

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- P2032, a former village-level ARSA commander from Maungdaw township, describes fighters from his village fighting soldiers in August 2017 "*mostly with sticks but one person had a local hand-made arm (tela bond duk)*";[73]

- LI-054, who stated that he was recruited into ARSA in his village in Maungdaw district in 2017 to undertake "sentry duty", stated that he and other sentries were never armed: "*[h]e believed that within his village track (Thit Tona Gwa Sone VT) there were 80-90 members but all they did was sentry duty. There were no other duties. He never saw any weapons or arms. They were told to guard, but they were also told if anyone comes, they wouldn't need to fight, other fighters will come. They didn't have any weapons as the knives were all confiscated 2 months earlier*";[74]

- LI-122, who stated that he was an ARSA commander with around 1000 men under his command by late 2016, claimed that in training prior to the October 2016 attacks "*[t]here were some guns – AK47, M16, 9mm, 5 Star, and Chinese. But not everyone had guns, just a few people. Maybe 20 / 100 people had a gun because it's a big budget*".[75]

IED construction and materials

51. Testimony of three eyewitnesses[76] and three self-declared former members of ARSA[77] provide details regarding the construction or use of IEDs by ARSA members. Descriptions in these testimonies are consistent with photographs of alleged ARSA IEDs in the materials provided to the Kofi Annan Foundation (Section II), and with photographs of alleged ARSA IEDs accompanying Government reports during 2016 and 2017 (Annex I): they describe "pipe bomb"-type IEDs operated both by command wire and remote control, sometimes constructed within vehicle engine pistons as the explosive container.

52. These accounts suggest that IEDs were constructed locally by groups of ARSA members in villages, rather than through centrally-organised construction, though with some distribution of materials from ARSA members elsewhere; and strongly suggest that the explosives and detonators used were also homemade explosives (HME) and homemade detonators rather than commercially produced or taken from military explosive munitions, and of variable quality.[78]

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[73] **IIMM0019922085** P2032 Screening Note (IIMM), 29 September 2022, para. 22.
[74] **IIMM0000027075** LI-054 FFM Interview Summary, 18 November 2017.
[75] **IIMM0000027558** LI-122 FFM Interview Summary, 5 March 2018.
[76] **IIMM0019915259** P2101 Witness Statement (IIMM), 17 November 2022, paras. 101-103, 106, 112; [redacted] **IIMM00000020967** CI-189 FFM Interview Summary, 15 July 2018.
[77] **IIMM0019922085** P2032 Screening Note (IIMM), 29 September 2022, paras. 19-22; **IIMM0000027556** LI-121 FFM Interview Summary, 5 March 2018; **IIMM0000027558** LI-122 FFM Interview Summary, 5 March 2018.
[78] **IIMM0019922085** P2032 Screening Note (IIMM), 29 September 2022, paras. 18-19. *See also* bags of powdered materials reportedly containing sulphur, charcoal powder and 'gunpowder' in IED construction

53. P1496, [redacted] from Buthidaung township, described ARSA members constructing IEDs in August 2017: "*I saw they were working with wires and batteries. I continued watching as the two men assembled two bombs. Each bomb was the width of a Tupperware container with material inside the frame of a battery that we used for wireless table fans inside our homes. The height of the battery frame was about a "hands length", from the wrist to the fingertips. I saw they were mixing a lot of materials and placing it inside the battery frame. They were mixing lots of "gondorok" which I believe is called gunpowder and joining wires together. It was not common to find gondorok and not something that was sold at the local market. I am not sure but I think they may have obtained the gondorok by having people in Maungdaw send it to them… They placed one bomb at the base of the mango tree, which was attached to a long cord that stretched 20 metres. Then they pulled the long cord and detonated the bomb. The bomb made a very big sound that shook the entire town. It caused a lot of smoke but not any damage. Not even the mango tree was scratched.*"[79] This description is consistent with an IED that is operated with a command wire switch, and using a battery casing as the container for the main charge. Photograph 8 of the photographs provided by the Myanmar military to the Kofi Annan Foundation also includes a battery of approximately the size described here (See above Section II).

54. P2101, an individual from Buthidaung township, described seeing a "weapon" left after an explosion allegedly caused by ARSA during an attack near a police post on 25 August 2017: "*It was a large cylinder that looked like an engine silencer. I could see that there were some materials inside the cylinder and that one end was covered with tin. I identified its colour as colour no. 34 on the colour chart. People were saying that it was a bomb.*"[80] This description is consistent with the type of IED main charges/containers shown in the photographs of materiel gathered after the October 2016 attack provided by the Myanmar military to the Kofi Annan Foundation: cylindrical "pipe-bomb"-type containers, sealed at one end (see above, Section II). It is also consistent with photographs of alleged ARSA IEDs constructed within cylindrical objects including vehicle engine pistons, disseminated by Government news sources between October 2016 and September 2017.[81]

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materials seized by Myanmar security forces, shown in photograph in **IIMM0001139423** Report of State Counsellors Office Information Committee, Global New Light of Myanmar, 9 May 2017. These materials could be used in a number of ways as ingredients of homemade explosive (HME) for IEDs, including using sulphur as a sensitizer, and charcoal as an organic fuel. *See* **IIMM0028129681** Geneva International Center for Humanitarian Demining, *Basic Chemistry of Explosives and Hazards of Homemade Explosives and Chemical Precursors* (GICHD: Geneva, 2021), https://www.gichd.org/fileadmin/uploads/gichd/Media/GICHD-resources/rec-documents/IEDD_Handbook_Chapter_5.pdf. For photograph of homemade detonators, see photograph in **IIMM0001139487** Report of State Counsellors Office Information Committee, Global New Light of Myanmar, 2 August 2017, p. 6.

[79] **IIMM0019628625** P1496 Witness Statement (IIMM), 30 November 2022, paras. 80-82.

[80] **IIMM0019915259** P2101 Witness Statement (IIMM), 17 November 2022, para. 106. Note: Colour 34 on the colour chart (**IIMM0019627965**) is medium brown.

[81] **IIMM0001139003** Myanmar News Agency published in Global New Light of Myanmar, 17 November 2016; **IIMM0001138986** Myanmar News Agency published in Global New Light of Myanmar, 15 December 2016;

55. P2032, a former ARSA commander from Maungdaw township,[82] described "mine bombs" received from an ARSA regional commander in July/August 2017: "*P2032 indicated, by hand gesture, that these bombs were between 20-30cm in length. Of the six bombs assigned to [village 1], there were two types: three were remote control operated and three that had a long cable with red and blue wires which someone would need to operate. An additional eight bombs were also assigned to [village 2]*". This description is consistent with command-operated (command-wire and radio-controlled) IEDs. It is also consistent with the IEDs and IED components visible in the photographs of materiel gathered after the October 2016 attack provided by the Myanmar military to the Kofi Annan Foundation: containers/main charges approximately one foot long, some with long wires (consistent with command-wire operation), and some with remote-control keychains likely designed for motorbikes or other vehicles (consistent with remote-control operation).

56. Several accounts also describe the premature explosion of IEDs during construction or transport, killing or injuring ARSA members.[83] This is also consistent with, though not conclusive evidence for, the use of HME and/or homemade detonators.

VI. Government statements and evidence regarding ARSA weapons access and use

57. Photographic and documentary evidence provided by the Myanmar Government to the Kofi Annan Foundation regarding ARSA's weapons capabilities is discussed above (Section III). Following the October 2016 attacks, and again after the August 2017 attacks, Myanmar Government agencies also issued reports of weapons seizures from alleged ARSA members, recoveries from alleged ARSA weapons caches, and weapons used in alleged ARSA attacks. These include: a) reports disseminated by the Myawaddy military news service and the Government's Myanmar News Agency, and reproduced in the Global New Light of Myanmar (GNLM) published by the Ministry of Information; b) the Interim Report of the Government's Investigation Commission on the October 2016 attacks in Maungtaw [Maungdaw] District, published in January 2017; and c) statements published online and via the GNLM by the Information Committee chaired by the State Counselor's office, established in November 2016 to disseminate statements regarding the situation in Rakhine State.

IIMM0001139002 State Counsellors Office Information Committee / Myanmar News Agency published in Global New Light of Myanmar, 16 December 2016; **IIMM0001139423** State Counsellors Office Information Committee published in Global New Light of Myanmar, 9 May 2017; **IIMM0001139708** State Counsellors Office Information Committee / Myanmar News Agency published in Global New Light of Myanmar, 10 July 2017. For full details see Annex I.

[82] **IIMM0019922085** P2032 Screening Note (IIMM), 29 September 2022, para. 19. Village locations removed by IIMM.

[83] **IIMM0000020967** CI-189 FFM Interview Summary, 15 July 2018; **IIMM0000027556** LI-121 FFM Interview Summary, 5 March 2018.

Annex 148

IIMM Sharing Packs Provided to The Gambia, Received 21 May 2024

IIMM sharing packs provided to The Gambia

	Package content	Delivered
1.	"Efforts to Investigate and Punish Sexual and Gender-Based Crimes Committed Against Rohingya: Evidence Analysis"	September 2023
2.	"Structure of Western Regional Command: 2016-2017"	September 2023
3.	The witness statement of P1563 and underlying materials	December 2023 **Provided to Myanmar May 2024**
4.	Cultural report on the Rohingya and 25 witness statements of P0806, P1235, P1240, P1244, P1289, P1299, P1301, P1461, P1477, P1492, P1493, P1495, P1496, P1540, P1547, P1548, P1550, P1618, P1622, P2101, P2252, P2300, P2334, P2384 and P2499	December 2023 **Provided to Myanmar May 2024**
5.	"Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis"	December 2023
6.	9 witness statements of P1235, P1237, P1239, P2295, P2879, P2880, P2892, P2894 and P2967.	January 2024 **Provided to Myanmar May 2024**
7.	Analytical note: "Analysis of the Myanmar Government's Encouragement of Resettlement by Buddhists from Bangladesh to Rakhine State, Myanmar" and underlying materials	May 2024
8.	Analytical note: "Evidence of ARSA weapons possession and use"	May 2024
9.	Record of screening note of military defector P3408 and signed investigator declaration	May 2024
10.	Statement of P1721, a midwife who coordinated health care responses for Rohingya women who suffered sexual violence during the 2017 Clearance Operations	May 2024
11.	Analytical note: "Information of Myanmar Security Forces from the Ministry of Homes Affairs' (MOHA) Facebook Page" and underlying materials	May 2024
12.	"Expert Analysis Compilation: State Measures Targeting or Impacting Rohingya" accompanied by an Explanatory Note, Timeline and underlying materials	May 2024
13.	"Evidence Related to Detention of Rohingya in Buthidaung Prison and Other Locations" and underlying material for which there is consent to share	May 2024

Annex 149

IIMM, Witness Statement No. IIMM0028503937, 9 July 2024 (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Myanmar		
Gender:	Male		
Mechanism person code:	P2032		
Date of birth/Age:	[redacted]	Place of birth:	[redacted] Township: Maungdaw
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya (Native), [redacted] Burmese (Very little)
Religion:	Islam	Language(s) written:	[redacted]
Formal educational level:	Grade 3 in Burmese School and [redacted] in Madrasa [redacted]	Prior occupation and employer in Myanmar:	Imam

School attended: Previous address in Myanmar:	[redacted] Maungdaw	Current occupation and employer: Current address:	[redacted]
Date or approximate date of departure from Myanmar if applicable:	About 4 days after Qurban, 2017		
Photo ID:	Yes	Type of photo ID:	UNHCR-GOB Smart ID Card
Authority issuing photo ID:	UNHCR-GOB	Issuance date on photo ID:	31-March-2019
Name on photo ID:	[redacted]	Registration number on photo ID:	[redacted]
Any other form of photo ID:	No		

II. Interview Information

Prior screening(s) conducted: Indicate **Yes**

Place/modality of interview:

Location of interviewer: [redacted]
Location of witness: [redacted]
Location of interpreter: [redacted]

Date(s) and times of interview: (DD/MM/YY) (Interviewer Time Zone) (24:00 HRS)

01/07/24 [redacted]
02/07/24
04/07/24
06/07/24
07/07/24

08/07/24
09/07/24 [redacted]

Language(s) used in interview: English and Rohingya

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0102	
	M0014	
Interpreter:	M0091	
Witness support person:		
Other persons present:		

III. Introductory Matters

1. I was introduced to the interviewers. The interviewers explained that they would ask questions in English and the interpreter would then interpret the questions into Rohingya for me. Equally, the interpreter would tell the interviewers in English what I had said in Rohingya.
2. The interviewers explained the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. They explained that as team members from the Mechanism, they belong to an organization which is called the "United Nations", or "UN" for short. I understand their explanation that other organizations like UNHCR and WFP are part of this same big organization, but they all do different jobs. I understand that the team speaking with me is collecting information about the crimes committed in Myanmar. The interviewers explained what a court is, and what it means to be a "witness". I said that, as far as I understand, a court is there to seek justice. For example, if there is a quarrel between two parties the court is there to decide who is at fault.

3. I was told that this interview is about the events that led me to leave Myanmar and come to Bangladesh.
4. I was informed that I am not obliged to participate in this interview or answer any specific questions. I confirm that I am cooperating with the Mechanism voluntarily. Nobody forced me, threatened me, or made promises to get me to participate in this interview. Nobody told me what to say or not to say.
5. The interviewers explained that the Mechanism's investigations are confidential, to protect both the work of the Mechanism and the persons it interacts with.
6. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others.
7. The interviewers stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, they will read it to me, so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.
8. The interviewers explained that this statement and the material that I shared with the Mechanism would not be shared with anyone else without my full and informed consent.
9. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I did.

IV. Previous Accounts

10. I previously provided some details of my experiences in Myanmar with the IIMM. I am told the record of that meeting has a reference of BIN **IIMM0019922085**.
11. I remember that at some time during 2022 I spoke with two Rohingya men who were [redacted] They asked about my time in Myanmar. I recall one of the [redacted] was call [redacted] The meeting was conducted in a tea shop, and we sat in a circle with other Rohingya and shared our experiences.

IV. Documentary or Other Evidence in the Possession of Witness

Type of evidence and description of evidence:

12. N/A

V. Statement

13. I am from [redacted] village tract in Maungdaw, and I was born in the hamlet of [redacted] After I was married, I moved to [redacted], in the same village tract. The following hamlets were in my village tract:

    i. [redacted]
    ii.
    iii.
    iv.
    v.
    vi.
    vii.
    viii.
    ix.
    x.
    xi.

14. The west of [redacted]. These [redacted] parts of [redacted] are collectively known as [redacted] It means that there is a [redacted] hamlet in an area that contains more hamlets, and the whole area is sometimes referred to as [redacted]

15. The east of [redacted] consists of four hamlets, [redacted]. These four hamlets are collectively known as [redacted] Further east of [redacted] is a separate *Mogh* hamlet called [redacted]

16. To the north of [redacted] there is an area called [redacted]. It was previously used as Rohingya farmland but was later taken by the government and handed to Burmese people. [redacted] was established around 2008 when the Burmese people moved in. Around two years later some of them moved out and *Mogh* people moved in. I think it was around 2010 because there was an election then, when Rohingya could participate.

17. To the north of [redacted] and beyond [redacted] was [redacted]. Within this Village Tract was [redacted] which was a Rohingya hamlet. This was considered by the government to be part of [redacted] Village Tract.

18. By 2017 I was an Imam at [redacted] I had been an Imam for 7 years until I fled to Bangladesh.

19. In 2017, the chairman of [redacted] was a *Mogh* called, [redacted] At that time only *Mogh* were allowed to be village chairmen. This law was passed in 2008. Before that time Rohingya could also act as village chairman. [redacted]'s deputy was a Rohingya named [redacted]

20. [redacted] had been village chairman since around 2014, and [redacted] was his deputy since around 2015.

21. [redacted] was a head of 10 households (*Sae Eain Muu*) for [redacted]

Mogh

22. The "*Mogh*" is a community, and they refer to themselves as Rakhine, but Rohingya refer to them as *Mogh*. I have always referred to them as *Mogh* since I was a child. Rohingya and *Mogh* have different religions. *Mogh* people normally build pagodas and place statues there. They worship these statues. These statues have human faces. As far as I understand *Mogh* are Buddhist. They celebrate one festival each year (Water Festival) and this is when they would marry. *Mogh* eat food that Rohingya would not eat, for example non-Halal food like pig, crab, earthworm, and snails. The *Mogh* have different faces to Rohingya. They have bigger cheeks; smaller eyes and their eye lids have more flesh on them. The *Mogh* men dress in a similar way to Rohingya men, but the *Mogh* women wear dress with their arms exposed. The Rohingya women would not do this. Rohingya women wear a *burkha* and veil, but the *Mogh* women do not. The *Mogh* women might wear hats or head scarves but no veils. The *Mogh* had a different language to the Rohingya, and it was different to Burmese. We lived in separate hamlets to the *Mogh* and some of their houses were different to ours. The Mogh were treated differently by the authorities. The Rohingya had to seek permission from the authorities to travel and had to pay a fee, but the *Mogh* could travel without restriction and without having to make payments. They had *Molovi's* like us, but theirs were called monks and had bald heads.

23. In friendly interactions we would call each other *Baina*, meaning nephew, or *Mamu*, meaning maternal uncle, depending on age gap. Most *Mogh* could not tolerate Rohingya, and they called us *Minglo,* meaning motherfucker, *Kalar,* meaning illegal immigrant, and Bengali *Kalar*. Some *Mogh* were friendlier, and we would visit their homes. They would serve us food that we could eat, according to our beliefs. But these *Mogh* were in the minority.

Checkpoints

24. There were three checkpoints in my village tract. One was in [redacted], about fifteen minutes' walk east from [redacted]. It was occupied by the *Nay Khra Zound*. Before 2012 only around 6 *Nay Khra Zound* were stationed there, but after 2012 the number increased to between 50-60. The *Nay Khra Zound* were a mixture of police and soldiers and they all wore the same uniform.

25. I also heard *Nay Khra Zound* referred to as "BGB". I do not know why they were referred to as BGB.

26. I was asked to look at a chart containing images of uniforms, badges, and weapons. I was told this chart has a reference of IIMM BIN **IIMM0028041975**. The *Nay Khra Zound* uniform was like the image at 39C on the chart.

27. Another checkpoint was located at a bridge on the road between [redacted] and [redacted]. The *Nay Khra Zound* were based there. I would estimate that, after October 2016, the checkpoint had over 100 men stationed there, sometimes with a mixture of *Nay Khra Zound,* and soldiers. The soldiers wore the uniform shown at 38A on the chart.

28. The third checkpoint in my village tract was in [redacted]. This was occupied solely by *Nay Khra Zound* until October 2016. After that time the base was shared with soldiers in the uniforms, 38A, shown in the chart. I would estimate there were over 100 soldiers and 20 *Nay Khra Zound* based at this checkpoint. This checkpoint was a twenty-minute walk northeast of [redacted]

29. There was also checkpoint [redacted] based in [redacted] village tract. This checkpoint controlled the other three I have mentioned and had over 100 personnel. It was different because it had family quarters and the others did not. The chiefs of the *Nay Khra Zound* were based there and transferred personnel to the various other checkpoints. If we had to solve a matter, we would need to travel to this checkpoint to resolve it. The *La Wa Ka* was also present at this base, and the annual family check was coordinated from there. It would take about 15 minutes to ride there on a motorbike. It was to the west of [redacted] near the sea.

ARSA

30. The Arakan Rohingya Salvation Army (ARSA) was formed by a man called Ataullah Abu Ammar Junini, who previously lived in Saudi Arabia. There were many Rohingya who lived in Saudi Arabia.

31. By 2012, the government had tortured the Rohingya and had attacked us on many occasions. It had been going on for 70 years. The consensus of the Rohingya was we needed to protect ourselves.

32. During 2012, the *Mogh* had been provoking the Rohingya and not allowing free movement. We were issued various identity cards over the years that stripped us of citizenship. My great grandparents had full citizenship, but I was not considered a citizen.

33. A well-known attack on some Muslim pilgrims took place in 2012, in a place called Toungup. I have never been to this place; I just heard the name. This attack on the pilgrims was the final trigger. ARSA formed that year and began visiting villages and informing the Rohingya that they would need cooperation. Villagers supported and respected them, and even children would sing songs of support for them. ARSA were considered the protectors of the Rohingya.

34. ARSA's stated objective was to have the same freedoms as all other ethnicities in Burma. They did not want an independent state.

35. Some Rohingya opposed ARSA, for example those who had some form of government employment. There were also some Rohingya informants working for government.

36. I was given my role by Attaullah in January 2016. He did not see me himself, but sent others to speak to me, including [redacted].

37. I joined ARSA, because I believed in their objective, and I thought it was not only ARSA's duty but my duty to pursue this.

38. Each Hamlet had site commander. The following three commanders of hamlets in my village tract were more active than others, which is why I recall their names:

- [redacted] - Site Commander for [redacted]
- [redacted] - Site Commander for [redacted]
- [redacted] - Site Commander for [redacted]

39. [redacted] no longer lives in the camps, but he was previously living in Camp [redacted] I understand he was being sought by the police to arrest him, and the groups RSO and Islami Mahaz were also looking for him, because of problems between the organizations.

40. [redacted]

41. A man called Hasim (I don't know his full name) commanded Maungdaw South and some parts of Maungdaw North including Bat Kar Gone Nar (Khola/Hoila Banga), Shwe Zar, Hainda Hali, Italiya, Ha Yong Hali, and Niator Deil. There may have been other villages, but I cannot recall them. Hasim had command of these northern areas because Maungdaw North had more villages and this arrangement made the distribution of command more even. Ustad Khaled commanded the remainder of Maungdaw North. [redacted]

42. Hasim was also known by ARSA commanders as Asod Bhai. I do not know if Ustad Khaled was known by any other names, but he was commonly referred to as Ustad.

43. I only met Hasim once, when he spoke with [redacted] I do not know him, and he was not from our Village Tract. Hasim subsequently died in Unchiparang in Bangladesh.

44. In 2017, ARSA in Maungdaw was structured as follows:

Ataullah Abu Ammar Junini (Head of ARSA)

Hasim, Commander, Maungdaw South and part of Maungdaw North

Khaled, Commander, Maungdaw North

Site Commanders, various locations (3 Village Tracts)

Site Commanders, various locations (1 Village Tract)

Site Commanders, various locations (Hamlet)

45. The structure was the same in Maungdaw and Buthidaung, with a senior commander having responsibility for three Village Tracts, a more junior commander taking one Village Tract and finally a commander for each Hamlet.

46. I was the ARSA site commander for [redacted] was site commander for the entire [redacted] village tract, [redacted] Village Tract, and [redacted] Village Tract (Site Commander 3 Village Tracts). He was originally only site commander for [redacted] but was promoted. I cannot recall when this happened. He now lives in [redacted]

47. [redacted] Village Tract is commonly known as [redacted] by the Rohingya people. It is also known as [redacted] in Rohingya and [redacted] in Burmese.

48. Armed elements of ARSA would sometimes come to my village, and we would provide support. Every group of twenty or so had its own commander and could operate independently. By 2017 these armed elements did have some firearms. They did not carry weapons whilst in the village for fear of the village being attacked by the authorities. Those that remained in the hamlets, including me, would pass on information of soldier movements and assist with transporting food and materials when required.

49. I knew of one, armed ARSA group that patrolled in Maungdaw. They had around 20 ARSA personnel and, by 2017, I understood they had around 10-20 firearms. The armed group was commanded by a man called, Hafez Mohammed Ayoub, and a teacher named

Mohammed Younus. Both men were from [redacted]

50. [redacted] He was born with a defect in his leg and walked with a limp.

51. [redacted] I do not know his father's name or any other detail.

52. These armed groups could not operate independently and would follow orders from the ARSA hierarchy. Orders were communicated via a black device that had buttons. It was roughly the shape of a mobile phone but thicker and it had black stick coming out of the top. This stick could be stretched longer. It was called a wireless set. This set had a limited range. Communications were also made using mobile phones, including WhatsApp groups. There was a commander's group, village commander's group (3 Village Tracts), Maungdaw South group, and Maungdaw North group.

53. The wireless set I describe is something I saw used by government soldiers. Only the senior person in a group of soldiers or at a checkpoint, carried a wireless set. I do not recall specifically seeing these during the attacks I will describe later.

54. I was only a member of the WhatsApp group for 3 Village Tracts. I sometimes saw messages sent to other groups when [redacted] would show me them. I cannot recall the phone number I had at that time. The WhatsApp group I was in was named [redacted] I do not recall the name of the more senior WhatsApp group that [redacted] was a member of.

55. I do not know the numbers of ARSA armed groups that operated in Maungdaw or [redacted]

56. We would organize the male members of the villages to keep watch 24 hours a day, in three-to-four-hour shifts. This was to keep ARSA informed of movements, but also to alert villagers when soldiers and *Nay Khra Zound* were coming, because often they would arrest young men for no reason. The government would take men and fine them for the allegation of membership of ARSA.

57. Before 2012, some young men from our village had received combat training from RSO, in Bangladesh. I understood they were trained to fight using firearms. No equipment or guns was brought back from Bangladesh when the men returned. By 2013 or 2014 we had also started a Karate club to teach self-defense.

58. There were no strict age restrictions for ARSA membership. However, ARSA normally recruited men over 18 years old and up to around 45 years old, if they were strong enough.

59. [redacted] had received training from RSO [redacted] He was arrested by the Bangladesh authorities and spent some time in prison. I do not remember the year this happened, but it was before 2012.

60. After 2012, ARSA in Maungdaw looked for individuals that had prior training with RSO and asked them to join. Young Rohingya men would be trained by those who had previously trained in [redacted] Men from Maungdaw North and Maungdaw South were initially trained in a place in Maungdaw North but later, around 2017, another training field was used in Maungdaw South. [redacted] was the senior trainer. [redacted]

61. [redacted] was the name used for [redacted] by ARSA.

62. ARSA had a larger membership in Maungdaw because it was first established there.

63. I know that ARSA armed wing members, and commanders of the 3 Village Tracts, would receive money, but I did not receive payments from ARSA. Money was sent from the Rohingya diaspora in various countries throughout the world. I know this because I heard from my family members in [redacted] that this was the case.

64. ARSA site commanders from [redacted], would meet in-person about once per week and whenever needed. Only ARSA members would attend this. Villagers would not be invited.

65. There was a larger meeting of the senior [redacted] commanders, once every one or two months. I would ask questions about these meetings from [redacted]. He would tell me that religious scholars would sometimes be invited, to provide their input.

66. [redacted] and I grew up together. We were from the same village tract and attended the same madrassa.

67. In 2017, ARSA had no relationship or communication with other communities, outside of the Rohingya.

68. Occasionally Rohingya people would inform the authorities about ARSA activities. If this was suspected in our area, they would receive warnings from [redacted] If they continued their suspected activities they would be brought to the elders of the village, beaten, and made to promise on our holy book that they would not do it again. Punishments and warnings would be decided between the various commanders, with [redacted] having the final say.

69. I heard some informants were detained for one or two months, but not at our village. I also heard some informants were killed but, again, this was not in [redacted]

70. There was no cooperation between ARSA and RSO in [redacted] I cannot speak of whether ARSA had any relationship with them elsewhere. By 2017 there were no RSO in [redacted] which is why the RSO trained Rohingya were approached to join ARSA.

71. There was another group that operated a training ground, in the mountain side of Rathedaung. It had been set up by Salman, the brother of Ataullah. I cannot recall the name

of the group, but I think it was dismantled by the authorities during the beginning of 2017. I heard that Salman and some of his people fled to Bangladesh.

72. There was no relationship between ARSA and the security forces. For our area ARSA would have no communication with the village chairman, as he was a *Mogh*. However, they might speak with the deputy, [redacted] and ask him to help facilitate their movements.

73. I am not aware of any training given to ARSA members that covered when to engage an enemy. They were just told to always be prepared.

74. Attaullah said, "As long as they do not give us our rights, we will kill them with their own weapons". I saw this video on Twitter.

[redacted]

75. [redacted]

76.

77.

78.

79.

80.

2015

93. In 2015, after around 1pm, the *Nay Khra Zound* surrounded and entered [redacted]'s house at [redacted] fled, and I saw him running away. He fell into a drainage ditch, and as he got up and ran again, he was shot dead. [redacted] I watched this happen with my own eyes. [redacted]

94. A bamboo length is ten arms. An arm is measured between the elbow and fingertip.

95. The *Nay Khra Zound* remained in [redacted]'s home for up to one hour and afterwards they departed towards the checkpoint at [redacted] I saw the *Ray Muu* (police chief) there. I heard him referred to as "[redacted]". He was senior at the *Nay Khra Zound* checkpoint at [redacted], but also patrolled seven Village Tracts, including ours. He had two flowers and another symbol on the badge over his shoulder, like the badge at 33B on the chart I was shown. He was among the *Nay Khra Zound* outside Hamid Hussein's home.

96. When the soldiers had left, I ran to [redacted], but he was dead. His wife, [redacted], had also gone to him and I saw her there. She was very distressed. Her upper clothing had been removed and she had taken a shawl to cover herself. We helped her back to her house and brought [redacted]'s body with us. At the house we asked [redacted] what had happened. She showed us her torn clothing that had been removed. It was on the floor of the house. She only mentioned she was assaulted but did not mention any sexual assault. However, given her condition, I suspected she was hiding it to protect her reputation. She said her husband was blamed for being involved with the sale of the drug, known as *Yaba*.

97. [redacted]

98. I knew the *Ray Muu* (police chief) from many sightings. I saw him at least twice a day but I never spoke with him.

99. It was pointed out to me that in my previous meeting with the IIMM it was recorded that the killing of [redacted] was in 2017. That is not correct, it was in 2015. I cannot recall which month this happened.

October 2016

100. As I mentioned, in January 2016, I was appointed as site commander [redacted]

101. During 9 October 2016, ARSA attacked a large military base (*Htar Nar Shoak* or headquarters) in Kawar Bil (Hawar Bil), Maungdaw North.

102. I was under the command of [redacted] and was not involved in the attack, but I heard that around 20-50 ARSA surrounded the base and shot the gate guards. They then entered the base and started bombing shelters inside the base, finally capturing weapons from inside the base.

103. Following the 9 October 2016 attack, groups of security forces would come to our village. The Rohingya called them Thanat Paung Sone (Thana Bong Soung). They were a mix of security forces, soldiers (38A on the chart), police (39B on the chart) and *Nay Khra Zound* (39C on the chart). They used vehicles from their respective organizations, with different colours and markings. They would frequently come to the villages in our area, arresting people with no connection to the 2016 events.

104. After 9 October 2016, there was a meeting about taking the NVC card about twice per month, organized by the village chairman. He would just convey the message from the authorities that we should take the NVC card and if we were stopped and beaten because we did not have it, then we could not complain. Following these meetings, the elder and senior Rohingya in the village would discuss the NVC issue, but we always came to the same conclusion, that we should resist taking it.

105. If anyone was arrested, they would be forced to accept the NVC before they were released. Whilst we were not arrested for being without a NVC card, it would limit our chance to travel. Anyone who spoke out against accepting the NVC card or questioned its issuance, was targeted, and arrested, and later forced to take the card.

106. [redacted] and other responsible people were forced to take the NVC. They were called to meetings at the security check points and told to take the cards, to show an example to others. I heard this from [redacted], who were made to take the NVC card. They were pressured to tell the villagers to take the NVC card, because they had done so.

Months preceding August 2017 attack at *Kilai Daung*

107. Following October 2016, soldiers were mounting "clear" operations all over Maungdaw. I heard the expression "clear", and what it meant, from the village chairman, [redacted]. The Rohingya in [redacted] were told to remove all fencing around their homes. Initially the order was not followed, but in our village the *Nay Khra Zound* came and smashed up fencing and houses of some who had not complied. After that the Rohingya in [redacted] complied.

108. The soldiers would surround villages and gather everyone in one location. Old people, sick people, men, women, and children. Whenever this happened the soldiers harmed the reputation of our mothers and sisters. I heard this from other Rohingya. It was happening in many places. These were called "clear" operations.

109. These "clear" operations happened in [redacted] on three occasions between 9 October 2016 and 25 August 2017. I cannot recall the dates or months. On two of the occasions, I managed to flee and was not present. But on one occasion I was present. The soldiers first surrounded our village and then the *Nay Khra Zound* entered, along with some soldiers. The Rohingya from our village were made to sit in a large compound that was also used as a market area. We were told we would be shot if we tried to leave. I saw the *Nay Khra*

Zound and soldiers searching our houses, whilst other soldiers guarded the perimeter of the village. The *Nay Khra Zound* stole valuables and smashed our homes. The soldiers that surrounded our village were wearing red scarves around their necks. The women were made to sit without wearing their burkha or veils.

110. Since October 2016 and throughout 2017 the Rohingya were very tense and often alarms were raised in [redacted] about soldiers and *Nay Khra Zound* coming to the village. Sometimes I would jump into the river nearby on many occasions in a single day. Many people did this, and it was so often that we would laugh about it.

111. During 2017, ARSA were travelling between Rohingya villages to recruit people and gain general support from villagers. I also recall reports from ARSA commanders of fighting between the military and ARSA in Maungdaw North. I cannot recall the details and there was no fighting in Maungdaw South, until August 2017.

24 August 2017

112. On the evening of 24 August 2017, [redacted] forwarded a message to the [redacted] WhatsApp group. It had originally come from [redacted] commander, and the message mentioned it was being circulated to the rest of Maungdaw ARSA. The message said all villagers in every village had to be cautious and stand up with whatever they could, like sticks or anything else. The site commanders were also instructed to place bombs at the side of the main road. We were not instructed to attack anyone but were told to be prepared to use them if attacked.

113. ARSA at [redacted] had already received six bombs some months before. I cannot be sure exactly when, but I saw these bombs. They were made of iron and they had black powder (*barud*) Inside. The bombs were the color of iron, shaped like a cylinder, and about one foot long. I know about measurements in feet. I saw the powder because one of the bombs was once drenched in water and it had to be taken apart and the powder dried.

114. These bombs were made by ARSA and were not standard military equipment. The man that made these bombs was Mohammed Younus. He was later killed in Myanmar. He showed us how to use the bombs about one week after he delivered them. He gathered some site commanders and young men. He explained how the bombs were detonated, by connecting two wires of differing colours that ran from the bomb to someone with a battery. As soon as the connection with the battery was made the bomb would explode. Mohammed Younus took a small amount of the black powder and placed it around a small lightbulb, wrapping tape around it. He then connected two wires and the light blasted. He used this to explain how everything worked.

115. Around two or three days before 24 August, a bomb accidentally exploded and two Rohingya Hafez were killed. I do not know the specific circumstances. This happened in [redacted] village tract. I was not present, [redacted]

[redacted] I later heard of the deaths from ARSA members on our WhatsApp group.

116. Following the WhatsApp instructions from [redacted] we placed two bombs along the side of the road that runs next to [redacted] This location was a junction [redacted], including the main road used by the soldiers and their vehicles. I did not go to the road to see them placed, but [redacted] (site commander [redacted]) and some young men went. The young men then waited, out of sight of the roadside, for any instruction to detonate the bombs. [redacted] returned to the village and informed me the bombs had been planted successfully. Only two bombs were planted as it was thought this was sufficient. The remaining bombs were never planted.

Killing of Hindus, Fawira Bazaar 25 August 2017

117. I remember seeing a news article and reading on the internet that Hindus had been killed by ARSA at a place called Fawira Bazaar (Kha Maung Seik). After the killing there was a discussion on the ARSA WhatsApp group, I was a member of. [redacted] said that ARSA did not commit the killings and it was the government seeking to blame us.

118. I remember there was a voice recording circulated stating it was not ARSA that attacked in that area. I do not know who made the recording.

25 August 2017

119. At around 1:00am on 25 August 2017, I heard loud noises from the direction of [redacted] It sounded like bombs exploding. I do not know if there was a fight between ARSA and the military. I only heard the sounds.

120. I tried to find out whether ARSA were engaging in fighting, but I did not get any information. Those people I managed to speak to could only say they could hear the noises.

121. I could also hear gunfire from the direction of the [redacted] checkpoint. Bullets struck some water tanks in our village. Even cooking pots and trees were struck. Again, I could not be sure why there was gunfire.

122. I later learned that there had been fighting between ARSA and the military at a place called [redacted] I saw messages in the ARSA WhatsApp group confirming there was a fight.

123. [redacted]

124. The villagers gathered their belongings and went to the west of [redacted] near the riverside, where they constructed temporary shelters using tarpaulin. The fear was the soldiers would come to our village, and our homes were already being struck with gunshots. [redacted]. It was here that the villagers placed their shelters. We chose this place because it was slightly elevated and protected by the flood wall. It was also far enough from the check point that we thought bullets would not reach.

125. By dawn on 25 August 2017 the gunfire and explosions quietened, and I could only hear occasional gunfire.

126. I remained in the village, to defend it if necessary. All the men of the village remained and, after dark, gathered at [redacted] Mosque. They were joined by some ARSA members, including myself. I think there were six official ARSA members present but we were receiving help from other villagers, who would follow instructions. In total, I would estimate there was around 100 Rohingya men gathered at the mosque. We discussed the ARSA WhatsApp message that had been circulated. We also discussed the worry that we would be attacked by the government forces.

127. The men had armed themselves with what they could, mostly sticks and some billhooks, and remained together in [redacted] whilst some patrolled [redacted]. The ARSA members present did not have firearms. I know some ARSA members did hold guns, but we did not have any. We villagers sometimes helped transport guns through our area to ARSA, which is how I believe there were guns in circulation. Ataullah had stated that ARSA had captured around 100 weapons during the 9 October attack.

128. During the meeting at the mosque, [redacted], a young ARSA member, remained at the roadside with the bombs that had been planted the day before.

129. [redacted]

130. I was not aware of any significance of the date, 25 August 2017, as far as it concerns ARSA.

26 August 2017

131. Nothing much happened, but some noises from the checkpoint. Some villagers were moving away to [redacted]

27 August 2017

132. Since 2012, it was not unusual to see helicopters flying around our area. They would regularly arrive to provide supplies and additional personnel and would be unloaded by soldiers wearing black tee shirts and shorts, but still carrying a weapon and wearing a belt.

133. From 25 August we would see helicopters flying overhead every two to three hours, during daylight.

134. On 27 August 2017, I saw two helicopters landing in [redacted], which is near the [redacted] The helicopter was the same green colour as the soldier's uniforms (38A on the chart).

135. After the helicopters had departed, soldiers began approaching our village in a vehicle. It was a green colour, again like the uniforms the soldiers would have (38A on the chart). This vehicle had no roof in the rear and many soldiers could sit in the back in two rows, facing each other. I watched as the vehicle parked on the east side of a bridge in [redacted]

[redacted] The soldiers left the vehicle and walked across the bridge. Once across the bridge, they turned north along the main road. There was a loud explosion and I saw smoke, but I did not see what happened.

136. I then saw about 20-30 soldiers begin heading south on the same road, towards [redacted]. Other soldiers went straight back across the bridge towards the vehicle that had been parked. This explosion was in a different location to the two bombs we had planted days before. The soldiers entered our village whilst firing their guns. The *Nay Khra Zound* from the checkpoint between [redacted] and [redacted] came and joined the soldiers, heading from the opposite side of [redacted]. Both groups met up in paddy fields to the east of the main village road, behind [redacted]'s largest mosque. The groups then headed south, towards the checkpoint, continuously firing. Once at the main road, they stood and fired towards the village for around 10-20 minutes and then began walking backwards to the checkpoint and firing as they did so. Young Rohingya men were chanting "*Allahu Akbar*". The soldiers and *Nay Khra Zound* then entered the checkpoint. The firing continued throughout the night from inside the checkpoint. Bullets struck our homes, fencing and trees in [redacted].

137. Villagers were armed with sticks and prepared to fight them, but there was no face-to-face fighting that I saw. Most villagers only had sticks and billhooks, but one villager had a different weapon, called a *Tela Bond Duk*. This was a homemade type of gun. It was made of wood, and it was fired by squeezing a spring tight and releasing it with a trigger that looked like the tip of a billhook. However, the *Tela Bond Duk* was not working so it was just brandished to make the soldiers think it could fire.

138. A bullet struck my nephew, [redacted] in his rear and exited through the area of his "shy part". Blood was flowing from his injury, and one of his testicles was damaged. I could not see if the bullet was still inside him. We took him to a house in [redacted]. My brother, [redacted] injected [redacted] with a pain killer. [redacted] was my relative but also my student. [redacted] would call me *Abba Jaan*, meaning my beloved father. Even as he was dying, he said "*Abba Jaan*, don't leave me". I was with him as he died. Now, as I remember him, I miss him a lot. I later led funeral prayers for him as he was buried in [redacted]. He was about 10 years old.

139. It was pointed out to me that, in the record of my previous meeting with IIMM, [redacted] is mentioned as being killed during the incident. [redacted] is my cousin and he is alive. He was [redacted]'s father. [redacted]. He was not injured during this incident.

140. During the same violence, a young man from [redacted], came to [redacted]. I met him myself at the same house my nephew was being treated. He was shot close to the entrance to our village, and had a bullet wound to his thigh area. The wound was also at his shy part, and I helped treat him. There was a small hole in his groin and a

larger hole in the lower part of his hip. People came from his village to collect him. I understand that this young man later died. His name was [redacted]. He was around 20-30 years old.

141. The shooting continued until around dusk.

28 August 2017

142. Throughout the night and early hours, many villagers had left [redacted], but most of the men, including myself, remained. At around 09:00am on 28 August 2017 the soldiers and *Nay Khra Zound* entered [redacted] from the checkpoint to the south, and some entered homes in [redacted]. I was there in my father's house. I heard screaming and shouting and jumped into the river to escape. I swam across the river to a fish hatchery, and I hid there on the edge of the water. There was a raised mud structure in the water to hold the fish and I used this to hide from view.

143. The soldiers stole produce from the homes in [redacted] and then moved away from the village. From the hatchery I made my way to [redacted]

144. Later that morning, just before noon, I saw another two helicopters land in [redacted]. Again, they were the same colour as the uniform of the soldiers. Soldiers in uniform and men wearing black tee shirts, shorts and a gun and belt, moved out of the checkpoint between [redacted] and [redacted], and walked diagonally across the paddy fields to the east of the village, towards where the helicopters had been. I saw other soldiers from [redacted] meet with them and hand over supplies. I do not know what was given to them, but I saw that they were passed many boxes and backpacks. It was the men in tee shirts that were carrying most of the supplies as they returned to their respective checkpoints.

145. Gunfire from the checkpoint continued throughout daylight hours. [redacted], ARSA site commander for [redacted], and I remained in [redacted] We had remained to use the two bombs we had planted if the soldiers attacked us.

146. After dusk the firing from the checkpoint persisted, but the security forces remained in the *Nay Khra Zound* base throughout the night.

29 August 2017

147. At around 10:00 am a newly appointed commander from the military contacted [redacted] the deputy chairman of the village. I know this because [redacted] informed me and later the issue was discussed by the remaining men in the village. The commander had said he would not burn the village if the villagers paid 12 *lakh* Burmese Kyat. I do not recall the name of the military commander, but he was a soldier. This commander was

apparently from [redacted]. But I was told that at the time of the call to [redacted], this commander was in [redacted]

148. I once saw this commander. He came to [redacted] and was asking where the Imam was. [redacted] and this commander finally saw an old man with a beard and began beating him. On this occasion he was wearing a soldier's uniform (38A on the chart), without a red scarf. He had a pistol on his belt and was carrying a wireless set. He arrived on a motorcycle with another soldier. He had flowers on his shoulders but I cannot recall how many.

149. This demand for 12 *lakh* was discussed among the remaining men in the village. We were worried. Most people had fled and we did not have the money that was being demanded. One man said he was prepared to pay the whole amount if it was later repaid to him. However, we discussed this further and thought we had no guarantee other soldiers would not also demand money. We decided not to pay the money and [redacted] was advised to change his SIM card, to avoid taking further calls.

150. Later, the *Ray Muu* (police chief) at the *Nay Khra Zound* base contacted [redacted]. He said the base was low on food and ordered some was brought to the base. This instruction was conveyed to the men in village. As this base was so close to us, we thought we should try to keep them happy. We delivered buckets of rice, coffee, and vegetables. [redacted] travelled to the base on a bicycle with another man. Because [redacted] had a good relationship with the *Ray Muu* he was confident that he would not be harmed. Food and coffee were handed over to soldiers, a short distance outside the base.

30 August 2017

151. I left my house to wash and hold *Fazr* prayer. I heard sounds of motorcycles and gunfire, and looked to the east where a house was burning at the side of the main road. [redacted] The walls of the house were brick and the roof was made of wood and tin. The roof was burning. I saw soldiers on motorcycles and *Nay Khra Zound* approaching from their base. The motorcycles were ridden by soldiers and men with black tee shirts, with the belts and guns.

152. The facial features of the men in civilian clothing were different to Rohingya. Their faces were fuller, and they had smaller eyes.

153. I moved west away from the road and towards [redacted] and my father's house.

154. On the way through the fields, I saw a man I recognized. His nickname was [redacted] and he was *Nay Khra Zound*. This man would harass Rohingya, steal phones and ask for bribes. He was well known in [redacted]. He was strong and tall. [redacted] He would normally wear the uniform of *Nay Khra Zound* when he patrolled

[redacted], but on that day he wore a black tee shirt. He looked straight at me, but I continued moving.

155. I took what I could from my father's house, including a solar panel, and jumped into the river. I crossed the river to the fish hatchery and used it to hide as I had done before. I was with [redacted].

156. From the fish hatchery, [redacted] and I went to a small house. From there I watched what was happening across the river in [redacted].

157. The whole of [redacted] was burning. I filmed this using my phone, but unfortunately it was subsequently stolen in Bangladesh.

158. I saw men on foot and some travelling on motorcycles, all entering [redacted]. Each motorcycle had at least two men on board. Some men were wearing sleeveless white tee shirts, others were wearing black half sleeve tee shirts, and white half sleeve tee shirts, others were in the uniform of soldiers. I saw [redacted] burning, shortly after the motorcycles had arrived. I watched as the men poured liquid at the base of some of the houses, grabbed hay from the rooves, lit the hay, and threw it across the rooves.

159. They lit the base of the houses with a lighter and the liquid made big flames, that spread to other houses in the village. The whole of [redacted] was burned to ashes.

160. The men and motorcycles moved off. [redacted] went to [redacted] and I returned to [redacted]. I moved around, filming the scene on my phone. Only a few houses were not burned in [redacted] and just two in [redacted]

161. I did upload videos of what had happened to a WhatsApp group, shared with other villagers in [redacted]. However, this group was later closed and I cannot access it now.

162. Since 25 August 2017, villagers had been living in temporary shelters in [redacted]. Some people would return and some would leave [redacted] during the period leading to 30 August 2017. However, by 30 August 2017, almost everyone had moved to the temporary shelters. Some villagers had also fled to [redacted].

163. I saw fire and smoke at [redacted]

164. I could also see black smoke rising to the north of [redacted] but could not see which villages.

165. I returned to my family, at a temporary shelter in [redacted].

166. I do not know of anyone that died during the 30 August burning of the villages. The villagers had fled before the soldiers arrived at [redacted].

Chronology

167. The events I have described from 24 August 2017 through until 30 August 2017 are as I remember them. However, many things happened during this time and there may be some confusion around dates. I have spent time thinking carefully about them, and I am as sure as I can be about the order of events.

168. *Qurban* fell within one week of 25 August 2017, but I cannot recall which date exactly. I was still in [redacted] when *Qurban* fell.

Journey to Bangladesh

169. My village was burned. I spoke on the phone with my Father-in-Law, who was in [redacted] He advised me to leave Bangladesh. I did not leave immediately, but I did send my family on a boat, jointly owned by my brother, [redacted] and another villager. I placed my wife, [redacted] and children, [redacted] into my brother's boat. They set off for Bangladesh from a river that flowed into the sea between Myanmar and Bangladesh. It would normally take about two hours to get across the water to Bangladesh. However, the tide was strong and the boat had to return. My brother called me and I met my wife and children back at the river where they had set off. It was dark when they returned.

170. The next day, after speaking with my father-in-law again, I decided to leave Myanmar with my wife and children. Others were in the boat with us, including my brother, [redacted] as we set off.

171. After crossing the water, we came to many fish hatcheries and barbed wire fencing. I then arrived at the seashore with my family. Many Rohingya were there and all of us were trying to get a boat across.

172. Boats came across from Bangladesh and were collecting Rohingya. I made a deal with a boat rider to pay him 50,000 Burmese *kyat* per person, to cross.

173. There were two *Nay Khra Zound* bases, one to the north, and one to the south of [redacted] shore. I saw them watching us and patrolling. I remained at the shore until *Asr* prayer time. They made no attempt to stop us leaving.

Annex 151

IIMM, Witness Statement No. IIMM0019915259, date redacted (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name: [redacted]

First name: [redacted]

Former names:

Other names used: [redacted]

Father's name: [redacted]

Mother's name: [redacted]

Spouse(s)' name(s): [redacted]

Childrens' name(s) and date(s) of birth/age: [redacted]

Nationality(ies): Myanmar

Gender: Male

Mechanism person code: P2101

Date of birth/Age: [redacted]

Place of birth: Nga Yant Chaung, Nga Yant Chaung (a) Taung Bazar, Buthidaung township, Rakhine State, Myanmar

Ethnicity: Rohingya

Religion: Muslim

Language(s) spoken: [redacted]

Language(s) written: [redacted]

Formal educational level: [redacted]

Prior occupation and employer in Myanmar: [redacted]

Current occupation and employer: [redacted]

School attended: Primary school of Nga Yant Chaung (Class 1-5), Basic Education High School in Taung Bazar (Class 6-10)

Previous address in Myanmar: Nga Yant Chaung

Current address: [redacted]

Date or approximate date of departure from Myanmar if applicable: 11 September 2017

Photo ID: Yes

Type of photo ID: Forcibly Displaced Myanmar National/ Person of Concern to UNHCR

Authority issuing photo ID: UNHCR

Issuance date on photo ID: [redacted]

Name on photo ID: [redacted]

Registration number on photo ID: [redacted]

Any other form of photo ID: [redacted]

[redacted]

II. Interview Information

Prior screening(s) conducted: **Yes IIMM0019915156**

Place/modality of interview: In-person [redacted]

Date(s) and times of interview:
12/11/2022, BST, [redacted]
13/11/2022, BST,
14/11/2022, BST,
15/11/2022, BST,
16/11/2022, BST,
17/11/2022, BST,

Language(s) used in interview: [redacted]

Names and signatures of persons present during interview:

	Name:	Signature:
Interviewer(s):	M0065	
	M0015	
Interpreter:	[redacted]	
Witness support person:		
Other persons present:		

III. Introductory Matters

1. I was introduced to the interviewers. The interviewers explained to me the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. I was explained that the Mechanism, and team speaking with me, belong to an organization which is called the "United Nations", in short "UN". I understand the explanation that other organizations like UNHCR and WFP are part of this same big organization, but they all do different jobs. I understand that the team speaking with me is collecting information about the crimes committed in Myanmar. I understand that the mandate of the Mechanism only covers events that occurred in Myanmar and nothing in the Bangladesh territory. I have been explained what a tribunal is, and what it means to be a "witness". I understand that my story may be shared with national or international courts prosecuting crimes committed in Myanmar, and that I may become a witness in these cases.
2. I was told that the focus of this interview is about the events that led my family and I to leave our home in Myanmar and come to Bangladesh. I want to share my story with you and explain what has happened.
3. I was informed that my cooperation with the Mechanism is entirely voluntary and that I am not obliged to participate in this interview or answer any specific questions. I confirm that I am cooperating with the Mechanism voluntarily. Nobody forced me or made promises to me to participate in this interview. Nobody told me what to say or not to say.
4. The interviewers explained that the Mechanism's investigations are confidential, to protect both work of the Mechanism and the persons it interacts with. The interviewers asked me to keep my interactions with the Mechanism confidential. Only [redacted] knows that I am giving a statement.
5. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or to say "I don't know" if I do not know the answer to their questions. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I heard or learned from others. It was explained to me that I might be shown documents, photos, videos and maps during the interview and I indicated that I understood this.
6. The interviewers also stated that they would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, they will read it to me so that I can make all corrections or clarifications, and confirm that it reflects what I said during this interview.
7. The interviewers explained that this statement and the material that I shared with the Mechanism would not be shared without my full and informed consent.

8. The interviewers asked if I fully understood these issues and asked if I wanted to proceed with the interview. I confirmed that I understood the points raised by the interviewers and confirmed that I want to proceed with the interview.

IV. Previous Interviews

9. [redacted]

10 [redacted]

11 [redacted]

12 [redacted]

V. Statement

Nga Yant Chaung (Naraing Shaung)

13. I was asked to describe my village, Nga Yant Chaung. Nga Yant Chaung village tract is the most populous village tract in Buthidaung township. Nga Yant Chaung is one of several

Lead up to August 2017

63. Whenever police officers from Regional Police Station No. 9 in Taung Bazar came to Nga Yant Chaung, I would see them carrying pistols and walkie-talkies. I remember occasions on which they came to our village and had tea in the tea shops in Moli Bazar.

64. Two or three months before 25 August 2017, the **Officer-in-Charge of the Regional Police station No. 9** ("*Ne-Me-Re-Muu*") in Taung Bazar, was passing through Nga Yant Chaung on his way to Buthidaung town. He stopped in Nga Yant Chaung to have tea with Village Chairman **Kaung Se Hla** and Officer-in-Charge of the police post in Nga Yant Chaung **Aye Mya.**

65. They met and had tea at [redacted]'s tea shop in Moli Bazar. [redacted] That morning I was at [redacted]'s tea shop having breakfast. I recognized Kaung Se Hla and Aye Mya, but not the other high-ranking BGP officer, so I asked [redacted] who he was. [redacted] told me he was the Officer-in-Charge of the Regional Police station No. 9 in Taung Bazar. I do not know the name of the Officer-in-Charge of the Regional Police station No. 9 in Taung Bazar; we always referred to him as the "*Ne-Me-Re-Muu*". I saw him with my own eyes that morning. I could not hear what the officers were talking about over tea. [redacted]

66. **Kaung Se Hla** was wearing a shirt and a *longyi*. He had a DT motorcycle. **Aye Mya** was wearing a BGP uniform with a mixed blue pattern, which I identified as colours nos. 22 and 27 on the colour chart. The **Officer-in-Charge of the Regional Police station No. 9** was also wearing the same BGP blue mixed colour pattern uniform. I knew he was the Officer-in-Charge of the Regional Police station No. 9 because he had two stars on his epaulette.

67. The Officer-in-Charge of the Regional Police station No. 9 had a pistol with him. He also had a walkie-talkie. I heard voices coming out of the walkie-talkie but the Officer-in-Charge was not talking into it. I was asked to describe what the walkie-talkie looked like. It was thicker than a mobile phone and had a stick coming out of it making it look like a small radio. It was a solid dark colour, which I identified as being between colours nos. 39 and 40 on the colour chart. There was some white writing or some white symbols on it. I could not make out what it said but it was definitely not Burmese script. I did not hear what the voices coming out of the walkie-talkie were saying.

68. There were two other police officers at the tea shop that morning. They were from the Nga Yant Chaung police post, but they were new and I did not know their names. They were wearing solid blue police uniforms, which I identified as colour no. 24 on the colour chart.

69. In this same period leading up to 25 August 2017, I was receiving forwarded videos and audio clips in WhatsApp groups about and purportedly from a group that people referred to as Al-Yaqin. I now understand that this is another name for ARSA. In the video and audio clips, the Al-Yaqin members were encouraging Rohingya people to stand up for their

rights, sending messages like, "We are living like slaves. We have to rise up. It is time." I do not know from whom these audio and video clips originated.

Friday 25 August 2017

70. The big problems started on 25 August 2017. We later had to leave our home. It took us 15 days to travel to Bangladesh. I crossed the border into Bangladesh with my family on 11 September 2017. While fleeing Nga Yant Chaung, I filmed things I saw on my smartphone. I recorded the route, the suffering of our people, and how we climbed across the mountains [redacted] While swimming across the Fur Ma River ("*Fur Ma Khal*" as "*khal*" means river in Rohingya) with my youngest sister [redacted] my phone fell out of my backpack. The phone was in a waterproof bag and it floated down the river. Due to the current, I was unable to recover the bag and the phone. I could not go after it without endangering my sister, so I let it go. [redacted]

Night, 24-25 August 2017

71. The night of 24-25 August, I was awake reading a book [redacted] at home. My younger brother was studying and doing homework, while my parents and brothers and sisters were sleeping. My younger brother eventually went to sleep, and I continued reading. [redacted] It was near midnight, and I thought I should go to sleep. I went to sleep with my brother in one bed. I remember there was nothing in the news that night related to Rakhine. The most striking news story that night was about an incident in Irrawaddy.

72. While in bed, suddenly I heard a strange noise that I had never heard before. It was a very big, strange noise that sounded like it was very near my home. Everyone in my home woke up. I asked my father what was happening. I recognized the sounds of gunshots because they sounded like gunshots that I had previously heard in movies.

73. The sounds were coming from the direction of the police post and from the west, the direction of the no. 552 military base. There were very loud sounds coming from the police post. I asked my father if we could go out and look at what was happening. At the back of my house we had a balcony. My father said we should not open our doors since there was heavy firing and we might be shot Instead, my father, mother and I looked outside through the cracks in our bamboo walls but it was so dark we could not see anything. There was some artificial lighting around the police post but we couldn't see past the trees obstructing the view; we could only see some movements there, which I believed were police officers. We continued looking through the bamboo for about half an hour. We could hear the voice

of Aye Mya, and it sounded like he was shouting into a phone or walkie-talkie. He was shouting very loudly in Burmese, "Now we are under attack here. How is the situation there? We are safe now, we are continuously firing. People came and threw hand bombs at us; no other weapons; we think some have already died."

74. I could not see anyone else around the police post. I could see the movement of police at the top of the hill. After some time, Aye Mya was no longer shouting but the gun noises continued from 3am – 6:12am. I remember this specific time because I looked at a clock in our home and wrote it down in my diary at the time. I left my diary behind in Myanmar, but the night I arrived in Bangladesh, I borrowed [redacted] and typed everything I could remember into a document file, [redacted]. I provided [redacted] to the IIMM, which were registered as BIN **IIMM0019915226**. We were very scared so we could not sleep. All my siblings were awake. I think all the villagers of Nga Yant Chaung woke up. My father was calming us down and telling us not to worry and that we would learn what had happened in the morning.

75. [redacted] between 3am and 6am, many of my friends, cousins and relatives came to our house to see what was happening, stayed for a while and then returned home. My father was also receiving phone calls from his friends in different parts of the village to find out what was happening. No one called our family with any information about what was happening, they were only calling to ask us about what we knew.

76. There were a lot of messages coming through the [redacted] WhatsApp groups. I remember seeing lots of news, video and audio clips coming through that night. Members of these groups were forwarding messages that they had received. People started forwarding messages that were allegedly from Al-Yaqin saying that all the noise was coming from Al-Yaqin shooting guns and not from the government. I remember that these messages that appeared to be coming from Al-Yaqin members were voice clips shared on [redacted] The voice said things such as, "We are firing at the security forces. Everyone get ready. We need your help. We are attacking the security forces. All the noise you hear is from our side. We have seized many checkpoints. We are continuously fighting and attacking. We already control many police posts. We are firing." The voice came from a man speaking in the Rohingya language. While he did not identify himself directly as a member of Al-Yaqin or indicate his location, the context and content of his message made me believe he was a member of Al-Yaqin. I didn't recognize the voice as belonging to anyone I knew. In the voice recording, I did not hear any shooting or other background noise.

Morning, Friday 25 August 2017

77. After the shooting stopped at 6:12am, Nga Yant Chaung village was silent like a graveyard. No one was coming out of their homes, everyone was scared. There was no call to prayer

him and he asked me in the Burmese language who I was and what I was doing there. I was so angry at that moment. I replied to him with my own question for him and said, "It is not for you to ask me this question. It is for me to ask you this question. [redacted] and I have never seen you here before. Who are you and what are you doing here?" He became very angry. His eyes turned red and he started using bad words and shouting, "Who the hell are you? How dare you, *meh lu?*" "*Meh lu*" is a bad word that is used to intimidate. I could see that he wanted to hit me. Just then, another soldier came up and addressed me more politely. He asked who I was and what I was doing there. I replied, [redacted]

97. The three soldiers in front of [redacted] wore the same military uniform I have described before, with a mixed colour pattern in colours that I identified as nos. 5, 39, and 22 on the colour chart. The polite soldier had two lines on his arm badge, same as the lines I drew and that were registered by the IIMM with BIN **IIMM0019915168**. They were not wearing hats. On the collar of their uniform, there was a round gold pin with some writing that I could not make out. They were not wearing red scarves. They had long black guns with iron handles, but were not wearing any other gear like the backpacks and water jugs I described earlier. They did not have the larger cylinder weapons with them.

98. [redacted]

99. While I was in [redacted] a large group of Rohingya men and boys, started coming down the main road and shouting very loudly. The Rohingya men and boys were between 12 and 35 years old. The soldiers [redacted] then left abruptly in the direction of the police post, so I went to [redacted] to see what was happening. I peeked out my head [redacted] and saw this large group of Rohingya. Some Rohingya were carrying sticks. I did not see anyone carrying any other weapons. The group was moving in the direction of the police post. I know the group was made up of Rohingya from different villages because I recognized some Nga Yant Chaung villagers in the group but not others. I was very scared and continued to watch [redacted] I was holding my phone in my hand. I was about to call my father, when I noticed that the soldiers had left their guns behind, on top of a bench in front of my shop.

100. Then I heard the sounds of shooting, with gunfire coming from the direction of the police post. None of the Rohingya people in the approaching group were hit. I could only hear gun firing sounds coming from the direction of the police post and did not see the actual bullets or who was firing them.

detained these people, confiscated their valuables and told them that they could not stay on the mountain anymore. The military also told these villagers that they could go where they wanted but if they chose to return to their homes in Nga Yant Chaung, the military would kill them. We then heard that our father's friend [redacted] was in that group with his family. My father asked me to go and try to find them. I had the phone number of [redacted]'s son, [redacted]

142. I called and kept trying to reach [redacted] as I walked toward the Nga Yant Chaung mountain. Someone finally answered the phone, but I heard that someone responded in Burmese. The voice said, "Who are you?" I understood this was not [redacted] and so I quickly ended the call and turned off my phone without saying anything. I continued towards the mountain looking for [redacted]s family. I eventually found them in the Nga Yant Chaung mountains, near the same place where [redacted] had been detained. There were about 10-15 families with a total of around 50-60 women, men and children, all from Nga Yant Chaung. The soldiers had left them there after taking all their valuables. I spoke to [redacted] and asked him what happened. He told me what had occurred and confirmed the families had items stolen from them and were threatened with death if they stayed on the mountain or returned to their homes. [redacted] was able to understand what the soldiers were saying to them because he understood the Burmese language. I did not see any injured people. After 10-15 minutes of talking with him, I asked [redacted] what he was going to do. He said he didn't know. I left and returned to [redacted]'s house to relay this to my father. My father called [redacted] and they spoke. I do not know what they discussed. My father then told me that we should return to our home in Nga Yant Chaung and consult with some Nga Yant Chaung villagers who were hiding near the village.

143 [redacted]

144. That afternoon, our whole family returned from [redacted]'s house to our home in Nga Yant Chaung. We could see that the military was still in and around the hospital. Nothing else changed in our home. I didn't notice any new damage or other missing items. It was then that some people from Soor Fara in Chin Tha Mar village tract began to arrive in Nga Yant Chaung. I know this because our relative, the mother of [redacted] lives in Soor Fara and arrived at our home telling us that other people from her village were coming and had plans to flee to Bangladesh. [redacted]

145. Around 3-4pm, we saw the military leave the hospital. My mother and sister saw this from [redacted] and then reported this to me. My mom said that they went towards Buthidaung. I went out [redacted] and looked and saw that there were no more soldiers in or around the hospital.

146. In the evening, once it was already dark, we assembled near [redacted] house. Our family, the 10-15 families that had encountered and been threatened by the military on the

mountain, other Nga Yant Chaung families, and families from other villages, all gathered together. My grandfather kept pushing for us to leave. My father did not want to go to Bangladesh. My grandfather insisted that if we stayed, we would be killed. Finally, my grandfather made the decision that our family would leave.

147. We stayed the night in our home and prepared to leave the next morning.

5 September 2017

148. In the morning, the same group from the day before gathered, and we all left together. My father went [redacted] We could not travel by boat because the Regional Police Station No. 9 would see us. We only had one option, to walk through the mountains.

149. I took a bag with me with two books, my mobile phone, and some clothes, and my youngest sister, [redacted] My father was carrying some food and water.

150. [redacted]

151. We reached Boiddaw Para and took a rest there. Boiddaw Para was surrounded by hills. It was empty. I saw there were some damaged homes and broken shop doors. We left Boiddaw Para around 12pm or 1pm. We reached Chaung Pauk at around 7pm, and stayed the night there. We had relatives in Chaung Pauk, [redacted] They were still in their home in Chaung Pauk. I had never been there before, and I did not look around the village.

6-9 September 2017

152. [redacted]

153. [redacted]s father was saying that even though all the other Nga Yant Chaung villagers had continued on their journey, we should stay. We stayed for three days.

154. [redacted] During the journey, we all separated as we walked different speeds, but I stayed with [redacted]

155. We passed through many villages in Buthidaung but I did not know which ones, because I had never been there before. I did not notice anything in particular while passing by those villages.

156. We reached Fati Yaar village the same day we left Chaung Pauk, 9 September. Our family reunited, together with my mother and baby [redacted] In Fati Yaar, we stayed in

Annex 152

IIMM, Witness Statement No. IIMM0027992947, date redacted (extract)

United Nations Nations Unies

INDEPENDENT INVESTIGATIVE MECHANISM FOR MYANMAR • MÉCANISME D'ENQUÊTE INDÉPENDANT POUR LE MYANMAR

CONFIDENTIAL

WITNESS STATEMENT

I. Witness Information

Last name:	[redacted]	Father's name:	[redacted]
First name:		Mother's name:	
Former names:		Spouse(s)' name(s):	
Other names used:		Childrens' name(s) and date(s) of birth/age:	
Nationality(ies):	Myanmar		
Gender:	Male		
Mechanism person code:	P1493		
Date of birth/Age:	01-Jan-1972 (On FDMN Card) 01-Jan-1978 (Original)	Place of birth:	Hamlet: Phaung Daw Pyin (B), Fundu Farang (R); Village Tract: Chin Tha Mar (B), Hang Sar Ma (R); Township: Buthidaung
Ethnicity:	Rohingya	Language(s) spoken:	Rohingya Burmese Rakhine Bengali (limited) English (limited)
Religion:	Islam		
		Language(s) written:	Burmese English
Formal educational level:	Grade 10	Prior occupation and employer in Myanmar:	[redacted]
School attended:	Basic education affiliated middle school in Phaung Daw Pyin (up to Grade 8)		

	Basic education High school Buthidaung (Grade 9 and 10)	Current occupation and employer:	[redacted]
Previous address in Myanmar:	Hamlet: Phaung Daw Pyin (B), Fundu Farang (R); Village Tract: Chin Tha Mar (B), Hang Sar Ma (R); Township: Buthidaung	Current address:	
Date or approximate date of departure from Myanmar if applicable:	13/14 September 2017		
Photo ID:	Yes	Type of photo ID:	UNHCR/GOB FDMN Card
Authority issuing photo ID:	Government of Bangladesh/UNHCR	Issuance date on photo ID:	[redacted]
Name on photo ID:	[redacted]	Registration number on photo ID:	
Any other form of photo ID:			

II. Interview Information

Prior screening(s) conducted: **No**

Place/modality of interview:

Location of interviewer: [redacted]
Location of witness:
Location of interpreter:

Date(s) and times of interview:

26/02/23 [redacted]
27/02/23
01/03/23
02/03/23
16/03/23
18/03/23

Language(s) used in interview: Rohingya, English

Names and signatures of persons present during interview:

Interviewer(s): M0059

M0014

Interpreter: M0093

Witness support person: N/A

Other persons present: N/A

III. Introductory Matters

1. I was introduced to the interviewers and the interpreter and explained that the latter would interpret everything the interviewers said in English to me in the Rohingya language and vice versa.
2. I was provided with an explanation about the work of the Independent Investigative Mechanism for Myanmar ("Mechanism" or "IIMM") and the purpose of this interview. I understand that the mandate of the Mechanism only covers the events that occurred in Myanmar and nothing in the Bangladesh territory. It was explained to me that the IIMM was created by the UN. The interviewers explained to me what a court is, and that the Mechanism is not a court. Rather, it conducts its own independent investigations and then shares this information with other national or international courts or judicial authorities. I was provided with further information about the specific courts or authorities that the IIMM is currently sharing information with and what it would mean if my information was shared with these bodies, including that I could become a witness. It was explained to me that the Mechanism is trying to make sure that the people who were responsible for committing serious crimes in Myanmar face justice.
3. I was informed that my cooperation with the Mechanism is entirely voluntary and that I had no obligation to participate in this interview or answer any specific questions. I confirm that nobody coerced me or made promises to me to participate in this interview. Nobody told me what to say or not to say. I am happy to be here and give my statement.

4. The interviewers explained that the Mechanism's investigations are confidential, both to protect the integrity of the investigations and the security of the individuals the Mechanism interacts with. The interviewers requested I keep my interactions with the Mechanism confidential.

5. The interviewers explained how the interview process will work. They asked me to try and be as detailed and accurate as possible, and to indicate if I do not understand a question, or if I do not know, or recall, what they are asking about. They explained that it is important that I tell the truth, and that I distinguish between what I saw and experienced myself and what I may have heard or learned from others.

6. I was told that this interview is about the events in Maung Nu village and surrounding areas that have occurred since 2011.

7. I was informed that I might be shown documents, photographs, videos and maps during the interview. I was explained that the interviewers would prepare a written statement with the information I provide during the interview. I understand that, before signing the statement, this statement will be read to me in the Rohingya language, and I will be given the opportunity to clarify and correct this statement to ensure that it accurately reflects my recollection of events.

8. The interviewers explained that this statement and any associated materials that I have shared with the Mechanism would not be shared without my full and informed consent.

9. The interviewers asked if I fully understood these issues. I was asked if I had any questions for them and if I was willing to proceed with the interview. I confirmed that I did not have any questions and understood the process explained by the interviewers and confirmed my willingness to proceed with the interview.

IV. Documentary or Other Evidence in the Possession of Witness

10. I was able to bring all documents from Myanmar when I came to Bangladesh, but many of the documents got lost during [redacted] The documents which were lost were: a family list with my family and my grandparents names (different to the one still in my possession), my birth certificate, the birth certificates of my wife and elder son [redacted]

11. The documents I still have from Myanmar are:

    a. Two family lists from 1996. This list was constantly updated up to 17 Feb 2016 (BIN IIMM0025673251)

    b. Set of four documents which are applications for Identity Cards made by my father that has all the names of his father and forefathers listed; done in 1986. These documents have also a family chart attached (BIN IIMM0025673249):

        - Cover letter

- Application for father, [redacted]
- Application for mother, [redacted]
- Family chart

c. Receipt cards for myself and my wife (BIN IIMM0025673250)

d. Birth Certificate for my younger son, [redacted], issued in June 2017. I note that the authorities did not state the ethnicity in this document; it was neither Bengali nor Rohingya written there. It was only a dash.

(BIN IIMM0025673248)

12. [redacted]

V. Prior Interviews

13. I was previously interviewed at least two times about the events in Myanmar. The first time—to the best of my recollection—was in November 2017. I don't recall who interviewed me. The interviewer took handwritten notes and typed on a computer. This interview lasted for three days. The only thing I can remember is that I was interviewed by some foreigners, except the interpreter. It was conducted at a place [redacted]

14. The second interview was [redacted] The interview took an entire day, [redacted] I was interviewed by foreigners, and they typed my interview on a computer. I can't tell you much more, I lost all my notes and records [redacted]

15. For both interviews I didn't receive any compensation or payment, no snacks were given, no money. Just bottles of water were handed out.

16. It was explained to me that the IIMM has a record of an interview It was explained to me that the IIMM has a record of an interview given by an individual matching my identifying information and village of origin to the [redacted]

military soldiers for each cow we owned. This was once a year. All these matters were discussed in this meeting.

56. There is a mogh (Rakhine) village called U Taung Fara which is three to four miles away from my village. Many muslim villagers from my village and surrounding areas had land adjacent to U Taung Fara. [redacted] I used to go to my land frequently. One day I found one of my cows was missing. I reported this incident to 564 base officials at Mouk Bil, but no action was taken. Later on, I learned that it was taken by the mogh (Rakhine) villagers in U Taung Fara.

57. After listening to the villagers complain, the Byu-Har-Muu said, "I will make sure these things don't continue in the future.", but nothing changed. Moreover, the soldiers harassing the villagers more, saying "you guys complaint to your daddy, so what were you able to do to us?"

58. A few days after this meeting in later October 2016, around 100 military soldiers from military base 564, 552 and base no 15 from Da Bru Chaung came to my village. I recognized two high officials as stated as follows:

    i. *Bo Muu* (Major) from 564. His name was Kyaw Kyaw. He was a one-moon and two-star officer. Base no 564 is in my village. The Bo Muu of 564 used to come to Fundu Bazar often for shopping. He was known to all of us.

    ii. *Bo Muu* (Major) from 552. His name was Thein Aung. He was also a one-moon and two-star officer;

59. I don't recall the name of the Bo Muu of base no 15.

60. The all were in plain green uniform. I knew the military base number because I saw these numbers were marked on the bottom of their rifles.

61. The military soldiers and all three Bo Muu stayed in the village for four days. They used to stay in the school and we, the villagers had to provide food to them. During these four days, they did not arrest anyone from the village. They did not do anything to the villagers.

62. On the very first day, the Bo Muu ordered the village administrator, Mohammod Arof to inform the villagers to remove all the fences around their houses. And then the Ru Ru (soldiers without any badges/insignia) started removing fences around the villagers' houses. They searched in houses and confiscated all sharpen tools that could be used as a weapon like machete, knife, spade and other tools that we used to use for cultivation. No one dug a trench or hole on the ground to hide themselves or their valuables.

63. During these four days, they also went to three village tracts namely Min Gee See, Da Bin Sora, Saung Gha Na. The soldiers did the same as they did in my village. They removed all the fences around the villagers houses in these three village tracts and took away all sharpen tools from villager's houses. I heard this from villagers from these three village tracts and other villagers in my village.