

INTERNATIONAL COURT OF JUSTICE

Written Statement of Professor Michael A. Newton

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I. INTRODUCTION

1. I submit this written statement pursuant to the Court’s instructions provided to The Gambia on 17 October 2025. This statement provides a summary of my findings in my two expert reports previously submitted as Annex 359 to the Memorial and Annex 67 to the Reply of The Gambia. I affirm the full contents of those two reports and do not repeat the entirety of those reports here, including my professional background and experience.

2. Section II of this statement summarizes my findings regarding the distinguishing features of counter-terrorism and counter-insurgency operations. Section III summarizes my findings regarding the distinguishing features of Myanmar’s clearance operations. Section IV addresses Myanmar’s criticisms of my reports.

II. THE DISTINGUISHING FEATURES OF COUNTER-TERRORISM AND COUNTER-INSURGENCY OPERATIONS

3. Authentic counterinsurgency (COIN) requires comprehensive efforts to reassert the sovereign authority of the state, with the overall objective of establishing stable and secure peace that protects the civilian population. The conception of an enemy/adversary must be strictly constrained by reference to the subset of the overall population who are armed insurgents. The civilian population *per se* cannot constitute a lawful military target of COIN. Indiscriminate attacks directed at entire segments of a civilian population are thus entirely incompatible with COIN and warrant the inference that the objective is not to defeat an insurgency, but to punish or destroy the civilian population.

4. These principles are broadly accepted worldwide, including (at least nominally) by Myanmar in its Rules of Engagement, which largely incorporate them. Myanmar does not deny this fact in its Counter-Memorial or Reply.

5. “Clearance” in standard COIN doctrine does not refer to or imply military operations against or forcible removal of the civilian population—it is meant to be directed solely at the “enemy forces,” not the civilian population as a whole or at geographically designated zones, such as entire villages. Targeting the entire population, such as by the destruction of villages and removal of civilians from designated areas, is plainly inconsistent with this doctrine.

6. Protection of the civilian population is not only a legal imperative under international humanitarian law; it is the key to a successful COIN strategy. Establishment or reestablishment of governmental control and stability depends on a multidimensional effort beyond military neutralization of insurgent or “terrorist” elements. Protection of the civilian population represents the *sine qua non* for genuine and successful COIN. Regaining the social allegiance of civilians to the sovereign government rather than an insurgency is the ultimate objective of COIN. Conversely, widespread and indiscriminate attacks directed at entire segments of a civilian population are so obviously incompatible with genuine COIN that they warrant the inference that the government’s objective is not to defeat an insurgency, but to punish or destroy the civilian population in whole or in part.

III. THE DISTINGUISHING FEATURES OF MYANMAR’S “CLEARANCE OPERATIONS”

7. Based on the evidence that I have reviewed, the scale and nature of the “clearance operations”—and especially the Tatmadaw’s widespread and unprovoked slaughter of thousands of Rohingya civilians unconnected to the insurgents, its wholesale destruction of Rohingya villages including many that were devoid of any ARSA presence, its burning of homes with entire families locked inside, its mass executions of men and boys, its wanton killing of children and infants, and its pervasive sexual violence against women including rape, gang rape and sexual mutilation across a wide swathe of northern Rakhine State—contradict assertions of an intent to conduct genuine counter-insurgency and manifest an intention to destroy the Rohingya as a group in whole or in substantial part.

A. Indiscriminate Attacks on Rohingya Civilians

8. The United Nations Fact Finding Mission (UN FFM) concluded that there “was not the least effort” by “[t]he perpetrators” of the “clearance operations” to “make any distinction between ARSA fighters and civilians, or to specifically target a military objective or identify and repel an immediate threat.”¹ Rather, it found that “Everyone was a target and no one was spared: mothers,

¹ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 1433 (noting that “Everyone was a target and no one was spared: mothers, infants, pregnant women, the old and infirmed all fell victim to the ruthless campaign.”). MG, Vol. II, Annex 40.

infants, pregnant women, the old and infirmed all fell victim to the ruthless campaign.” These findings are supported by witness statements² and NGO reports.³

9. Myanmar appears to admit this: it seeks to defend the attacks on civilians on the ground that the entire civilian population constituted the “support base” for ARSA.⁴ This is an admission that security forces deliberately conflated Rohingya civilians with ARSA and then attacked and destroyed them.

10. Myanmar fails to describe any affirmative measures taken to distinguish innocent civilians from insurgents, nor any measures to warn civilians of the impending attacks. Rather than intending to protect the civilian population, the evidence leaves room for no conclusion other than that Myanmar’s planning process involved the deliberate targeting of Rohingya civilians, including the expansion of the zone of attack beyond that where insurgents were present.⁵

11. Only *Rohingya* civilians, and no others, were attacked. Members of other national, ethnic or religious groups living in the same or nearby villages were not attacked. While Tatmadaw forces destroyed Rohingya villages, adjacent Rakhine villages remained unscathed. The UN FFM documented 22 locations where the two communities lived in close proximity to one another, and the Tatmadaw destroyed only the Rohingya areas, sparing those inhabited by the Rakhine.⁶ Inn Din, for example, was completely destroyed, but the ethnic Rakhine village in close proximity suffered no damage.⁷ Objective satellite imagery demonstrates that in other villages, such as Zay

² Legal Action Worldwide, Collated Information from Victims/Witnesses, Statement TS0215. MG, Vol. X, Annex 336. See also, UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 783. MG, Vol. II, Annex 40; Amnesty International, “We Will Destroy Everything”: *Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar* (June 2018). MG, Vol. IV, Annex 112 [**hereinafter** Amnesty International, “We Will Destroy Everything” (2018)].

³ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 942.

⁴ Counter-Memorial of The Republic of The Union of Myanmar (24 August 2023) (**hereafter** Myanmar CM), paras. 13.214, 13.216.

⁵ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), paras. 1430-31.

⁶ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 972.

⁷ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 972 (showing the destruction of Inn Din nearby the undamaged village of ethnic Rakhine).

Di Pyin, in Rathedaung Township, the Tatmadaw burned and destroyed only the portion populated by ethnic Rohingya.⁸

12. Tatmadaw commanders provided no grid coordinates to secure safe zones. Instead, they permitted soldiers to kill escaping Rohingya—including women, children, the elderly and the infirm—without any countermanding orders. No one was safe. There is no conceivable basis under genuine COIN doctrine for such deliberate targeting of the civilian population.

13. Myanmar’s proposition that “counter-terrorism operations were directly responsive to the threat posed by ARSA and its supporters, and Rules of Engagement were disseminated to ensure proportionate use of force” is simply not credible.⁹ The evidence in the UN FFM reports—as confirmed by a number of the Tatmadaw’s “field reports” annexed to the Counter-Memorial—is to the contrary. It demonstrates that the Rules of Engagement were routinely ignored in practice, both by the Tatmadaw commanders in charge of the “clearance operations” and the troops who carried them out against the Rohingya civilian population.

14. Myanmar’s Rules of Engagement also demonstrate that Myanmar understood and accepted standard COIN doctrine during the entire period that it was ignoring them in practice. It can only be reasonably concluded that the defining feature of the Tatmadaw’s “clearance operations” was the deliberate refusal to distinguish innocent civilians from insurgents in order to attack those civilians and carry out a long-desired destruction of the Rohingya population.¹⁰

B. The Tatmadaw’s Massive Violence and Extreme Brutality against the Rohingya

15. The nature and extent of Myanmar’s attacks on the Rohingya civilian population are inconsistent with any reasonable conclusion that the “clearance operations” were a genuine COIN exercise. When the violence is as brutal, extensive and destructive as it was against the Rohingya civilian population, it is only reasonable to conclude that the perpetrators had another objective,

⁸ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 974; United Nations Institute for Training and Research, *Affected settlements in Buthidaung, Maungdaw and Rathedaung Townships of Rakhine State in Myanmar* (18 October 2018). MG, Vol. III, Annex 70.

⁹ Myanmar CM, para. 1.16.

¹⁰ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 1169.

specifically the destruction of the group. This is especially the case where, as here, these attacks were sustained across a wide geographic region and throughout the relevant period.

16. Satellite imagery analyzed by the Operational Satellite Applications Programme of the UN Institute for Training and Research demonstrates that at least 178 Rohingya villages were destroyed while another 214 were partially destroyed.¹¹ This represents the destruction of approximately 40 per cent of villages in northern Rakhine State.¹² The UN FFM further documented the sustained and widespread campaign of violence aimed at Rohingya villages within the townships of Maungdaw, Buthidaung and Rathedaung; and it identified “approximately 37,700 individual structures [that] were destroyed.”¹³ The Tatmadaw also obliterated “markets, religious schools (madrassas) and mosques”.¹⁴ To state the obvious: none of these actions constitutes genuine COIN, or an operation directed at armed insurgents.

17. The Tatmadaw’s real objective was revealed not only by the widespread destruction of Rohingya villages, homes and other civilian structures, but also and especially by the massive violence on Rohingya civilians themselves. Survey data collected from Rohingya refugees sheltering in Bangladesh shows that “the vast majority” of respondents personally “experienced or directly witnessed extreme violence”. One-in-five witnessed a “mass-casualty event of killings or injuries (either in their villages or as they fled) with more than 100 victims”.¹⁵ The UN FFM also documented “detailed accounts” of “corroborated mass killings” in which “hundreds, of men, women and children were killed” in “targeted attacks”.¹⁶

18. Emblematic of this brutality was the “clearance operation” in and around Myin Hlut, which lasted “several days”.¹⁷ The UN FFM corroborates that “[a]n initial ‘clearance operation’ in the

¹¹ United Nations Institute for Training and Research, *Affected settlements in Buthidaung, Maungdaw and Rathedaung Townships of Rakhine State in Myanmar* (18 October 2018). MG, Vol. III, Annex 70.

¹² *Ibid.* UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 960.

¹³ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 960.

¹⁴ *Ibid.*, para. 960.

¹⁵ US Department of State, *Documentation of Atrocities in Northern Rakhine State* (August 2018), p. 1. MG, Vol. VII, Annex 194.

¹⁶ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 892.

¹⁷ Myanmar CM, paras. 9.32-9.33.

village started in the early morning of 25 August, with Tatmadaw soldiers and members of the BGP [Border Guard Police] entering from the west and firing weapons at people fleeing and burning properties.”¹⁸ The Tatmadaw burned Rohingya houses, killed people by cutting their throats with knives, and pushed infants and young children into burning houses.¹⁹ Myanmar’s own records show that the ARSA “terrorists” had already retreated, and no engagement with them was required. Despite this, Tatmadaw forces continued to burn houses, shoot civilians, and rape women and girls.²⁰ Satellite imagery corroborates that the Rohingya hamlets of Myin Hlut village tract were burned to the ground.²¹

19. Mass executions of civilian men and boys took place in a variety of locations. Some were killed at close range with their hands bound, while others were shot after being forced to lie on the ground.²² Despite the reports that there were no ARSA attacks at Inn Din, Myanmar admitted that the Tatmadaw executed ten men on September 1, 2017 during “clearance operations” that took place there.²³ Satellite imagery analysis conducted by the UN FFM also shows that all Rohingya homes and buildings were burned down during the “clearance operations” and, together with “trees and other vegetation, ... bulldozed and cleared” by 16 February 2018.²⁴ There is no conceivable basis for these actions based on military necessity.

¹⁸ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), paras. 857-858.

¹⁹ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 858; The Gambia’s Memorial, para. 8.66 (citing and quoting UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 910) (“Multiple accounts were received of people, including babies and children, being pushed or thrown into burning houses by soldiers. One interviewee reported seeing two young children, six or seven years old, running out of a burning house, only to be pushed back in by soldiers during the operation in Myin Hlut, Maungdaw Township.”).

²⁰ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), paras. 860-862.

²¹ *Ibid.*, para. 863.

²² PILPG, *Documenting Atrocity Crimes Committed Against the Rohingya* (2018), p. 42. MG, Vol. IV, Annex 121; International State Crime Initiative, *Genocide Achieved, Genocide Continues: Myanmar’s Annihilation of the Rohingya* (2018) (describing soldiers firing on men and boys indiscriminately and slitting the throats of survivors before mutilating the decedents). MG, Vol. IV, Annex 109.

²³ Myanmar CM, para. 9.62.

²⁴ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 879.

C. The Tatmadaw's Attacks on Rohingya Children and Infants

20. Rohingya children and infants were viciously killed by the Tatmadaw during the “clearance operations.” I summarize several independent sources of evidence confirming this fact at paragraph 23 of my Second Expert Report, including reports from the UN FFM,²⁵ U.S. Department of State,²⁶ witnesses,²⁷ and NGO reports.²⁸

21. The abhorrent attacks on children and infants in multiple Rohingya villages dispel any notion that the objective of the “clearance operations” was genuine COIN or that they were carried out for the purpose of combatting insurgency or “terrorism”. Such widespread and extreme violence against children can only be reasonably associated with an intention to destroy the group to which they belong.

D. The Tatmadaw's Rape, Mutilation and Murder of Rohingya Women

22. Sexual violence against the women of a particular racial, ethnic, national or religious group is widely recognized as an indicator of genocidal intent. It is most definitely *not* a component of genuine COIN, or indicative of an effort to combat insurgency or terrorism.

23. The UN FFM's investigation determined that “[r]ape and other sexual and gender-based violence”, sexually humiliating acts, sexual slavery and sexual mutilations, were “perpetrated on a massive scale”²⁹ against Rohingya women and girls during the Tatmadaw's “clearance operations”. In paragraphs 25 to 27 of my Second Expert Report, I refer to the compelling evidence of this from multiple credible and independent sources.³⁰

²⁵ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), paras. 770, 789, 796-797, 996.

²⁶ US Department of State, *Documentation of Atrocities in Northern Rakhine State* (August 2018), p. 12. MG, Vol. VII, Annex 194.

²⁷ Legal Action Worldwide, Collated Information from Victims/Witnesses, Statement TS0523, Statement CK0206, p. 53. MG, Vol. X, Annex 336. *See also* “Myanmar's Killing Fields”, Transcript, *Frontline* (8 May 2018), PDF p. 497. MG, Vol. V, Annex 139.

²⁸ Fortify Rights, *They Gave Them Long Swords* (2018), p. 67. MG, Vol. IV, Annex 114.

²⁹ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 920.

³⁰ *See, e.g.*, UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), paras. 921, 1092; UN OHCHR, *Flash Report* (2017), p. 21. MG, Vol. II, Annex 30; Legal Action Worldwide, Collated Information from Victims/Witnesses, Statement CK0545. MG, Vol. X, Annex 336; “Myanmar's Killing Fields”, Transcript, *Frontline*

24. The evidence leaves no doubt that the women were targeted for rape because they were Rohingya.³¹ The UN FFM documented that gang rape of women and girls was a hallmark of the Tatmadaw’s “clearance operations”, and that there was a “notable pattern” of rapes with “multiple perpetrators and multiple victims.”³² The UN FFM concluded that sexual violence was “commonly perpetrated in open public spaces”, with some victims “raped in front of their entire village.”³³

25. Myanmar’s written pleadings are silent on the Tatmadaw’s widespread sexual violence against Rohingya women and girls during the “clearance operations.” It offers no defense or explanation for this reprehensible, cruel and destructive behavior by its armed forces. Even Myanmar does not deign to characterize it as counter-terrorism or counter-insurgency. The only reasonable conclusion that can be drawn from such vile conduct is that the perpetrators intended to destroy the Rohingya people by impairing the capacity of their women and girls to procreate.

IV. MYANMAR’S CRITICISMS OF MY FINDINGS

26. Myanmar challenges the factual basis of my findings.³⁴ As specified in my Expert Reports, my knowledge of Myanmar’s “clearance operations” is based on my diligent review of diverse, credible, and independent sources of information, such as the reports that were prepared by the United Nations, including the UN Fact-Finding Mission, the OHCHR, and the Special Rapporteur on the human rights situation in Myanmar, as well as reports by other governments, reports by reputable NGOs specializing in human rights, and witness statements submitted with the Parties’ pleadings.

27. Myanmar observes in its Rejoinder that my “first report was written without knowledge of Myanmar’s Counter-Memorial and its annexes.”³⁵ That is obvious, as my first Expert Report was

(8 May 2018), PDF p. 496. MG, Vol. V, Annex 139; HRW, *Massacre by the River* (2017), pp. 24-25. MG, Vol. IV, Annex 107.

³¹ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), paras. 932, 1378.

³² *Ibid.*, para. 921.

³³ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 921.

³⁴ Myanmar CM, para. 13.219. Rejoinder of The Republic of The Union of Myanmar (30 December 2024) (*hereinafter RM*), paras. 13.174, 13.177.

³⁵ RM, para. 13.176.

submitted in October 2020 with The Gambia’s Memorial, almost three years before Myanmar’s Counter-Memorial was filed in August 2023.

28. Myanmar asserts in its Rejoinder that my “opinions have now evolved.”³⁶ That is inaccurate. As I made clear in my Second Expert Report at paragraph 3, my review of Myanmar’s Counter-Memorial has “reinforced the conclusion reached in my prior Report that the ‘clearance operations’ conducted by Myanmar were not carried out as counter-terrorism or counter-insurgency operations.” The contents of Myanmar’s Rejoinder and its annexes have further confirmed my findings.

29. Finally, Myanmar suggests that I lack expertise in counter-insurgency conducted by non-Western countries. This too is inaccurate. First, my professional credentials demonstrate the global breadth of my experience, including work related to counter-insurgency operations in Iraq, Sierra Leone, and Peru, among others. Second, in my first Expert Report, I specifically cite to principles of COIN doctrines as employed and taught by India and the Philippines, among other States.³⁷ Third, as discussed above, Myanmar’s own Rules of Engagement are consistent with the principles that I identified in my Expert Reports. My Expert Reports hold Myanmar to those standards, which are consistent across geographic regions and cultures. Fourth, Myanmar itself likened its “clearance operations” to counter-terrorism operations conducted by other States, including “the United States of America, the United Kingdom, Australia, Nigeria, Pakistan, and Yemen, as well as NATO.”³⁸ For all these reasons, I believe my experience in counter-insurgency operations is highly relevant to the issues in this case and may be of assistance to the Court.

V. CONCLUSION

30. The “clearance operations” conducted by Myanmar in northern Rakhine state were not carried out as counter-terrorism or counter-insurgency operations. They were not designed, aimed or conducted in such a manner as to target ARSA insurgents or “terrorists”, as distinguished from the civilian population, but rather to target the Rohingya civilian population itself. They reflect an

³⁶ RM, para. 13.175.

³⁷ Expert Report of Newton, paras. 16, 18.

³⁸ Myanmar CM, para. 1.41.

intention not to “defeat” ARSA, but to eliminate the Rohingya group, or at least a substantial part of it, regardless of any association with ARSA or any other insurgency.

31. The actions described in the UN FMM reports and other independent and reliable studies, bear no resemblance to genuine COIN operations, as Myanmar itself understands them, or to what is required to defeat insurgents or “terrorists”. The evidence shows that the “clearance operations” consisted mainly of indiscriminate killing of unarmed and innocent Rohingya civilians; slaughtering of children and infants; raping and mutilating of women; and burning and subsequent bulldozing of Rohingya homes and villages. These actions are the polar opposite of authentic COIN and render impossible any reasonable conclusion that this was their intended purpose.

The only reasonable conclusion from the evidence is that Myanmar’s “clearance operations” cannot reasonably be explained or understood as counter-terrorism operations, since they violated every cardinal principal of counter-terrorism strategy and practice—including Myanmar’s own. The evidence shows that these operations were conceived, coordinated, and conducted with the intention of inflicting maximum harm on the civilian population. They can only be reasonably explained and understood as an organized and determined effort by the Tatmadaw to destroy the Rohingya people as a group in Myanmar.

The whole respectfully submitted on this day, 18 November 2025:

A handwritten signature in dark ink, reading "Michael A. Newton", with a long horizontal flourish underneath.

Michael A. Newton
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The following counsel for The Gambia were involved in the preparation of this written statement.

Signed on this day, 18 November 2025

A handwritten signature in black ink, appearing to be 'A-Su', written over a horizontal line.

Arsalan Suleman