

**TRADUCCIÓN PÚBLICA**  
**CERTIFIED TRANSLATION**

**COMPLAINANT FILES A CRIMINAL COMPLAINT OF GENOCIDE AND CRIMES AGAINST HUMANITY COMMITTED AGAINST THE ROHINGYA COMMUNITY IN MYANMAR – UNIVERSAL JURISDICTION** -----

Your Honour: -----

MAUNG TUN KHIN, in my capacity as President of the Burmese Rohingya Organization UK (BROUK), with domicile at 24 Quakers Place, Forest Gate, London E7 8AG, U.K., on my own behalf, represented by Attorney at Law Tomás Ojea Quintana, T. 53, F. 103 CPA, establishing legal domicile at Lavalle 1717, of the Autonomous City of Buenos Aires, respectfully address Your Honour and state: -----

**I. PURPOSE** -----

That invoking the principle of universal jurisdiction we appear for the purpose of filing a complaint against the parties who may be criminally responsible for the crimes internationally designated as GENOCIDE and CRIMES AGAINST HUMANITY, committed against the ROHINGYA community in the territory of Myanmar, as a minimum in the period spanning from the year 2012 to the year 2018 (article 118 *in fine* of the Argentine National Constitution, Law 26,200, Rome Statute of the International Criminal Court, and section 236 and related sections of the Federal Criminal Procedural Code). -----

Additionally, and for the reasons I shall set forth below, we ask to be accepted as complainants, with the attributions acknowledged under section 83 and subsequent sections of the Criminal Procedure Code. -----

**II. INTRODUCTION** -----

As stated, the present complaint refers to the international crimes committed against the ROHINGYA community in Myanmar, a country located in Southeast Asia. -----

The crimes hereby reported, in particular that of GENOCIDE, are of an exceptional seriousness that move the most fragile contemporary morality.

This involves the mass, indiscriminate slaughter of members of the ROHINGYA community, including children of either sex, with terrible methods which range from shooting with weapons of war to the use of machetes and other cutting implements to decapitate and dismember the bodies of terrorized and defenceless persons. It also involves the gang rape of women, girls and boys for the purpose of altering, in the most sinister way, their sense of belonging to the ROHINGYA community. It involves the virtually total destruction of their towns and villages by intentionally setting them on fire. It has involved methods applied for decades to systematically discriminate against the community, through limitations on the freedom of movement and of expression, and on the most elementary political freedoms such as the right to citizenship, to economic, social and cultural rights, methods which converged on the locking up of the ROHINGYA in virtual ghettos across the province of Rakhine, to finally conclude with those genocidal practices that forced the ROHINGYA to escape from Myanmar to Bangladesh along the most dangerous and inaccessible paths.-----

The crimes we here report were committed recently – at least from 2012 through 2018 – and are possibly still being perpetrated. This immediacy in time with regard to the period of commission of the international crimes invests the complaint with singular importance whereas legal proceedings in these cases generally are instituted many years, even decades, after the events have taken place, when the victims, the perpetrators and the evidence register this passage of time. Suffice it to refer to the Argentine case. Nevertheless, this complaint may put an end to the monstrosity of impunity and makes it possible to offer justice in the present moment, in accordance with duty, and at the same time to stop the crimes which may continue to be committed – which are and have been unconscionably heinous and immoral – and prevent the conditions under which other abuses may take place in the future.-----

This complaint also acquires importance by virtue of the fact that neither in Myanmar nor under the scope of the United Nations Security Council has a judicial case been generated that would make it possible, within the framework of due process, to establish the truth of the events, and to identify and punish the persons responsible. Despite the extreme seriousness of the violations of human rights against the ROHINGYA, which as we shall see below qualify as GENOCIDE, up to the present no national or international judicial jurisdiction exists for dealing with the case as regards the crimes committed in

the territory of Myanmar, so that the doctrine of the “forum non conveniens” may be applicable to this complaint. Our country, which, by virtue of our constitutionalists more than a century and a half ago, foresaw the judging of crimes against the law of nations – preannouncing the today recognized universal jurisdiction – has the legitimate possibility and the altruistic opportunity by means of its courts to enable truth and justice for the ROHINGYA and for all of mankind that is injured by this conduct. -----

We must establish that within the scope of the International Criminal Court an investigation is indeed being carried out on crimes committed within the territory of Bangladesh against the ROHINGYA who escaped to that country from the persecution in Myanmar. This has been a very important development for the victims, but since Myanmar has not ratified the Rome Statute, this case does not include the crimes committed within the territory of Myanmar, among them GENOCIDE. -----

As regards the obstacle that the geographical distance might entail for the investigation, and in addition to the allocation of resources that the judicial authority might assign for the treatment of this complaint, it is important to stress the enormous work carried out by the United Nations Organization, and by the organizations of civil society, which have been studying, investigating and reporting the facts and the situation of the ROHINGYA in Myanmar for several years. As we shall see in the following chapters, there exist investigative commissions within the United Nations with which it will be possible to interact, as well as numerous precise and detailed reports on the facts; a repository of evidence has even been set up, all of which will facilitate the work of the Argentine judicial body in the task of investigation. -----

### III. **CAPACITY AS COMPLAINANT**-----

The Burmese Rohingya Organisation UK (BROUK), of which MAUNG TUN KHIN is President, is a civil society organization, legally incorporated in the United Kingdom. Since its creation in 2005 it has been defending the ROHINGYA community in Myanmar, which over the years has been the victim of the most outrageous state policies. The ROHINGYA community suffered systematic practices of discrimination and of violations of human rights that ended in explicit genocide – at the beginning of the twenty-first century – without the international community applying the necessary means to prevent it. -----

The defence carried out by BROUK is systematic and includes all types of peaceful actions. BROUK's promotion centres on spotlighting the genocide underway against the ROHINGYA and asking for some action, international or of a different nature, which will make it possible to put the parties responsible on trial and to prevent further violations of the ROHINGYA's human rights. ---

BROUK's interest in the ROHINGYA cause is also determined by the personal experience of its President, Mr. MAUNG TUN KHIN, who is part of the ROHINGYA community. The personal history of Tun Khin and his family in many ways reflects the recent history of the ROHINGYA in Myanmar, which we will set forth below. It may be mentioned here that his grandfather was Parliamentary Secretary during the democratic period after Myanmar obtained its independence in 1948. Tun Khin's family later faced ever greater difficulties as the repression against the ROHINGYA intensified. In 1978, Tun Khin's parents were among the hundreds of thousands of ROHINGYA who temporarily fled to Bangladesh after the Myanmar army (Tatmadaw) launched a cruel military campaign to root them out. In the early 1990s, Tun Khin saw how friends and family members were murdered or forced to flee amid another military operation by Tatmadaw in the Rakhine State. Finally Tun Khin himself decided to escape from Myanmar in the mid-1990s after the government had refused to allow him to go the university simply because he is ROHINGYA. -----

By virtue of the described interest, and of the provisions stated in sections 83, 84, subsection (b) and related sections of the Federal Criminal Procedural Code, we request that the BURMESE ROHINGYA ORGANIZATION UK (BROUK) be considered as complainant. We state that we appoint Dr. Tomás Ojea Quintana, T. 53, F. 103 CPA, as special attorney and will in due course attach the corresponding Special Power of Attorney. -----

#### IV. JURISDICTION IN LIGHT OF THE PRINCIPLE OF UNIVERSAL JURISDICTION -----

As we have already mentioned, the assigning of jurisdiction by Argentine courts to know the facts, investigate and, if necessary, prosecute those responsible for crimes against humanity committed outside the national territory, is established in section 118 *in fine* of the National Constitution, which states that: *"The trial (these ordinary criminal trials) shall be held in the province where the crime has been committed; but when committed outside*

*the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law.* And jurisdiction is determined by Law 26200, inasmuch as it establishes in its section 5 that as regards the perpetration of the crimes foreseen in the Rome Statute – genocide, crimes against humanity and war crimes – jurisdiction shall be exercised by the Argentine Federal Courts with jurisdiction in criminal matters.

In consequence, we request that the provisions regarding territorial jurisdiction established in section 1, subsection (1), of the Argentine Criminal Code not be applied to this complaint. -----

This is because, regarding this point, universal jurisdiction does not require any territorial connection, either with regard to the site where the events took place, or to the active personality (perpetrator) or to the passive personality (victim). Nor is any specific national interest required. The connection, as is acknowledged, is provided by virtue of the matter, since it involves international crimes that affect the entire international community as a whole.

The basic concept of universal jurisdiction can be traced to the periods in which agreements on *ius in bellum* began to take shape, insofar as they contained guidelines relating to the ideas that gradually shaped universal jurisdiction. --

Contemporarily with that period, in 1927 the Permanent Court of International Justice, in having to decide in the conflict originated by the collision between the mail steamer *Lotus*, which bore the French flag, and a coal freighter under the Turkish flag, issued one of the first lines of doctrine on universal jurisdiction: *“Though it is true that in all systems of law the principle of the territorial character of criminal law is fundamental, it is equally true that all or nearly all these systems of law extend their action to offenses committed outside the territory of the State which adopts them, and they do so in ways which vary from State to State. The territoriality of criminal law, therefore, is not an absolute principle of international law and by no means coincides with territorial sovereignty”* (Judgment of 9 September 1927, PCIJ, series A, No. 10, 1927). -----

This original notion of extraterritorial criminal jurisdiction is now understood not to be generic, but to be limited to the prosecution of the criminals who have attacked all of humanity by having perpetrated the most atrocious crimes (contained in the law of nations). In this manner, the principle of universal

jurisdiction would be linked *rationae materiae* to the above-mentioned international crimes. -----

The four Geneva Conventions of 1949 also included provisions related to universal jurisdiction. Indeed, in a text that is common to the four instruments (that of sections 49, 50, 129, 146 – let us remember there is also section 3 in common), it is ruled that *“Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.”* -----

A series of human rights treaties which Argentina is party to empowers States to exercise universal jurisdiction in international crimes. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is a norm of *ius cogens*, establishes in its section 5.3: *“This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.”* The Inter-American Convention to Prevent and Punish Torture also establishes in its section 12 that *“This Convention does not exclude criminal jurisdiction exercised in accordance with domestic law.”* The Inter-American Convention on the Forced Disappearance of Persons, in its section 4, states that *“each State Party shall take measures to establish its jurisdiction.”* -----

The principle of universal jurisdiction has also been covered by the Rome Statute of the International Criminal Court when in paragraph 6 of its Preamble it establishes: *“it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”* -----

International jurisprudence has dealt with the issue. By way of example, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, in the *Tadic* case, ruled that *“universal jurisdiction (is) nowadays recognized in the case of international crimes”* (case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, of 2 October 1995, paragraph 62). -----

This is because the recognition which the Appeals Chamber refers to is certainly linked to the *erga omnes* obligations that ensue from the *ius cogens* nature of international crimes.-----

In any event, beyond the discussion about whether, precisely for that reason, every State is obliged to incorporate universal jurisdiction into its domestic law, what is indeed unarguable is that there is no international rule that forbids States from incorporating universal jurisdiction over the most serious international crimes and, in consequence, to exercise it effectively. It is what our Constitution drafters did when they incorporated section 118 into the National Constitution.-----

The diverse decisions and opinions issued by the organs of the inter-American human rights system, which are compulsory for our domestic law, have likewise stressed the importance of exercising universal jurisdiction and have recommended that States apply it. -----

At the same time, international law on human rights provides a key element in the development of the principle of universal jurisdiction, through its association with the right to have access to justice, national or international. Indeed, the right to have access to justice is a right that is recognized in the principal international instruments on human rights (for example, in sections 14 of the International Covenant on Civil and Political Rights and 8 and 25 of the American Convention on Human Rights), and this right has contributed to develop the principle of universal jurisdiction, by expanding its nature not only as a right or obligation of the State, but also as a right by crime victims themselves to have access to justice; more specifically, to initiate legal action *motu proprio*, and without the intervention of the Public Prosecutor, in pursuit of justice. This is due to the fact that even though, within the scope of Criminal Court, the possibility of the victim's participation in the process is recognized (section 68 (a) of the Rome Statute), the truth is that this right to report the crimes and initiate a lawsuit does not exist. -----

In our country, Argentina, we have important precedents for the exercise of universal jurisdiction by Federal Criminal Courts. Indeed, in the year 2010 the victims of the crimes committed during Francoism in Spain filed charges in our country on the basis of universal jurisdiction, and the case was admitted and is currently being processed. Afterwards, the case was expanded to investigate the crimes committed by that regime against women. -----

Another important precedent of the exercise of universal jurisdiction in our country is the case of the persecution and presumptive perpetration of genocide and crimes against humanity committed against the Falun Gong ethnic group, leading on 17 December 2009 to the issuing of arrest warrants and summons for taking investigative statements from the accused Luo Gan and Jiang Zemin.-----

Additionally, and likewise invoking universal jurisdiction, in September 2014 charges were filed in federal court in the Province of Córdoba against Israeli authorities for crimes against humanity committed in the Gaza Strip between 8 July and 26 August 2014. Similar charges were filed in federal court in the City of Buenos Aires over crimes against humanity and genocide committed during “Operation Protective Edge.”-----

Saudi Arabian Prince Mohammed bin Salman was also charged in federal court in the City of Buenos Aires of crimes against humanity committed during the war in Yemen, invoking universal jurisdiction. Sheltered by that same jurisdiction, and also in federal court, Paraguay’s indigenous Aché community charged Alfredo Stroessner with genocide against that community.-----

In conclusion, the principle of universal jurisdiction is widely admitted in the international arena, and accepted legally and in practice in our country. And it is for this reason that, on the basis of that principle, this complaint must be admitted. It is relevant, at this point, to transcribe paragraph 1657 of the Report of the Independent International Fact-Finding Mission on Myanmar (about which we will report and speak in detail below), issued in September 2018, since it makes direct reference to the type of action proposed by this complaint. The report states:-----

*“In addition to an ICC referral and/or the creation of an ad hoc international criminal tribunal for Myanmar, the Mission encourages States to actively pursue investigating and prosecuting crimes committed in Myanmar before their respective domestic courts, under the principle of universal jurisdiction for serious crimes under international law. Many countries require the presence in their territory of the accused or the victim to activate jurisdiction, and complex investigation and prosecution of crimes under international law are costly. Cases before domestic courts of third States are therefore likely to lead to a fragmented or partial form of accountability at best. However, their importance should not be underestimated, especially in a context where there*

*is no international tribunal with jurisdiction to handle cases. Domestic courts exercising universal jurisdiction may also encourage victim communities and serve as an incentive for legal reforms within the country concerned.”-----*

It is for this reason that in concluding its report, this entity recommends the following: *“Member States should exercise jurisdiction to investigate and prosecute alleged perpetrators of serious crimes under international law committed in Myanmar” (recommendation 116).-----*

This jurisdiction to judge heinous crimes acquires special preeminence in the case of the ROHINGYA reported herein, as long as it does not exist so far in the legal area of Myanmar, internationally or of a third State, any concrete procedure dealing with those crimes committed against the ROHINGYA in the territory of Myanmar. Consequently, none of the principles associated with universal jurisdiction such as subsidiarity, concurrence, *non bis in idem*, comes into dispute. We have already placed on record that within the scope of the International Criminal Court an investigation is indeed being processed into crimes committed within the territory of Bangladesh against the ROHINGYA who escaped to that country from persecution in Myanmar. This has constituted very important news for the victims, but given that Myanmar hasn't ratified the Rome Statute, this case does not include the crimes committed in the territory of Myanmar, among others that of GENOCIDE. ----

In sum, the universal jurisdiction exercised here in Argentina will enable the ROHINGYA community to file a concrete legal procedure, with a view to exercising their right to truth and to justice, over the crime of GENOCIDE, the “crime of crimes,” and other international crimes. -----

## V. OVERVIEW OF MYANMAR -----

Myanmar – also known as Burma under its old denomination – is a country located in Southeast Asia which obtained its independence in the year 1948, after having been subjected to the colonialism of the United Kingdom in the area for a number of decades. In the course of that time it was regarded as another province of India. -----

Myanmar is a multi-ethnic country, but the majority of the population belongs to the Bamar ethnic group, which professes Buddhism. The tension and the territorial and political disputes between the Bamar majority and the remaining other ethnic minorities, such as the Karen, the Kachin and the Mon,

who developed armed branches, provoked, after independence, focuses of domestic war, some of which, unfortunately, continue up to this day. -----

The perception that these domestic struggles might endanger the territorial unity of Myanmar was one of the reasons that in the year 1962 the military (named *Tatmadaw* in Burmese) staged a coup and began to govern the country for almost fifty years, up to elections of the year 2010. At the same time, the intensification of the Cold War in the world, and given Myanmar's strategic geopolitical location, led the military elite to develop an ideological thinking of its own, such as the so-called "Burmese way to socialism," aimed at a national economic development plan that would reduce foreign influence over the country. -----

Nevertheless, this process in turn provoked an isolationism that accentuated the nationalistic feeling and, above all, the primacy of the Bamar ethnic majority, and its hostility towards other minorities, especially the ROHINGYA. It was over the course of this long period that the military regimes resorted to massive and systematic violations of human rights to subdue ethnic minorities and to repress the social movements that demanded a democratic opening.

The ROHINGYA community, which despite not having participated in the independence processes, nor having developed an ethnic armed struggle, had already resided for generations in the Province of RAKHINE, was the object of systematic discriminatory policies during this period, such as excessive restrictions on their freedom of movement, abusive birth control regulations, and denial of citizenship. The contempt towards the ROHINGYA by the military government, and also by the Bamar majority, was already beginning a spiral of extreme cruelty that would culminate in the GENOCIDE we herein condemn. In 1982, the military government issued the so-called National Citizenship law that excluded the ROHINGYA as one of Myanmar's ethnic groups, thus obstructing the processes by which that population could acquire citizenship in the country.-----

Following decades of repressive policies by the military governments, and in the framework of a severe economic crisis, in the year 1988 Myanmar experienced mass demonstrations by students and pro-democracy groups, demanding the end of the dictatorship and the calling of general elections. This marked the appearance of what was known as the "88 Generation." The most distinctive feature of this movement is that it was mainly formed by individuals

belonging to the Bamar ethnic group, who called for a change towards democracy, but who did not express the needs of the ethnic minorities, although they did not exclude them from the movement. The repression of the demonstrations of this movement was bloody, with hundreds of dead and wounded, and hundreds of political prisoners. This epic setting of violence, agitation and the exercise of public freedom placed a young woman in a historical dilemma of taking on the leading role that the social and political events demanded of her. This was Aung San Suu Kyi (ASSK), daughter of one of the heroes of independence, General Aung San, assassinated by sectors that opposed his vision of national unity. -----

Aung San Suu Kyi, who lived in the United Kingdom with her British husband was on a personal visit to Myanmar when the demonstrations took place in Yangon, the country's capital – known as Rangoon before name change – and found herself immersed in a social and political maelstrom of which she became a part. From that moment on Aung San Suu Kyi would turn into a popular democratic leader of massive significance in Myanmar, years later obtaining the Nobel Peace Prize, and attaining the country's top political leadership position, as she does nowadays. -----

The social and political pressure on the military government generated by the 88 Generation movement was of such magnitude, that the military elite was forced to call general elections in the year 1990. Aung San Suu Kyi and the 88 Generation were to set up the political party of the National League for Democracy, which swept those elections. The ROHINGYA community established itself as a political force that supported the National League for Democracy, and participated in the polls with its provisional citizenship cards.

Nevertheless, the armed forces were not willing to hand over political power, which also implied an enormous economic power through their participation in diverse government-owned corporations that controlled the exploitation of major reserves of natural resources in the country. In an exercise of sheer power, they unilaterally and baselessly declared the elections invalid and placed ASSK under house arrest. She remained there for more than 15 years. In recognition of her commitment to the struggle for peace and human rights, Aung San Suu Kyi received numerous awards, among them the Nobel Peace Prize in 1991. -----

In the year 2008 the armed forces, as part of their plan to set up a “flourishing democracy,” held a referendum to approve a National Constitution which, although it should have been drawn up by representatives of all ethnic groups, was drafted unilaterally and without consultation by the military. Without any type of control or scrutiny, and with public freedoms totally curtailed, the referendum was held, achieving, according to the military government, 97% approval. All of this in the midst of the massive destruction caused by Cyclone Nargis. Those among the ROHINGYA community who had provisional citizenship cards, issued during certain periods, took part in that referendum.

This Constitution was designed to preserve the dominant role of the military forces in politics and in any future government. A government system was established with military and civilian components. The Tatmadaw (armed forces) appoint 25% of the seats on the two legislative organs created by the Constitution, and select the candidates for three key ministerial positions (defence, border affairs and interior), and at least one of the two Vice-Presidents. This is sufficient to control the National Defence and Security Council and the entire security apparatus, as well as to block constitutional amendments.-----

A peculiar feature of this Constitution, evidently premeditated and for the sole purpose of preventing Aung San Suu Kyi from becoming a President of Myanmar, is section 59 (f) which forbids the candidacy to that post to any person whose spouse is a foreign national. The nationality of Aung San Suu Kyi’s husband was indeed British. -----

After the legalization of the Constitution, in the year 2010 the military called general elections, which weren’t free, and announced General Thein Sein, who had been the candidate of a military political party, had won the elections. Thus began the mandate of a formally constitutional, but essentially military, government, since the armed forces not only enjoyed the prerogatives the Constitution awarded them (25% of members of Parliament, the Defence, Interior and Border Affairs Ministries), but the remaining civilian powers continued to be in military hands. -----

It was during this mandate that, starting in the year 2012, the first episodes of the genocidal final plan against the ROHINGYA began to take place. In order to gain the support of the Buddhist majority against a government that was illegitimate and illegal from its origin, the highest public authorities and

Buddhist religious authorities promoted hatred and fear vis-à-vis Muslim groups, especially the ROHINGYA, through different kind of campaigns employing false or distorted information. It was in that year that, in a coordinated manner among all State entities, the use of the name ROHINGYA began to be forbidden, to be replaced by the indeterminate notion of "BENGALIS." As of that moment, the ROHINGYA ceased to exist in Myanmar and only populations of BENGALIS existed. This tactic of causing ROHINGYA identity to disappear continues at present.-----

In addition, religious feeling, so dear to the human race, was manipulated for the worst purposes. The Buddhist majority of Myanmar (87.9% of the population) began to perceive, erroneously, that the Muslims (4.3%) were going to take over the country and convert it to Islam. And it tolerated the worst atrocities, which it was already aware of, because, surprisingly, those who for decades had suffered the repression of the military governments, like the 88 Generation and Aung San Suu Kyi, validated the GENOCIDE against the ROHINGYA. -----

But worse still, following the November 2015 elections, in which the Government of the National League for Democracy, led by Aung San Suu Kyi, was the winner, the genocidal plan was perfected, in a cruel twist of history that allowed the worst atrocities to be committed under the authority of those who had fought with their lives for democratic freedoms, human rights and peace. Aung San Suu Kyi isn't the President of Myanmar, but Parliament created a special position for her, that of State Counsellor, which in practice exercises more power than the President of the country himself. -----

Today the ROHINGYA are decimated, the majority surviving in refugee camps on the Bangladesh border, where they ended up after fleeing en masse, under the worst conditions, among them being children on their own, their parents having been murdered; women raped; being thirsty and hungry, many of them ill, tormented by the abuses they had fled from, under conditions of extreme suffering, in an exodus on slippery paths in the midst of the water.-----

In Myanmar, where international sanctions were lifted in the year 2016, neither the authorities nor the population provide information on this tragedy in which they played key parts. Impunity is absolute, extended and premeditated, which worsens the genocidal practices against the few ROHINGYA who still remain in Myanmar. -----

## VI. BRIEF DESCRIPTION OF THE ROHINGYA COMMUNITY -----

The Rakhine State is located in western Myanmar. It stretches some 560 km along the Bay of Bengal and shares a frontier with Bangladesh. It is a geographically remote territory: a large share of its domestic borders with other states of Myanmar are mountainous and infrastructural links with the rest of the country are limited. Despite its strategic location and its fertility, the Rakhine State continues to be one of the poorest in Myanmar, with an estimated 44% of the population living below the poverty threshold. All communities in the State are affected by the scarcity of opportunities for subsisting and it ranks low on many social development indicators. -----

The Rakhine State comprises several ethnic and religious groups. The majority of the population is ethnically Rakhine, their religion being Buddhist. Muslims constitute the second largest religious group, the majority among them being ROHINGYA, with a lesser proportion of Kaman. There is also a series of other minorities such as Chin, Daingnet, Khami, Maramagyi, Mro, Thet and Hindus. The distribution of the ethnic and religious minorities across the state varies by region: the ROHINGYA constitute a vast majority in the northern district of Maungdaw, and the Rakhine ethnic group in most of the remaining districts. The estimates of the number of ROHINGYA who lived in the Rakhine State are of 800,000, yet after massive exodus to Bangladesh which took place as of the year 2012, but particularly in the years 2016 and 2017, as a consequence of massive human rights abuses, the number today varies between 200,000 and 240,000 in the northern municipalities and 332,000 and 360,000 in the centre of the Rakhine State.<sup>1</sup> -----

[Footnote 1:] It must be mentioned that in the last census, of the year 2014, in Myanmar, the government did not allow the ROHINGYA to identify themselves as such, which caused the majority of this population not to register. -----

The ROHINGYA are Muslim, and historically have been a peaceful people. Nevertheless, in late 2015, and after decades of abuses, oppression and systematic discrimination, in the Rakhine State there appeared a small armed group that calls itself the Army of Arakan. Its declared objectives include self-determination for people of the Rakhine (Arakanese) ethnic group, the safeguarding of the cultural heritage and the promotion of "Arakanese national dignity and national interest." It has operated in several municipalities

---

of the Rakhine State and has, since then, sporadically engaged with the Tatmadaw, and it appears that the clashes have become increasingly frequent and deadly in recent years. -----

## VII. THE ACTS COMMITTED AGAINST THE ROHINGYA COMMUNITY CONSTITUTING GENOCIDE AND CRIMES AGAINST HUMANITY -----

### A. Introduction -----

To address the description of abuses, it is appropriate to rely on the work that the United Nations has been doing for decades regarding the human rights situation in Myanmar. In 1992, the UN established the Special Rapporteurship on the situation of human rights in Myanmar, and began to address the issue through a country resolution. The Special Rapporteurship was exercised over the years by various experts, who consistently reported systematic discrimination against the ROHINGYA and concluded that this community began to fall victim to crimes against humanity. The legal sponsor of this complaint, Tomás Ojea Quintana, served as Special Rapporteur for the situation of human rights in Myanmar between 2008 and 2014. As an example, the conclusions of his last report of 2014 are cited as follows: -----

*“Taking into consideration the information and allegations the Special Rapporteur has received throughout the course of his six years on this mandate, including during his five visits to Rakhine State, and in particular since the June 2012 violence and its aftermath, he concludes that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations have taken place on a large scale and have been directed against the Rohingya Muslim population in Rakhine State. He believes that the deprivation of health care is deliberately targeting the Rohingya population, and that the increasingly permanent segregation of that population is taking place. Furthermore, he believes that those human rights violations are connected to discriminatory and persecutory policies against the Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and*

*privacy. In the country's ongoing process of democratic transition and national reconciliation, the human rights situation in Rakhine State will be a critical challenge for the Government of Myanmar and the international community to address.*" (A/HRC/25/64, Abril 2014, par. 51). -----

Special Rapporteur Yanghee Lee, who came after Ojea Quintana from mid-2014, continued to report on the extreme situation of abuses against the ROHINGYA through new reports, which, given the extreme deterioration of the situation, led the Human Rights Council of the UN to take the decision of creating an "Independent International Fact-Finding Mission on Myanmar" composed of three experts.<sup>2</sup> -----

[Footnote 2:] The mandates of Special Rapporteurs are not exclusively research mandates, and rely on other tools, such as diplomatic tools, to carry out their task. In addition, each Rapporteurship is exercised by a single expert, and the mandate extends for a period of six years. In contrast, fact-finding missions usually have a precise mandate to investigate a given situation and are composed of three members. The reports of the Independent Fact-finding Mission are found in: -----

<https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx> -----

Even though Myanmar rejected the request of the members of this International Mission to visit the country, after visiting the ROHINGYA displaced-persons camps in Bangladesh, in September 2018 the Mission issued an extensive report of 444 pages, where it verified, through the strictest methodologies of data collection and analysis, the crimes against humanity committed against the ROHINGYA community, and also, within the margins of its non-judicial mandate, the GENOCIDE crime committed. Recently, in August 2019, the Mission issued a new report entitled "Sexual and Gender-based Violence in Myanmar and the Gendered Impact of its Ethnic Conflicts". -----

It is necessary to refer to the evidentiary standards used by this International Mission in order to adequately weigh the value of the evidence collected and the consistency of its analysis and conclusions. In a reference that can be equated to the resource of sound criticism, which our procedural system uses to evaluate the evidence, the Mission stated in its summary report that: *"Factual findings are based on the "reasonable grounds" standard of proof. This standard was met when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that an incident or pattern of conduct occurred. The mission amassed a vast amount of primary information. It*

---

*conducted 875 in-depth interviews with victims and eyewitnesses, both targeted and randomly selected. It obtained satellite imagery and authenticated a range of documents, photographs and videos. It checked this information against secondary information assessed as credible and reliable, including the raw data or notes of organizations, expert interviews, submissions and open-source material. Specialized advice was sought on sexual and gender-based violence, child psychology, military affairs and forensics. The mission relied only on verified and corroborated information. To collect information, the members of the mission travelled to Bangladesh, Indonesia, Malaysia, Thailand and the United Kingdom of Great Britain and Northern Ireland. The secretariat undertook numerous additional field missions between September 2017 and July 2018. The Mission also held over 250 consultations with other stakeholders, including intergovernmental and non-governmental organizations, researchers and diplomats, either in person and remotely. It received written submissions, including some in response to a public call. The mission strictly adhered to the principles of independence, impartiality and objectivity. It sought consent from sources on the use of information, ensuring confidentiality as appropriate. Specific attention was paid to the protection of victims and witnesses, considering their well-founded fear of reprisals.” (Paragraphs 6-9). -----*

In September 2019, all the evidence amassed by the International Mission was handed over to a new office created by the United Nations Human Rights Council, called the "Independent Investigation Mechanism", with the following mandate: *“(i) to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and (ii) to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law”*.<sup>3</sup> -----

[Footnote 3:] Resolution 39/2 of September 27, 2018, Human Rights Council. -----

Therefore, according to the provisions in item (ii), what we will ask as a Complaint, and once the complaint is formally accepted, is that the Argentine Federal Court that intervenes contacts these bodies, especially the *Independent Investigation Mechanism*, to distinguish in a circumstantial

---

manner the facts that constitute GENOCIDE and crimes against humanity, and to identify all pieces of evidence that exist so as to compare them and include them in the proceedings.-----

The fact is that all the evidence produced and accumulated by these United Nations investigative entities, with respect to GENOCIDE and crimes against humanity, is reserved for any process of impartial and independent justice - such as the one we seek here - and cannot be accessed by private persons.

## **B. GENERAL DESCRIPTION OF THE FACTS -----**

The pattern abuse policies and practices against the ROHINGYA, which ended with the GENOCIDE, goes back many decades, and projects to the present. In order to address, as far as possible, a clear, precise and circumstantial account of the facts, we will use the transcription of certain passages from the reports of the *Myanmar Independent Fact-Finding Mission*, as it has dedicated its mandate to actually verify and report specific incidents. To this end, we will distinguish three specific and sequential stages in the history of this GENOCIDE: -----

1) the historic and systemic oppression and discrimination against the ROHINGYA -----

2) the violence, abuses and isolation measures applied as from 2012, all within the framework of a ROHINGYA ethnic cleansing plan -----

3) the extreme violence applied in 2016 and 2017 in the context of attacks by the Arakan Rohingya Salvation Army (ARSA), but to consummate the GENOCIDE plan against the ROHINGYA. -----

### **1) The historic and systemic oppression and discrimination against the Rohingya (paragraphs 20-23 of the International Mission summary Report)**

The process of “othering” the Rohingya and their discriminatory treatment began long before 2012. The extreme vulnerability of the Rohingya is a consequence of State policies and practices implemented over decades, steadily marginalizing them. The result is a continuing situation of severe, systemic and institutionalized oppression from birth to death.-----

The cornerstone of the above-mentioned oppression is lack of legal status. Successive laws and policies regulating citizenship and political rights have become increasingly exclusionary in their formulation, and arbitrary and

discriminatory in their application. Most Rohingya have become de facto stateless, arbitrarily deprived of nationality. This cannot be resolved through the Citizenship Law of 1982, applied as proposed by the Government through a citizenship verification process. The core issue is the prominence of the concept of “national races” and the accompanying exclusionary rhetoric, originating under the dictatorship of Ne Win in the 1960s. The link between “national races” and citizenship has had devastating consequences for the Rohingya. -----

The displacement of Rohingya in the 1970s and 1990s, in the context of the military regime’s implementation of this exclusionary vision, were earlier markers. Observers, including United Nations human rights mechanisms and civil society, have alerted the Myanmar authorities and the international community to a looming catastrophe for decades. -----

The travel of Rohingya between villages, townships and outside Rakhine State has long been restricted on the basis of a discriminatory travel authorization system. This has had serious consequences for economic, social and cultural rights, including the rights to food, health and education. The degree of malnutrition witnessed in northern Rakhine State has been alarming. Other discriminatory restrictions include procedures for marriage authorization, restrictions on the number and spacing of children, and the denial of equal access to birth registration for Rohingya children. For decades, security forces have subjected Rohingya to widespread theft and extortion. Arbitrary arrest, forced labour, ill-treatment and sexual violence have been prevalent.

**2) the violence, abuses and isolation measures applied as from 2012, all of which are part of a ROHINGYA ethnic cleansing plan (paragraphs 24-30 of the International Mission Summary Report) -----**

In this context, two waves of violence swept Rakhine State, in June and in October 2012, affecting 12 townships. The murder, and alleged rape of a Rakhine woman and the killing of 10 Muslim pilgrims are commonly presented as key triggers. According to the government inquiry commission, the violence left 192 people dead, 265 injured and 8,614 houses destroyed. Actual numbers are likely much higher. Further violence broke out in Thandwe in 2013. -----

Although the Government’s depiction of the violence as “intercommunal” between the Rohingya and the Rakhine has prevailed, it is inaccurate. While there certainly was violence between Rohingya and Rakhine groups, resulting

in killing and the destruction of property, these attacks were not spontaneous outbursts of hostility; they resulted from a plan to instigate violence and amplify tensions. A campaign of hate and dehumanization of the Rohingya had been under way for months, and escalated after 8 June 2012, led by the Rakhine Nationalities Development Party (RNDP), various Rakhine organizations, radical Buddhist monk organizations, and several officials and influential figures. It was spread through anti-Rohingya or anti-Muslim publications, public statements, rallies and the boycott of Muslim shops. The Rohingya were labelled “illegal immigrants” and “terrorists”, and portrayed as an existential threat that might “swallow other races” with their “incontrollable birth rates”. In November 2012, the RNDP, in Toe Thet Yay, an official publication, cited Hitler, arguing that “inhuman acts” were sometimes necessary to “maintain a race”.-----

Myanmar security forces were at least complicit, often failing to intervene to stop the violence, or actively participated. They injured, killed and tortured Rohingya and destroyed their properties. Witnesses from Sittwe and Kyaukpyu described cases of security forces preventing Rohingya or Kaman from extinguishing houses set on fire by Rakhine, including by gunfire. Witnesses from Maungdaw described security forces shooting indiscriminately at Rohingya and conducting mass arbitrary arrests, including of Rohingya workers from non-governmental organizations. Large groups were transferred to Buthidaung prison, where they faced inhuman conditions and torture. Prisoners were beaten by prison guards and fellow Rakhine detainees, some fatally.-----

The violence in 2012 marked a turning point in Rakhine State: the relationship between the Rakhine and Rohingya deteriorated; fear and mistrust grew. Although the Kaman are a recognized ethnic group, they were targeted alongside the Rohingya as Muslims, and have since suffered increasing discrimination and marginalization. -----

The Government responded to the violence by an increased presence of security forces and enforced segregation of communities. A state of emergency declared on 10 June 2012 was lifted only in March 2016. Township authorities in Rakhine State imposed a curfew and prohibited public gatherings of more than five people. These restrictions remain in force today in Maungdaw and Buthidaung and have been applied in a discriminatory

manner against the Rohingya. They have an impact on freedom of religion, as people are prevented from praying collectively in mosques.-----

The violence displaced more than 140,000 people, mostly Rohingya. The few thousand displaced ethnic Rakhine were able to return or were resettled by the Government. Six years after the violence, 128,000 Rohingya and Kaman remain segregated, confined in camps and displacement sites, without freedom of movement, access to sufficient food, adequate health care, education or livelihoods. The displaced are prevented from returning to their place of origin. Such confinement exceeds any justifiable security measure and constitutes arbitrary deprivation of liberty. Other Rohingya in central Rakhine, including those resettled, also face severe restrictions, including on freedom of movement, which has an impact on daily life. -----

The violence exacerbated the oppression of the Rohingya. Movement outside Rakhine State became even more difficult. Rohingya students have not been able to enrol at Sittwe University since 2012; their access to higher education has been effectively removed. This is a violation of the right to education, and a powerful tool to ensure cross-generational marginalization. Although Rohingya were allowed to vote in 2010, the right was revoked prior to the elections in 2015. The oppressive climate led to an increase in Rohingya leaving Rakhine State by boat in the following years. -----

At this time, the world is also witness to totally despicable decisions of third states that inhumanely refuse to receive on their coasts precarious barges crowded with ROHINGYA population, including children, with scarce water and food, in a state of almost starvation, who, escaping from violence and persecution, seek protection outside Myanmar. These third states, such as Thailand, in a similar procedure that was later observed in Europe regarding refugees from Syria and other African countries, push these barges back to high seas without any consideration. There are consistent reports of the sinking of many of these barges. -----

**3) the extreme violence applied in 2016 and 2017 in the context of attacks by the Arakan Rohingya Salvation Army (ARSA) but to consummate the GENOCIDE plan against the ROHINGYA (paragraphs 31-42 of the International Mission Summary Report) -----**

What happened on 25 August 2017 and the following days and weeks was the realization of a disaster long in the making. It was the result of the systemic

oppression of the ROHINGYA, the violence of 2012, and the Government's actions and omissions since then. It caused the disintegration of a community.

In the early hours of 25 August, ARSA launched coordinated attacks on a military base and up to 30 security force outposts across northern Rakhine State, in an apparent response to increased pressure on Rohingya communities and with the goal of global attention. A small number of minimally-trained leaders had some arms, and a significant number of untrained villagers wielded sticks and knives. Some had improvised explosive devices. Twelve security personnel were killed. -----

The response of security forces, launched within hours, was immediate, brutal and grossly disproportionate. Ostensibly to eliminate the "terrorist threat" posed by ARSA, in the days and weeks that followed, it encompassed hundreds of villages across Maungdaw, Buthidaung and Rathedaung. The operations targeted and terrorized the entire ROHINGYA population. The authorities called them "clearance operations". As a result, by mid-August 2018, nearly 725,000 Rohingya had fled to Bangladesh.-----

Even though the operations were conducted over a broad geographic area, they were strikingly similar. Tatmadaw soldiers would attack a village in the early hours, frequently joined by other security forces, often by Rakhine men and sometimes men from other ethnic minorities. The operations were designed to instil immediate terror, with people woken by intense rapid weapon fire, explosions or the shouts and screams of villagers. Structures were set ablaze, and Tatmadaw soldiers fired their guns indiscriminately into houses and fields, and at villagers.-----

The nature, scale and organization of the operations suggest a level of preplanning and design by the Tatmadaw leadership that was consistent with the vision of the Commander-in-Chief, Senior General Min Aung Hlaing, who stated in a Facebook post on 2 September 2018, at the height of the operations, that "the Bengali problem was a longstanding one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem."

The "clearance operations" constituted a human rights catastrophe. Thousands of Rohingya were killed or injured. Information collected by the mission suggests that the estimate of up to 10,000 deaths is a conservative one. Mass killings were perpetrated in Min Gyi (Tula Toli), Maung Nu, Chut Pyin and Gudar Pyin, and in villages in the Koe Tan Kauk village tract. In some

cases, hundreds of people died. In both Min Gyi and Maung Nu, villagers were gathered together before the men and boys were separated and killed. In Min Gyi, women and girls were taken to nearby houses, gang raped, then killed or severely injured. Houses were locked and set on fire. Few survived. In numerous other villages, the number of casualties was also markedly high. Bodies were transported in military vehicles, burned and disposed of in mass graves. -----

People were killed or injured by gunshot, targeted or indiscriminate, often while fleeing. Villagers were killed by soldiers, and sometimes by Rakhine men, using large bladed weapons. Others were killed in arson attacks, burned to death in their own houses, in particular the elderly, persons with disabilities and young children, unable to escape. In some cases, people were forced into burning houses, or locked in buildings set on fire. -----

Rape and other forms of sexual violence were perpetrated on a massive scale. Large scale gang rape was perpetrated by Tatmadaw soldiers in at least 10 village tracts of northern Rakhine State. Sometimes up to 40 women and girls were raped or gang-raped together. One survivor stated, "I was lucky, I was only raped by three men". Rapes were often in public spaces and in front of families and the community, maximizing humiliation and trauma. Mothers were gang raped in front of young children, who were severely injured and in some instances killed. Women and girls 13 to 25 years of age were targeted, including pregnant women. Rapes were accompanied by derogatory language and threats to life, such as, "We are going to kill you this way, by raping you." Women and girls were systematically abducted, detained and raped in military and police compounds, often amounting to sexual slavery. Victims were severely injured before and during rape, often marked by deep bites. They suffered serious injuries to reproductive organs, including from rape with knives and sticks. Many victims were killed or died from injuries. Survivors displayed signs of deep trauma and face immense stigma in their community. There are credible reports of men and boys also being subjected to rape, genital mutilation and sexualized torture. -----

Children were subjected to, and witnessed, serious human rights violations, including killing, maiming and sexual violence. Children were killed in front of their parents, and young girls were targeted for sexual violence. Of approximately 500,000 Rohingya children in Bangladesh, many fled alone after their parents were killed or after being separated from their families. The

mission met many children with visible injuries consistent with their accounts of being shot, stabbed or burned.-----

Numerous men and boys were rounded up, marched into the forest by security forces or taken away in military vehicles. While some families hope that their fathers and brothers were imprisoned, others suspect they have been killed. -----

Hundreds of thousands of Rohingya fled, without shelter, food or water. They walked for days or weeks through forests and over mountains. People died on the way, some succumbing to injuries sustained during the attacks. Women gave birth; some babies and infants died. An unknown number of people drowned after their boat capsized, or when crossing rivers. The Tatmadaw also killed Rohingya during the journey and at border crossings. Landmines planted in border areas by the Tatmadaw in early September 2017, apparently to prevent or dissuade Rohingya from returning, led to further loss of life and severe injuries.-----

Satellite imagery and first-hand accounts corroborate widespread, systematic, deliberate and targeted destruction, mainly by fire, of Rohingya-populated areas across the three townships. At least 392 villages (40 per cent of all settlements in northern Rakhine) were partially or totally destroyed, encompassing at least 37,700 individual structures. Approximately 80 per cent were burned in the initial three weeks of the operations, a significant portion of which after the Government’s official end date of the “clearance operations”. More than 70 per cent of the villages destroyed were in Maungdaw, where the majority of Rohingya lived. Most destroyed structures were homes. Schools, marketplaces and mosques were also burned. Rohingya-populated areas were specifically targeted, with adjacent or nearby Rakhine settlements left unscathed.

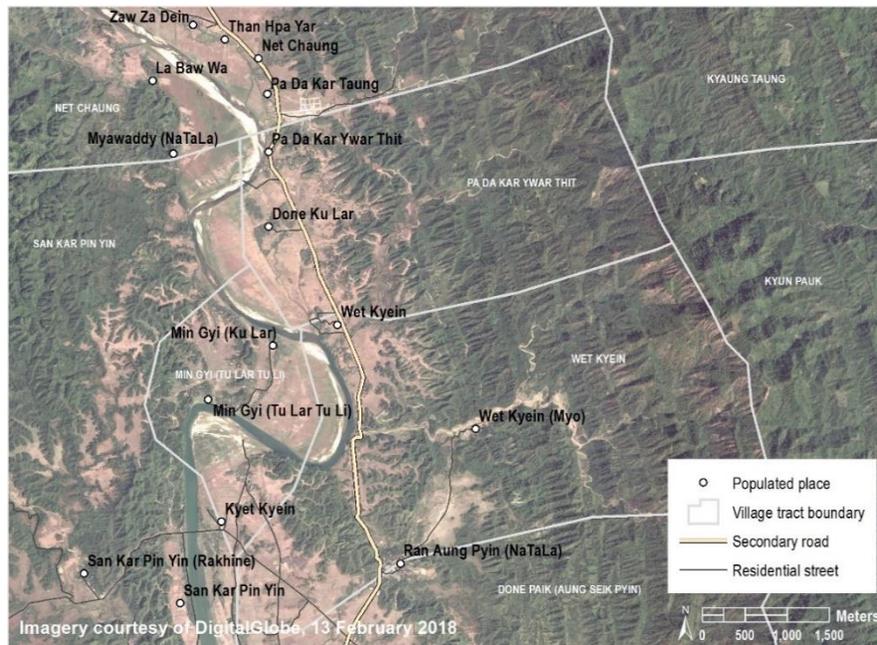
**C. CIRCUMSTANCED DESCRIPTION OF ATROCITIES COMMITTED IN ONE OF THE VILLAGE RESEARCHED BY THE INTERNATIONAL MISSION - August 2017 (paragraphs 756-778 of the International Mission Full Report) -----**

Village: *Min Gyi (Tula Toli)* -----

Min Gyi (known in Rohingya as Tula Toli) is a village tract located in Maungdaw Township in northern Rakhine State. With a population of approximately 4,300 Rohingya and 400 ethnic Rakhine, it is surrounded by a river on three sides.

Across this river on the eastern side are two other village tracts, Wet Kyein (known in Rohingya as Wed Kayaung) and Pa Da Kar Ywar Thit (known in Rohingya as Diyal Toli).-----

Image from 13 February 2018 showing the village tracts in the vicinity of Min Gyi village tract -----



On 25 and 26 August 2017, two ARSA attacks took place near Min Gyi. Witnesses reported hearing gunshots close to Min Gyi on the same dates. The Government further reported that ARSA burned down 30 houses and set off a handmade mine in Wet Kyein on 29 August. On the same day, the Government also reported that ARSA burned ethnic Mro homes in Khu Daing (Myo) village in Pa Da Kar Ywar Thit village tract and was responsible for violent acts against Mro villagers during this attack.-----

Between 26 and 29 August 2017, Tatmadaw soldiers carried out two “clearance operations” in the Rohingya villages in Wet Kyein and Pa Da Kar Ywar Thit village tracts, east of Min Gyi. As they entered Wet Kyein, they used “launchers” to set houses on fire while shooting villagers escaping towards the hills. Then they moved to Pa Da Kar Ywar Thit and continued shooting towards villagers and setting houses on fire. Many were injured. One villager who escaped from Wet Kyein recalled that the military were firing at the village from a bridge, using “launchers” and guns. As he tried to flee, carrying his 3-year old son, he was shot in the thigh. The bullet went through his leg and entered his son’s chest, who died on the spot. Another interviewee, a

medical shop owner, said he treated at least 20 people wounded by gunshots, and estimated that at least 100 people were shot and injured while fleeing. Similar accounts suggest that many others were also shot and killed in both Wet Kyein and Pa Da Kar Ywar Thit.-----

The first-hand accounts of homes burning are corroborated by satellite images analysed by UNOSAT showing the destruction of approximately 900 structures in Wet Kyein and Pa Da Kar Ywar Thit village tracts. -----

Some villagers who escaped from Wet Kyein and Pa Da Kar Ywar Thit, fled towards Min Gyi. The ethnic Rakhine chairperson of Min Gyi had reassured villagers, including those who had fled from Pa Da Kar Ywar Thit and Wed Kyein that it was safe to remain in Min Gyi. He told them that the soldiers would come but reassured the villagers not to flee, as they would not be harmed. -----

On the morning of 30 August 2017, between 8 and 9am, Tatmadaw soldiers entered Min Gyi, across the river and west of Pa Da Kar Ywar Thit, accompanied by armed ethnic Rakhine, members of other ethnic groups and police security forces. They entered the village from the north, opened fire and began burning houses using “launchers” from the village outskirts. As the soldiers advanced, villagers fled. Some were able to flee to the hills, others fled towards a large sandbank area beside the river, known as the shore. The soldiers then opened fire directly at the large number of people fleeing towards the shore. Many people were shot. One man reported: -----

*When I came out of my house that morning on hearing gunshots and seeing the village burning, I could see the military about half a kilometre away. They were firing their weapons. I immediately ran from my house in the other direction, towards the river and the shore. I think that everybody from my village was running towards the shore. While I was running, there was a lot of shooting and I saw many people hit and falling down. There were a huge amount of people at the shore. Five minutes after I arrived, the military moved to the shore and encircled the group. By this point many houses in the village were burning.*-----

A helicopter was observed flying over the village during the morning. Some described seeing a helicopter landing in the nearby ethnic Rakhine village and unloading containers of petrol.-----

The villagers who made it to the shore were then effectively trapped, on one side by the river, and on the other side by soldiers. “We were running to the sandy field as we didn’t know where to go. There was nowhere to flee”, reported an elderly woman. -----

Some attempted to swim across the river eastward to Wet Kyein and Pa Da Kar Ywar Thit on the far side. Some made it across. Numerous persons, especially elderly and children, drowned. Others were shot by the military while trying to cross the river. -----

One interviewee recounted that he was shot by soldiers but managed to get away by jumping into the river, where he saw another man shot just in front of him. He then swam across the river and saw bodies floating. He could also hear shooting and screaming from the shore. Several accounts described bodies of men, women and children floating in the river. Dozens of bodies were recovered by a group of men at the other side of the river. -----

Those who remained on the shore, who numbered in the hundreds, were then rounded up. The soldiers separated women and children from the men. Soldiers then systematically killed the men. As one witness described:-----

*The first round of shooting was like a rain of bullets. The second round was slow as the soldiers killed the men individually. They aimed a gun at each man and shot.* -----

Soldiers then killed those who had survived gunshot wounds with long knives, including children. One woman described how she saw her husband shot, after which his throat was slit, and another woman, who lost seven children, reported that: -----

*Soldiers separated the groups into men and women. The men were all in one group, and were killed. Men who were not shot dead, who were struggling or severely injured, were killed with a knife.* -----

The dead bodies were then thrown into pits dug by the military and ethnic Rakhine, covered with tarpaulin, and set on fire with gasoline. -----

*They put all dead bodies into those three pits and then set them on fire. I think that the military used petrol to burn the dead bodies because flames from the fire rose up very high and fast.* -----

Soldiers also removed jewellery and other valuable items from the dead bodies before setting them on fire. -----

Soldiers then turned to the women and children who, after being separated from the men, were forced to sit in a lowered area on the shore. Some of the children were shot, some thrown into the river, and others thrown onto a fire. One witness said that, after the departure of the helicopter, the soldiers took infants from their mothers' laps and threw them into the river. She described seeing children's bodies "floating away". Another witness described seeing soldiers stabbing a 10-year-old boy who was trying to run away with a knife. She described her body turning numb with fear.-----

The soldiers then took women and girls in groups of between five and seven to some larger houses in the village. Many women had their young children and infants with them. One mother said that she was with her daughter when the soldiers took her, her two sisters-in-law, an elderly woman and three of her younger brothers-in-law aged between seven and ten years old. On the way to the houses, they were taken past the large pits in which bodies were being put. A soldier grabbed the woman's daughter from her, and threw her into one of the pits. She did not want to leave her daughter and just stood there. A soldier then beat her repeatedly and she was forced to move on towards the houses. -----

Women and girls were taken into rooms where their jewellery and money was taken from them. They were beaten, brutally raped and frequently stabbed. Children or infants who were with them in the room were also killed or severely injured, often by stabbing. The houses were then locked and set on fire. The few women who survived, and who spoke with the Mission, displayed both serious burn marks and stab wounds, which were consistent with their accounts, and were deeply traumatized. They also described seeing dead bodies of men, women and children in the houses. A survivor described how she was taken together with her sister, her mother, two neighbours and her young daughter and son to one of the houses. When she entered the house she saw women being raped. Then they were taken to an empty room where they were robbed, undressed and raped. Her sister, mother and son were killed: "My daughter woke me up saying she was getting burned. They had locked the house and set it on fire. I managed to break down the door, and my daughter and I managed to escape. I had no clothes on and my skin was very badly burned." Another survivor recounted a similar experience: -----

*I entered the house with four of my neighbours, and three of us had babies. I knew the house. There were dead bodies on the floor, young boys and older men from our village. After we entered the house, the soldiers locked the door. One soldier raped me. They stabbed me in the back of my neck and in my abdomen. I was trying to save my baby who was only 28 days old but they threw him on the ground and he died. The other women who were there were also raped. It was late in the afternoon when I became conscious. I awoke because small flames were dropping from the roof onto my body. I was the only one who survived in that room. I could barely move but I realised I was going to burn to death. Although my baby was dead, I held him close to my heart, but I could not bring his body with me. I escaped through a small door in the kitchen, which was unlocked. -----*

During the course of the “clearance operation”, the houses and other structures in the various Rohingya hamlets of Min Gyi were completely burned and destroyed. Satellite imagery analysis confirms that Min Gyi was destroyed by 16 September 2017 and that approximately 440 structures were burned. The ethnic Rakhine village to the south remains intact (referred to in the image as “Min Gyi (Tu Lar Tu Li)”).<sup>4</sup> -----

[Footnote 4:] Satellite imagery analysis prepared by UNITAR-UNOSAT. -----

**Image from 25 May 2017 shows intact settlements in Min Gyi -----**



**Image from 16 September 2017 shows destroyed Rohingya settlements and intact Rakhine settlement (in bottom left corner) in Min Gyi -----**



Credible information collected by Rohingya community volunteers in the refugee camps in southern Bangladesh indicates that at least 750 people died in Min Gyi on 30 August 2017, including at least 400 who had been residents of Min Gyi. The total number includes villagers from Wet Kyein, Pa Da Kar Ywar Thit and elsewhere who had sought safety in Min Gyi. People died from being shot, stabbed, slit across the throat by a knife, beaten to death, drowned and burned. Many more were injured, and others remain unaccounted. -----

While the Mission has not been able to verify the accuracy of the full list, the Mission interviewed dozens of victims who had lost many family members in Min Gyi. One 25-year old man interviewed had lost his entire family: his father and his three younger brothers of thirteen, nine and seven years old were shot and killed and he believes his mother, wife and sisters were killed by soldiers inside the houses. A 27-year old woman saw 11 family members killed that day on the shore, including her 20-day old baby who she said was slaughtered with a knife and thrown on the ground. A 22-year old man reported returning to the village to collect the dead bodies of his family though he found only burned bodies. A 25-year old female survivor of rape reported that she lost eight members of her family, including her 28-day old baby. -----

All interviewees identified Tatmadaw soldiers as the main perpetrators. A number recognised the insignia of the Western Command on the shoulder patch. Many accounts also described helmeted soldiers in camouflage uniform that were distinguishable from other regular uniformed soldiers. The Mission believes these soldiers to be from the 99th LID. Credible sources have identified the 99th LID as being present in Min Gyi during the attack.-----

Ethnic Rakhine and members of other ethnic minorities participated. Several interviewees identified ethnic Rakhine, as well as Mro (Murong), Chakma and Kui from nearby villages. They were equipped with long knives, machetes and other type of local weapons. Some saw them also use knives to kill, including children. -----

Survivors of rape in Min Gyi also identified members of the Tatmadaw and soldiers in camouflage as the perpetrators of rape and killing of women and children in the houses. It is likely that this indicates the involvement of the 99th LID as perpetrators of these rapes.-----

#### **D. ATROCITIES AT OTHER LOCATIONS AND IN PREVIOUS PERIODS -----**

The detailed and solid investigation performed by the International Mission on what happened in the village of MIN GYI in 2017 was likewise reproduced with regard to what took place, also in 2017, in the towns and villages to the south of MAUNGDAW, of KOE TAN KAUK, of GU DAR PYIN, of MAUNG UN and of CHUT PYIN, all of them in the Rakhine State in Myanmar, in which the International Mission discovered similar patterns of horrendous human rights violations. The investigation and the conclusions can be found in its full report.

The report of the International Mission also sought out information on the violence exercised against the ROHINGYA in the year 2016 in at least 11 areas to the north of MAUNGDAW, and specifically investigated two incidents, regarded as the most serious, in the villages of PWINT HPYU CHAUNG and DAR GYI ZAR. -----

Additionally, the International Mission gathered evidence and verified instances of human rights abuses committed during the violence in the year 2012. -----

In sum, all of the events which the International Mission investigated in detail in its full report must form part of the statements of facts of this complaint.

## **E. THE SPECIAL CASE OF SEXUAL AND GENDER-BASED VIOLENCE -----**

We wish to make special reference to those crimes against sexual integrity, due to the fact that historically, but particularly during the crimes of the years 2016 and 2017, the ROHINGYA were victims of these heinous actions. So atrocious were these crimes that the International Mission decided to produce a special report on the subject. And in its conclusions it pointed out: -----

*“The Mission reaffirms its conclusion that rape and other forms of sexual and gender-based violence constitute gross violations of international human rights law in Rakhine, Kachin and Shan”* (paragraph 254). -----

*“Notably, the Mission’s consolidation of its materials has led it to conclude on reasonable grounds that the sexual violence perpetrated against Rohingya women and girls in Rakhine state on and after 25 August 2017 was an indicator of the Tatmadaw’s genocidal intent to destroy the Rohingya people in whole or in part”* (paragraph 255).-----

It is for this reason that we request that the report of the International Mission on sexual violence be properly considered, and that the investigation make special emphasis on these crimes. -----

## **VIII. CLASSIFICATION AS GENOCIDE -----**

In the above-mentioned full report, the International Mission carried out an exhaustive analysis of the facts, in the light of the Convention on the Prevention and the Punishment of the Crime of Genocide – which Myanmar is a party to since 1956 – as well as of the Statute of the International Criminal Court, and concluded that we are, from a strictly legal standpoint, in the presence of GENOCIDE against the ROHINGYA community. -----

In addition to examining all the objective elements of this criminal definition, in accordance with those treaties, plus the existing jurisprudence on the subject, the International Mission placed special emphasis on the subjective factor, which is so important in this case, with regard to genocidal intent, which it understands to be an element of special malice of the criminal type. It then analysed in detail the existence of the intention to destroy the ROHINGYA, in whole or in part, as an ethnic, racial or religious group, and arrived at the conclusion that there existed more than sufficient grounds that sustain the existence of such genocidal intent. We thus refer to this report (paragraphs 1411-1439). -----

Rightly, the International Mission indicates at the end of its analysis that it is now for a competent prosecutorial body and court of law to investigate and adjudicate the responsibility for GENOCIDE to specific individuals, and it is precisely this that is pursued by this complaint. -----

**IX. CLASSIFICATION AS CRIMES AGAINST HUMANITY -----**

The massive and systematic human rights violations of the ROHINGYA people also qualify as crimes against humanity, inasmuch as they were part of a generalized attack against a civilian population, in awareness of such an attack. These violations include the entire catalogue of criminal actions established in Article 7.1 of the Rome Statute: murder and extermination; enslavement; deportation or forcible transfer of population; imprisonment, torture and enforced disappearance of persons; rape, sexual slavery and sexual violence; persecution; apartheid. -----

In its full report the International Mission has also made an itemized analysis with regard to this category of international crimes, to which we refer.

**X. CLASSIFICATION OF THE EVENTS IN ACCORDANCE WITH DOMESTIC CRIMINAL LAW -----**

In addition to the classification of the international crimes as indicated above, the events described in this complaint must be categorized with regard to the diverse criminal definitions in our country's legislation, for the purposes of determination of the punishment. For the moment we shall point out that the events imply numerous crimes among those established under different Titles of Volume Two of the National Criminal Code.

**XI. THE ACTUAL PERPETRATORS, THE PARTICIPANTS AND THE ACCOMPLICES -----**

With regard to the actual perpetrators, the participants and the accomplices, we shall likewise follow the conclusions that the International Mission arrived at, but we shall expand with more precise determination on the possible criminal responsibility of the civilian authorities, who in any event were not excluded by the Mission in question.-----

**A. Security forces -----**

The International Mission concluded that the senior members of Myanmar's security forces were criminally accountable for the crimes committed. In its full report, the Mission carried out an exhaustive analysis of the point, basing

itself principally on the doctrine of “command responsibility,” which is applied in different cases before International Courts. It is well known that in our environment, jurisprudence has used the doctrine of the “power apparatus” of Claus Roxin to determine the criminal responsibility of military and security commanders, officers and troops in cases of massive and systematic violations of human rights. As this case progresses the legal outlook on the most suitable doctrine for the case will become clearer. What has become manifest to the International Mission, and to this party, is that the senior members of Myanmar’s security forces must be held criminally accountable for the crimes. -----

According to the International Mission, Myanmar’s armed forces (the Tatmadaw) were the principal perpetrators of the serious human rights violations and crimes under international law. But the Myanmar Police Force, the NaSaKa<sup>5</sup> [Footnote 5: A force exercising control over immigration in the border area, dissolved in 2013.] and the Border Guard Police were likewise perpetrators. At the same time, the local authorities of the Rakhine State, militias, “civilian” militant groups, politicians and monks participated or assisted in the violations, to a lesser or greater degree. -----

The International Mission drew up a non-exhaustive list of the presumptive perpetrators of crimes under international law, indicating priority matters for investigation and trial. The list contains the names of the presumptive actual perpetrators, although it centres on those who exercise effective control over them. In relation to the recent events in the Rakhine State, the list includes: -----

- **Tatmadaw Commander-in-Chief, Senior-General Min Aung Hlaing;** -----
- **Deputy Commander-in-Chief, Vice Senior-General Soe Win;** -----
- **Commander, Bureau of Special Operations-3, Lieutenant-General Aung Kyaw Zaw;** -----
- **Commander, Western Regional Military Command, Major-General Maung Soe;** -----
- **Commander, 33rd Light Infantry Division, Brigadier-General Aung;**
- **Commander, 99th Light Infantry Division, Brigadier-General Than Oo.** ----

The International mission points out that the full list of the persons identified as criminally accountable will form part of the Mission's archives, kept in the custody of the UNHCR, and can be shared with any competent and credible body pursuing accountability, in line with recognized international norms. Precisely, what is pursued with this complaint is the setting up of a formal, impartial and independent legal process that is validated as that "competent and credible body" to which the International Mission refers, with jurisdiction to try the international crimes committed against the ROHINGYA.

#### **B. Civilian authorities -----**

According to the International Mission, there are no indications that Myanmar's civilian authorities have directly participated in planning or implementing military or police security operations or were part of the command structure in relation to the operations in the Rakhine State. -----

In this regard, nothing emerges from the full report or from the summary report to indicate what type of research the International Mission carried out to assert that no such indications exist. In order to obtain the details of such an important point, it will be necessary to request access to the working documents that are currently under the scope of the recently established Investigative Mechanism. -----

**The reason is that in this part it is impossible to rule out the participation of the civilian authorities through any type of assistance, whether in the planning, the preparation, the execution and/or the concealment of the operations and the Governmental measures aimed at the ethnic cleansing of the ROHINGYA community, understanding as such not only the actual execution of the heinous crimes but also any State action that forms part of the framework which, precisely, generated the GENOCIDE and the ethnic cleansing. -----**

The International Mission analyses the heinous crimes on a case by case basis and believes that the constitutional powers of Myanmar's civilian authorities offer little margin for controlling the Tatmadaw's actions. It holds that security matters fall entirely within the scope of the Tatmadaw, without civilian supervision. It points out that the commander in chief is the supreme commander of all of Myanmar's armed forces, which deviates from the more modern constitutional frameworks in which it is generally the Head of State who is the supreme commander to whom the highest-ranking military officers and institutions are subordinated. Finally, it states that the Ministers

for Defence, Interior Affairs and Border Affairs are appointed by the Tatmadaw, and that through these appointments, the Commander in Chief also controls the majority of votes in the National Defence and Security Council, the constitutional body with jurisdiction over security matters.-----

It is evident that the Constitution of the year 2008, fraudulently approved by the military government, in the midst of the mass destruction caused by Cyclone Nargis, was meticulously conceived for the Myanmar military to continue to exercise disproportionate power within a quasi-democratic system, and to manage businesses linked to highly profitable natural resources and to the land through government-owned corporations. Indeed, 25% of seats in both houses of representatives are in the hands of the military without the intervention of any election by the citizenry. And the Ministers of Defence, Internal Affairs and Border Affairs, although appointed by the President, are first nominated by the Commander in Chief. With regard to the National Defence and Security Council, it must be made clear that it has 11 members and that the military appoint 5 of them, so that control of the body by the military is possible insofar as they obtain the support of one of the remaining 6 members. -----

**But even despite this entire organic system established so that the military preserve a share of public power, the truth, in our opinion, is that its performance is inscribed within the framework of the Myanmar Constitution and of the operation of the State as a whole, and not in isolation, so that the entire genocidal plan, including practices as heinous as mass murder, gang rape, the slaughter of children, the destruction of vast areas in which the ROHINGYA lived, combined with the denial of access to services in health, education and adequate housing, being prevented from trading and with the elimination of the ROHINGYA identity from public registers and censuses, all this within a framework of a null and void rule of law, could not have been deployed without the complementation, the coordination, the support or the acquiescence of the different civilian authorities.**-----

In fact, the Commander-in-Chief recently asserted, in the context of the United Nations Security Council visit to Myanmar, that, *“though I am the head of the Tatmadaw, our country has a President. And we Tatmadaw take actions under the leadership of the President”* and *“Our Tatmadaw is under the guidance of the Myanmar government. We only take action according to*

*the mandate given by the law and we are not authorized to do anything beyond the boundaries of law.”<sup>6</sup>* -----

[Footnote 6: <https://www.facebook.com/seniorgeneralminaunghlaing/posts/1963383073696171>] -----

Here is a clear indication that the armed forces acted under the “leadership” of the President of Myanmar. The country’s president was Htin Kyaw (from March 2016 to March 2018), but here we must note who actually exercised and exercises political leadership over Myanmar. This is because the indisputable political leader, Aung San Suu Kyi, who could not become the President of the country despite having won the elections, owing to that constitutional provision designed by the military to prevent it, against the principle of non-discrimination, after the elections accepted a position created by Parliament, that of State Counsellor, to virtually become the maximum political figure in the country. And here it is worth recalling Aung San Suu Kyi’s own words when, before the 2015 elections, she was asked whether she would be Prime Minister (given the prohibition to become President). Her answer was the following: *“Who said I will be Prime Minister? The Prime Minister is below the President; I said I will be above the President.”* And when asked how she would achieve that, she replied, *“Oh, I have already made the plans.”<sup>7</sup>* -----

[Footnote 7: <https://www.youtube.com/watch?v=Wh7aYsAxmow> (minute 129-140). During that press conference, Aun San Suu Kyi once again stated that if her political party won the elections, she would be above the President. See: <https://www.youtube.com/watch?v=tPqJDMa8Gm4>; [https://www.youtube.com/watch?v=Wzg\\_chIoeTQ](https://www.youtube.com/watch?v=Wzg_chIoeTQ)] -----

The plan, evidently, was to turn into State Counsellor with the authority to manage all State decisions.-----

**It is for this reason that the “leadership” by the President of Myanmar referred to by the Commander of the armed forces, when justifying the actions of the armed forces against the ROHINGYA in the Rakhine State, is truly referred to the political leadership in the country exercised by the State Counsellor, Ms. Aung San Suu Kyi.**-----

On this point, the International Mission pointed out in its full report that *“The State Counsellor, Daw Aung San Suu Kyi, has not used her de facto position as Head of Government, nor her moral authority, to stem or prevent the unfolding events, or seek alternative avenues to meet the Government’s responsibility to protect the civilian population or even to reveal and*

---

*condemn what was happening. On the contrary, the civilian authorities have spread false and hateful narratives; denied the Tatmadaw's wrongdoing; blocked independent investigations, including of the Fact-Finding Mission; and overseen the bulldozing of burned Rohingya villages and the destruction of crime sites and evidence. Ignorance on the part of the Myanmar civilian authorities was effectively impossible. The allegations of widespread human rights violations were widely covered in the media during the 'clearance operations' in Rakhine State, and the military and civilian authorities were themselves providing live updates on developments, including on Facebook"* (paragraph 1548).-----

And in the following paragraph it concludes as follows (paragraph 1549): *"As such, through their acts and omissions, the civilian authorities have tacitly accepted and approved the Tatmadaw's brutal, criminal and grossly disproportionate actions. Moreover, in the period under review, the civilian authorities supported and publicly defended the severe, systemic and institutionalized oppression of the Rohingya; they have condoned, mirrored and promoted the false, hateful and divisive narratives espoused by ultranationalist Buddhist groups; through silencing activists and critical voices, they have fostered a climate in which hate speech thrives and incitement to discrimination and violence is facilitated; through their obstinate denials of credible allegations of human rights violations and abuses, they emboldened perpetrators. Such conduct is not only in violation of Myanmar's obligations under international human rights law; it has also been profoundly damaging to the country and its democratic transition. Silence in the face of unfolding atrocity crimes amounts to a severe dereliction of duty."*-----

Nevertheless, following this, in one sole paragraph, the International Mission analyses the possibility of individual criminal liability by the civilian authorities, and points out that according to its information it is not possible to reasonably affirm a contribution to the perpetration of the crimes, nor, if such were the case, that such contributions would have been made in the knowledge that they would support the actual perpetrator. -----

In our opinion, the problem with this brief analysis of the individual criminal liability of the civilian authorities is that the International Mission delves into a field of law which – as regards the determination of who the perpetrator of a crime *per se* is – does not fall within its jurisdiction, i.e., it does not act as a

jurisdictional body with the attributions of an impartial and independent Court. This is a limitative aspect of its mandate that the Mission itself recognizes. And it is for this reason that the analysis tends to be shallow and above all indicative. And in a way it is also contradictory, since in previous paragraphs it points out that the civilian authorities *“supported and publicly defended the severe, systemic and institutionalized oppression of the ROHINGYA”* and describes a series of contributions that clearly emerge as necessary for the consummation of the crimes, later to state that the information at its disposal does not make it possible to arrive at that conclusion. -----

In any event, the institution of perpetration and/or participation recognizes, both within the scope of the Rome Statute and in that of our Criminal Code, different levels as regards cooperation and contributions, be they substantial, necessary or of another nature with lesser incidence. The contributions of the civilian authorities to the GENOCIDE of the ROHINGYA are reasonably framed within at least one of those categories, and the course of the investigation will gradually clear the outlook on this point or on the concealment. In fact, the International Mission itself recognizes in paragraph 1550 that *“...in other contexts, liability for aiding and abetting has arisen when civilian authorities assisted in the commission of crimes through, inter alia, demanding disarmament of adversaries, through providing encouragement and moral support to the perpetrators (which need not be explicit), and through failing to meet a legal duty to ensure the tranquillity, public order, and security of people, amid violent attacks on refugees. On the basis of these past findings by international criminal tribunals, the Mission considers that further investigation is warranted.”* -----

Here it is of interest to recall that State Counsellor Aung San Suu Kyi has, through her Information Committee, repeatedly rejected the reports on serious violations of human rights, describing them as “fake news.” The State Counsellor herself referred to an *“iceberg of misinformation”* about the situation in the Rakhine State. And it has been demonstrated, in addition, that some of the photographs shared by her Information Committee to further the narrative that the ROHINGYA were burning their own villages were actually staged (see paragraph 1340 of the International Mission full report). According to the International Mission, the same Committee’s Facebook page, with almost 400,000 followers, included statements and communications that

reflected and supported the narrative of groups such as *MaBaTha* that promoted hate and violence against the ROHINGYA (paragraph 1329).-----

With regard to the need for such contributions to have been made with knowledge of the genocidal criminal actions, the Mission states that the information obtained does not allow it to reach such conclusion in relation to civilian authorities, but in another part of its full report, when analysing genocidal intentionality, it makes use of what it calls the *“doctrine of overall policy,”* i.e., the existence of a State policy of oppression and persecution against the ROHINGYA in all aspects of the life of that community, which, added to a rhetoric of hate allowed and exercised by the authorities, may constitute a set of reasonable indicators of genocidal intent.-----

Moreover, analysing other aspects that indicate a genocidal intent, the International Mission mentions the statements of a civil authority, the then President of Myanmar in 2012, Mr. Thein Sein, who publicly held in April of that year: *“the last resort to this issue is to hand in the Rohingya who sneaked in to UNHCR to stay in the refugee camps”* (paragraph 1424, full report). -----

In other words, knowledge evidently existed on the part of civilian authorities regarding the genocidal criminal actions. But not only that; actually the genocidal intent was the matrix of the plan drafted and executed both by Myanmar’s security forces, and by the entire apparatus of the State, including the spheres dominated by civilian authority. This is because the heinous crimes committed by the security forces, in addition to being known, and contributed to, by the civilian authorities, in the ultimate instance complemented and assisted the public policies applied by diverse civilian authorities tending towards the annihilation of the ROHINGYA, such as the barriers impeding hundreds of thousands from gaining access to minimum conditions as regards health, education and adequate housing, such as the locking up of the community in what virtually were ghettos without being able to obtain their sustenance through fishing, agriculture or trade, such as the complete destruction of their towns and villages, on which territory the civilian authorities later erected buildings and dwellings to house other ethnic communities, such as the destruction of all mosques in the Rakhine State, with the acquiescence of the Ministry of Religious Affairs<sup>8</sup> [*Footstep* <sup>8</sup> The motto of the Ministry of Labour, Immigration and Population is revealing: “The earth will not swallow a race to extinction but another race will” (paragraph 1338, International Mission report), such as the restrictions of

---

births and marriages against the community's family rights, such as the elimination of the ROHINGYA identity from public registers and from the census, such as the refusal to guarantee the ROHINGYA the nationality by amending the law, as the constant blocking and limitation to the humanitarian aid indispensable for the survival of the community, such as the lack of control, and in certain cases the public spreading by the authorities of hate speech and violence against the ROHINGYA, such as the null implementation of the recommendations of the United Nations and of the Advisory Commission presided by Kofi Annan to avoid ethnic cleansing<sup>9</sup>, such as the absolute absence of the rule of law and such as the climate of fear and terror in which the ROHINGYA have lived for decades in the Rakhine State. -----

[Footstep 9:] -----

The Commission issued its final report in August 2017, including 88 recommendations with a wide spectrum. -----

**In sum, both the substantial, necessary or other contributions by civilian authorities, be it through commission or omission, to the perpetration of the reported crimes, and knowledge of the criminal actions and of the genocidal intent, existed and are proven by the enormous accumulation of information and of evidence collected not solely by the United Nations but also by the different organizations of civil society that for years have been denouncing the situation of the ROHINGYA.**-----

The civilian authorities to be investigated for GENOCIDE and crimes against humanity include the President of Myanmar for the period 2011-2016, Thein Sein, the President of Myanmar for the period 2016-2018, Htin Kyaw, State Counsellor Aung San Suu Kyi, and any other civilian authority that may have participated.

### **C. OTHER POSSIBLE CRIMINALLY LIABLE PERSONS**-----

The authorities, both military and civilian, of the State of Myanmar weren't the only parties criminally liable for the GENOCIDE of the ROGHINYA. In our opinion, the responsibility of other individuals should also be investigated, particularly in relation to the incitement to violence and to propagation of hate speech against that community. -----

#### **Political leadership** -----

This is the case of the President of the Party of Peace and Diversity of Myanmar, NAY MYO WAI, who developed a public campaign of hate and violence against the ROHINGYA in the framework of the genocidal plan. A clear

---

example is quoted by the International Mission in its full report where it indicates that, facing a crowd at a public meeting, NAY MYO WAI declared: *“I won’t say much, I will make it short and direct. Number one, shoot and kill them! Number two, kill and shoot them! Number three, shoot and bury them! Number four, bury and shoot them! If we do not kill, shoot, and bury them, they will keep sneaking into our country!”* He is referring to the ROHINGYA (paragraph 1423 of the full report of the International Mission). -----

### **Religious leadership**-----

A person who has also developed a systematic campaign of hate and incitement to violence against the ROHINGYA has been the Buddhist monk ASHIN WIRATHU. The International Mission analysed WIRATHU’s actions, along with the movements named *969* and *MaBaTha*, of an anti-Muslim religious nationalist character, with massive public support and with the monk being one of the leaders, and identified numerous occasions on which his interventions and appearances in the Rakhine State inciting hate and violence had a direct link to violent acts against the ROHINGYA. -----

The monk ASHIN WIRATHU was the person who at a public gathering termed Special Rapporteur Yanghee Lee a *“bitch”* and *“whore”* and even threatened her with violence after she submitted her report to the United Nations Human Rights Council. -----

It is to be noted that the United States magazine TIME, in an issue in the year 2013, published a photo of ASHIN WIRATHU on the cover with the headline, *“The Face of Buddhist Terror,”* and developed an article in which it exposed the monk’s role in violence against Muslims in general and the ROHINGYA in particular. -----

The International Mission indicated that it received credible information that suggested a connection between the leaders of the 969 and MaBaTha movements and the Tatmadaw or certain members of the Government of Myanmar linked to the Tatmadaw, and recommended that this link be the subject of a more thorough investigation. -----

In any event, the criminal liability of both NAY MYO WAI and the monk ASHIN WIRATHU, on grounds of their significant contributions to the genocidal plan, are clearly evident on the basis of the information collected by diverse bodies, and the unfolding of the investigation will reveal what degree of participation they may have had. It is significant at this point to note that, owing to the use

of social networks to spread hate and violence against the ROHINGYA, in the year 2018 Facebook decided to designate the MaBaTha group and the monks WIRATHU, THUSEITTA and PARMAKHA as figures promoting hate and cancelled their presence on that social network. -----

### **Company management** -----

After its full report on the massive and systematic violations of human rights, the United Nations International Mission drew up a report on the economic links of the Myanmar military, and analysed in which cases certain corporations in the hands of the military had an influence or incidence on the crimes committed. -----

The responsibility of economic groups over their participation in crimes against humanity isn't an aspect foreign to what occurred in Argentina during the State Terrorism. Indeed, in late 2018 two Managers of the Ford Argentina car factory were sentenced to 12 and 10 years of imprisonment over the illegal deprivation of liberty and torture of 24 workers and union delegates of the company. -----

In Myanmar, the International Mission was able to establish this type of links. For example, in paragraph 6. c) of its report regarding this matter, it points out: -----

*“At least 45 companies and organizations provided the Tatmadaw with USD 6.15 million in financial donations that were solicited in September 2017 by senior Tatmadaw leadership in support of the “clearance operations” that began in August 2017 against the Rohingya in northern Rakhine. The Mission also found that private companies with enduring links to the Tatmadaw are financing development projects in northern Rakhine in furtherance of the Tatmadaw’s objective of re-engineering the region in a way that erases evidence of Rohingya belonging in Myanmar, and preventing their return to access their homeland and communities. These projects, carried out under the Union Enterprise for Humanitarian Assistance, Resettlement and Development in Rakhine (UEHRD) consolidate the consequences of war crimes, crimes against humanity and acts of genocide. On the basis of these findings, the Mission has identified private companies with officials who may have made a substantial and direct contribution to the commission of crimes under international law, including the crime against humanity of “other inhumane acts” and persecution, warranting their criminal investigation.” -----*

Further down, in paragraph 129, the International Mission indicates:-----

*“In its 2018 report, the Mission concluded on reasonable grounds that crimes under international law were committed in Rakhine State, principally by the Tatmadaw. The crimes included the crimes against humanity of deportation and persecution. For reasons set out below, the Mission now has reasonable grounds to also conclude that officials from KBZ Group and Max Myanmar should be criminally investigated and, if appropriate, prosecuted for making a substantial and direct contribution to the commission of the crime against humanity of “other inhumane acts” and persecution as outlined above in the applicable legal framework on business officials and criminal liability. The Mission came to this conclusion based on its finding that these company officials donated funds to the construction of a barrier fence along the Myanmar-Bangladesh border and were aware of the substantial likelihood that the fence would contribute to the prevention of the displaced Rohingya population from returning to their homeland and community, thereby causing great suffering and anguish. Moreover, the Rohingya population was explicitly targeted and discriminated against based on their ethnicity, constituting the crime against humanity of persecution” -----*

In its report, the International Mission notes other cases of possible complicity by economic agents in the crimes committed against the ROHIGNYA. And it is for this reason that in concluding the report (paragraph 186.h), it recommends:-----

*“Exercise jurisdiction to extradite or investigate and, if there is sufficient evidence, prosecute officials of corporations where there are reasonable grounds to believe they participated in the commission of crimes under international law committed in relation to Myanmar’s human rights crisis”*

It is for this reason that this complaint also aims at those who, through their economic contributions became part in the crimes against the ROHINGYA, and thus we request that when filed, the investigation takes them into consideration. -----

## **XII. RELIEF OF DAMAGES-----**

Pursuant to sections 29 of the National Criminal Code and sections 40 and 98 of the Federal Code of Criminal Procedure, we reserve the right to become an Actor Civil [N.del T.: Plaintiff claiming damages in a criminal case] for the relief of damages caused by the crimes perpetrated.

### **XIII. ELEMENTS OF PROOF -----**

As has been repeatedly explained, the evidentiary basis for this complaint originates in the evidence collected by various United Nations bodies, but especially by the Independent International Fact-Finding Mission on Myanmar which, as it points out in its report, interviewed hundreds of witnesses and gathered plenty of information. -----

All of this bundle of proofs has recently been submitted to the Independent Investigation Mechanism, which has the responsibility of performing critical analyses of the proof, establishing patterns of human rights violations, and identifying responsible parties. But it also has the role of making these materials known to judicial spheres that pursue the process of complaints regarding the ROHINGYA, and that ensure independence, impartiality and due process in the investigation. -----

It is for this reason that what we expressly request, with regard to the evidence, that Your Honour establish contact with that institution and coordinate the necessary steps to gain access to the information in question.

Without limiting the foregoing, we request, as additional evidence: -----

### **TESTIMONIAL EVIDENCE -----**

1. It is hereby requested that the complainant TUN KHIN, who can detail the information in his possession regarding the abuses suffered by the ROHINGYA community be taken testimony. -----
2. It is hereby requested that the philosopher Daniel Feierstein, who has investigated the abuses against the ROHINGYA, and has produced documents and reports on the matter, be taken testimony. -----

### **REPORTS-----**

1. That an official letter be issued to the FACEBOOK company in relation to its communication in 2018 that it had designated MaBaTha and the monks Wirathu, Thuseitta and Parmakkha as hate figures and organizations, in order to report the reasons that supported that decision. And to likewise report regarding the communication, the removal of a total of 18 Facebook accounts, one Instagram account and 52 Facebook pages, followed by almost 12 million people, as well as the banning of 20 individuals and organizations from Facebook in Myanmar, including Senior-General Min Aung Hlaing. According to that announcement, it had removed *“46 pages and 12 accounts for*

*engaging in coordinated inauthentic behaviour on Facebook,” after discovering that “they used seemingly independent news and opinion Pages to covertly push the messages of the Myanmar military.” On all this, Facebook must report on the data and the contents of all these accounts and pages removed (see paragraph 1353 of the International Mission’s full report). -----*

**XIV. PRAYER FOR RELIEF -----**

Wherefore:-----

1. That this complaint over GENOCIDE and CRIMES AGAINST HUMANITY against the ROHINGYA be regarded as submitted, and the necessary decisions be adopted for processing it; -----
2. That we be considered as complainants in these proceedings, with the powers conferred by the Federal Criminal Procedural Code; -----
3. That the requested proofs be produced and that those produced by the United Nations Independent International Mission be gathered and incorporated;-----
4. That the perpetrators, co-perpetrators, participators and accessories be identified, and the necessary measures be adopted for them to give a *declaración indagatoria* [Translator’s Note: A suspect’s statement given upon interrogation by the judge during the investigation of the case] in the case, including their arrest and/or extradition if it were necessary. -----

May Your Honour grant what is herein requested for in doing so, -----

JUSTICE WILL BE DONE-----

[Firma ilegible y aclaración:] Tomás Ojea Quintana. Abogado -----

[Firma ilegible y aclaración:] Maung Tun Khin-----

*I certify the foregoing to be a true and complete translation into English of the relevant parts of the attached document, written in the Spanish Language, which I had before me in the city of Buenos Aires, on November 11, 2019. -----*

*[The following paragraph is included for authentication purposes only:] -----*

*Es traducción fiel al idioma inglés de las partes pertinentes del documento adjunto redactado en idioma español que he tenido a la vista y al cual me remito en la ciudad de Buenos Aires, el 11 de noviembre de 2019. La presente traducción consta de cuarenta y seis (46) carillas. -----*