

INTERNATIONAL COURT OF JUSTICE

THE GAMBIA'S OBSERVATIONS ON
MYANMAR'S REPORT OF 23 NOVEMBER 2022

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

7 December 2022

1. In accordance with the Court’s letter of 23 November 2022 (ref: 157602), the Republic of The Gambia (“The Gambia”) submits these Observations on the Sixth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020 (the “Sixth Report”).¹

2. These Observations, like those The Gambia submitted in response to the previous reports of the Republic of the Union of Myanmar (“Myanmar”),² are intended to highlight the principal shortcomings in the Sixth Report and the obvious ways in which Myanmar is failing to fulfill its obligations under the Court’s Order of 23 January 2020 (“Provisional Measures Order” or “Order”). The Gambia has not attempted to document all of the inaccuracies and inadequacies of Myanmar’s Sixth Report.

3. Myanmar’s genocidal state policies against the Rohingya remain entrenched. The Sixth Report, like those before it, contains much information that is irrelevant to the Provisional Measures Order and many assertions that are unsupported, misleading, not credible and impossible to verify because Myanmar continues to prohibit UN investigators, UN experts, journalists, and international non-governmental organizations from accessing much of the country, in particular northern Rakhine State. Other information provided in the Sixth Report confirms that Myanmar has failed to meaningfully implement the Court’s Order.

4. The UN Human Rights Council shares this assessment. In its 7 July 2022 resolution adopted at the conclusion of its 50th session, the Council expressed “deep concern that, despite the provisional measures ordered by the International Court of Justice on 23 January 2020, Rohingya Muslims in Myanmar, including women and children, continue to suffer from

¹ *Sixth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 November 2022) [hereinafter the “Sixth Report”].

² *Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (22 May 2020) [hereinafter the “First Report”]; *Second Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 November 2020) [hereinafter the “Second Report”]; *Third Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (20 May 2021) [hereinafter the “Third Report”]; *Fourth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 November 2021) [hereinafter the “Fourth Report”]; and *Fifth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 May 2022) [hereinafter the “Fifth Report”].

targeted killings, indiscriminate violence and serious injuries, including by indiscriminate fire, shelling, landmines or unexploded ordnance”.³

5. As noted in The Gambia’s Observations on Myanmar’s Third, Fourth and Fifth Reports, conditions for the Rohingya have deteriorated following the Tatmadaw’s coup of 1 February 2021,⁴ leaving the Rohingya even more vulnerable to further acts of genocide.⁵ In his oral update to the UN Human Rights Council on 21 September 2022, the UN Special Rapporteur on the Situation of Human Rights in Myanmar (“UN Special Rapporteur”) highlighted the Rohingya’s ongoing vulnerability:

“Five years after a genocidal campaign was launched against them, the Rohingya continue to face discrimination, repression, and human rights abuses each and every day.”⁶

6. On 26 September 2022, the Acting UN High Commissioner for Human Rights (“UN High Commissioner”) emphasized, in her oral update to the UN Human Rights Council, the lack of progress in protecting the Rohingya population from further violations:

“The relative stability experienced in Rakhine State since the start of the coup has proved very short lived. My office has received reports of killings, injuries, arbitrary detention and mass displacement of civilians resulting from clashes between the Myanmar military and the Arakan Army in several townships of

³ UN Human Rights Council Resolution 50/3, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/HRC/RES/50/3 (7 July 2022).

⁴ See UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc. A/HRC/46/56 (4 March 2021), available at https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf, paras. 4-15.

⁵ UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN Doc. A/76/314 (2 September 2021), Annex 1 – Additional Human Rights Concerns Observed by the Special Rapporteur, paras. 16, 20, available at <https://www.ohchr.org/Documents/Countries/MM/GA76report-annex-SR-Myanmar.pdf>.

⁶ Thomas H. Andrews, UN Special Rapporteur on the situation of human rights in Myanmar, *Oral Update*, UN Human Rights Council, 51st Session (21 September 2022), available at <https://www.ohchr.org/sites/default/files/documents/countries/mm/2022-09-21/hrc-oral-update-21-september-2022-sr-myanmar.docx>.

Rakhine and Chin State and along the border, with reported cases of shelling into Bangladesh.

Minority communities especially Rohingya and Kaman Muslims are particularly vulnerable, with the military imposing new restrictions on delivery of humanitarian aid and essential goods in large areas of Rakhine.

Last month marked the fifth anniversary of the military's 2017 campaign of violence against the Rohingya, involving the killing of thousands and pushing over 740,000 Rohingya to Bangladesh.

... Despite widespread international condemnation, Myanmar is yet to address the root causes of Rohingya persecution. Rohingya are deprived of citizenship rights and civil documentation, limiting their freedom of movement, and access to health and education services. They face daily extortion by camp authorities, village administrators, police, and military.⁷

7. The ongoing persecution and pervasive discrimination against the Rohingya, Myanmar's ongoing denial of their very identity, and the impunity accorded to those who committed genocide during the "clearance operations" of 2016 to 2018, including especially the members and leaders of the Tatmadaw who now wield all levers of state authority, further reinforce the conclusion that those acts were carried out with the intent to destroy the Rohingya as a group.

I. Ongoing Discrimination against the Rohingya as a Group

8. Myanmar has done nothing to dismantle the oppressive and discriminatory system of restrictions targeting the Rohingya that inflicts conditions of life calculated to bring about their destruction, which the UN Fact-Finding Mission identified as one of seven indicators of Myanmar's genocidal intent.⁸

⁷ Nada Al-Nashif, UN Acting High Commissioner for Human Rights, *Oral update on the human rights situation in Myanmar*, UN Human Rights Council, 51st Session (26 September 2022), available at <https://www.ohchr.org/en/statements-and-speeches/2022/09/oral-update-human-rights-situation-myanmar-human-rights-council>. See also Reuters, "Rohingya teenager killed in Bangladesh by mortar fired from Myanmar" (16 September 2022), available at <https://www.reuters.com/world/asia-pacific/rohingya-teenager-killed-bangladesh-by-mortar-fired-myanmar-2022-09-17/>.

⁸ UN Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/42/CRP.5 (16 September 2019), para. 224. MG, Vol. III, Annex 49. See *Application of the*

9. The UN High Commissioner, in her oral update to the UN Human Rights Council in June 2022, confirmed that:

“There have been no concrete and systematic efforts to work with the Rohingya to solve the longstanding human rights abuses, discrimination and exclusionary practices that have plagued their communities for decades. . . . Instead, the military has continued to use hostile and derogatory language to threaten and marginalize the Rohingya and to implement strict discriminatory limitations on their movement. In the past weeks, over 300 Rohingya have been arrested for traveling, what they call, ‘illegally’ outside their communities. Hundreds have been prosecuted and sentenced to prison terms up to two years for exercising their basic right to freedom of movement.”⁹

10. The UN Office for the Coordination of Humanitarian Affairs (“UN OCHA”) summarized the suffocating discriminatory policies that Myanmar imposes on the Rohingya in a 28 June 2022 update on their conditions:

“Rohingya people remain disproportionately affected by discriminatory policies and practices around civil documentation and citizenship, as well as freedom of movement – both of which restrict access to livelihoods and basic services, including health and education. Their unresolved legal status, related discriminatory policies and prejudiced or negative perceptions further place them at heightened risk of intimidation, harassment, forced labour, abuse, and negative coping mechanisms. Rohingya non-displaced stateless populations have faced the same challenges as Rohingya IDPs, although they have more livelihoods opportunities than the IDPs.”¹⁰

Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Memorial of The Gambia (23 October 2020), paras. 6.1-6.89 [hereinafter “Memorial”].

⁹ Michelle Bachelet, UN High Commissioner for Human Rights, *Oral update on Myanmar*, UN Human Rights Council, 50th Session (14 June 2022), available at <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar>.

¹⁰ UN Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Update No. 19* (28 June 2022), p. 3, available at <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-19-28-june-2022>.

11. Myanmar continues to target Rohingya children. The UN Special Rapporteur reported in a conference paper dated 14 June 2022:

“The junta has also arrested and detained hundreds of Rohingya children for violating discriminatory restrictions on their freedom of movement that violate international human rights law. ... Between February 2021 and March 2022, UNICEF’s implementing partners provided legal services to 545 Rohingya children facing migration-related charges. Most of these children were arrested while attempting to flee Myanmar. In November 2021, 234 Rohingya, including 90 children, were reportedly arrested by the Myanmar navy while apparently trying to leave Myanmar by boat.”

The Special Rapporteur further reported:

For decades, Rohingya children in Rakhine State have been systematically denied access to education opportunities. The tightening of travel restrictions on the Rohingya under the junta have made a bad situation worse, with children unable to move between locations to attend lessons. Government teachers are also reluctant to teach in Rohingya areas, often citing fears for their safety. ... The extreme persecution and discrimination faced by Rohingya people makes Rohingya children particularly vulnerable to trafficking and exploitation. Restrictions on movement drive Rohingya to use unsafe and irregular migration channels.”¹¹

12. UN OCHA, in a report dated 31 July 2022, confirmed Myanmar’s continuing imposition of these discriminatory policies:

“Many barriers remain in place for Rohingya children to access education at different levels (middle, secondary and higher) due to underlying issues including freedom of movement, access to livelihoods for families, and language skills.”¹²

¹¹ UN Human Rights Council, *Conference room paper of the Special Rapporteur on the situation of human rights in Myanmar; Losing a generation: how the military junta is devastating Myanmar’s children and undermining Myanmar’s future*, UN Doc. A/HRC/50/CRP.1 (14 June 2022), paras. 77-78, 107, 161.

¹² UN Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Update No. 20* (31 July 2022), p. 9, available at <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-20-31-july-2022>.

13. Rohingya continue to endure arrest, prosecution, and violence and death at the hands of Myanmar officials when they try to travel to other parts of Myanmar. Thirteen corpses believed to be Rohingya were found in December 2022 in Hlegu township, Yangon region, displaying signs of abuse.¹³ Twenty Rohingya reportedly died in November when their boat, carrying 80 Rohingya in total, sank in the Ayeyarwady region.¹⁴ A group of 56 Rohingya was sentenced to prison for travel in the Ayeyarwady region in September 2022.¹⁵ According to data compiled by *Radio Free Asia*, from December 2021 to September 2022, over 800 Rohingya were arrested for violating movement and travel restrictions.¹⁶ This appears to be an undercounting. Myanmar itself reports that, from 15 April to 15 October 2022, no fewer than 1,628 Rohingya were detained for violations of Myanmar’s discriminatory movement restrictions, with 622 of them being imprisoned for such travel and 572 still pending prosecution.¹⁷

14. Many Rohingya are compelled to try to flee Myanmar, risking dangerous journeys that often lead to deaths. The UN High Commissioner reported:

“On 21 May [2022], another boat capsized near the coast of Patheingyi township, just south of Rakhine State, resulting in at least 17 deaths, many of whom were children. UNHCR has reported that since the beginning of the year, at least 630 Rohingya have

¹³ RFA Burmese, “More than a dozen Rohingya found dead in Myanmar’s Yangon region”, *Radio Free Asia* (5 December 2022), available at <https://www.rfa.org/english/news/myanmar/rohingya-12052022174158.html>.

¹⁴ RFA Burmese, “Around 20 Rohingya missing after their boat sank in Myanmar’s Ayeyarwady region”, *Radio Free Asia* (1 November 2022), available at <https://www.rfa.org/english/news/myanmar/rohingya-missing-ayeyarwady-11012022060914.html>.

¹⁵ RFA Burmese, “Court in Ayeyarwady region sentences 56 Rohingya to 2 years in prison”, *Radio Free Asia* (8 September 2022), available at <https://www.rfa.org/english/news/myanmar/56-rohingya-sentenced-to-2-years-09082022064002.html>.

¹⁶ RFA Burmese, “Junta forces arrest 31 Rohingya in Myanmar’s Ayeyarwady region”, *Radio Free Asia* (19 September 2022), available at <https://www.rfa.org/english/news/myanmar/junta-forces-arrest-31-rohingya-09192022044636.html>.

¹⁷ Sixth Report, para. 112.

attempted desperate sea journeys to escape violence, the vast majority women and children.”¹⁸

15. In its Sixth Report, Myanmar tries to defend its NVC card process by falsely claiming that applicants “do not need to state any ethnicity or religion in their application form”.¹⁹ That assertion is contradicted by the application form itself, which requires applicants to disclose this information.²⁰ The contention is also refuted by Myanmar’s documented practice of prohibiting applicants from listing “Rohingya” as their ethnicity and instead forcing them to write “Bengali”.²¹

16. As in the Fourth and Fifth Reports,²² the Sixth Report refers to reports submitted by Union Ministries and State and Regional Governments in response to Directives issued in April 2020 by the Office of the President on compliance with the Convention on the Prevention and Punishment of the Crime of Genocide.²³ But, as before, the Report does not make those alleged reports available to the Court for examination. There is no indication that any of the discriminatory policies targeting the Rohingya have been repealed as part of this process. To the contrary, as the reports of multiple UN officials and agencies have confirmed, enforcement of discriminatory policies continues unabated.

II. Continuing Impunity for Acts of Genocide and Pervasive Sexual Violence against the Rohingya

17. The Sixth Report confirms that Myanmar has taken no meaningful actions regarding accountability for the acts of genocide committed during the “clearance operations” of

¹⁸ Michelle Bachelet, UN High Commissioner for Human Rights, *Oral update on Myanmar*, UN Human Rights Council, 50th Session (14 June 2022), *available at* <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar>.

¹⁹ Sixth Report, para. 72.

²⁰ Fortify Rights, *Tools of Genocide* (2019), Annex II. MG, Vol. V, Annex 126.

²¹ See Memorial paras. 6.26-6.35. See also Fortify Rights, “Myanmar: New Evidence of Denial of Rohingya Citizenship” (16 January 2020) (documenting tactics by Myanmar officials to force Rohingya to accept NVC cards identifying them as “Bengalis”), *available at* <https://www.fortifyrights.org/mya-inv-2020-01-16/>.

²² Fourth Report, paras. 30-32; Fifth Report, para. 36.

²³ Sixth Report, para. 17.

2016-2018. Like the Fifth Report, the section on “Proceedings within the military justice system” consists of two short paragraphs.²⁴ And, again, like the Fifth Report, there is no update regarding the alleged investigation into the “events at Chut Pyin Village”, nor any information reported on any other proceedings or investigations.

18. As discussed in The Gambia’s Memorial and recalled in its Observations on the Fifth Report, the 2017 clearance operation in Chut Pyin was particularly brutal, involving the systematic murder of men and boys, the murder and burning alive of children, and the mass rape of women, among other atrocities.²⁵ The UN Fact-Finding Mission estimated that 127 children aged five or under were murdered among the more than 358 Rohingya killed during that operation.²⁶ This clearance operation also involved the separation of men and boys from women, with the men and boys executed with their hands tied behind their backs, and the women raped and then shot and killed.²⁷

19. In its Second Report, Myanmar asserted that “[o]n 15 September 2020, the Myanmar Defence Services announced that a court-martial on Chut Pyin and Maung Nu would commence before the end of 2020.”²⁸ More than two years later, however, there is still no action, just as there was no meaningful action resulting from alleged military investigations into the atrocities perpetrated at Inn Dinn, Gu Dar Pyin, Maung Nu, and Taung Bazar, among the many Rohingya villages targeted during the clearing operations.²⁹

20. Myanmar’s claims regarding “Civilian accountability” are equally baseless. The Sixth Report conspicuously fails to provide any updates regarding the work of its Criminal

²⁴ Sixth Report, paras. 27-28.

²⁵ Memorial, paras. 8.108-8.120.

²⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN Doc. A/HRC/39/CRP.2 (17 September 2018), para. 796. MG, Vol. II, Annex 40.

²⁷ Memorial, para. 8.114.

²⁸ Second Report, para. 55.

²⁹ See *The Gambia’s Observations on Myanmar’s Report of 23 November 2021* (7 December 2021), paras. 17-21.

Investigation and Prosecution Body (“CIPB”). As before, the CIPB has not advanced beyond the 139 cases previously announced in the First Report over two years ago, and there has been no progress made in those cases. Of those 139 cases, only 23 are against members of the Myanmar Border Guard police. None are against members of the Tatmadaw. And, as before, only two of the 23 cases against the Border Guard Police have led to penalties, which included nothing more serious than forfeiture of one or two years of service for pension purposes.³⁰ The crimes alleged to have been committed have not been disclosed. Fifteen of the 23 cases against the Border Guard Police have been declared closed. Of the 29 cases against “local people”, only three have led to sentences.³¹

21. Myanmar continues to fail to provide accountability for the massive, systematic and extremely brutal rape, gang rape, sexual assault, and genital mutilation of Rohingya women and girls across northern Rakhine State.³² The Sixth Report confirms that no action has been taken, and no plans have been made, to address the crimes of sexual violence. Indeed, the Sixth Report brazenly admits that “not a single case has been brought up to now in relation to alleged violence committed during the clearance operations of 2016-2017”.³³

III. Denial of Humanitarian Assistance and Adequate Healthcare

22. As discussed above in Section I, discriminatory policies targeting the Rohingya, including restrictions on movement, continue to deny the Rohingya adequate healthcare, humanitarian assistance, and access to livelihoods.

23. The UN Special Rapporteur reported:

“Severe restrictions on freedom of movement impede access to medical care for Rohingya children in Rakhine State, where few Rohingya villages have primary health care providers, and Rohingya are usually unable to access mainstream medical

³⁰ Fourth Report, para. 40.

³¹ Sixth Report, para. 26; Fifth Report, para. 45.

³² See Memorial, Chapter 9.

³³ Sixth Report, para. 64.

systems. Nighttime curfews in place in Rakhine State prevent Rohingya families from seeking emergency care for children who are injured or fall ill at night, or mothers who go into labor. Rohingya families have been forced to pay bribes to visit clinics or hospitals.”³⁴

24. Other restrictions imposed by Myanmar, such as cumbersome administrative processes and security checkpoints where extortion is rampant, also serve to obstruct access to healthcare for the Rohingya population. On 9 September 2022, UNHCR reported:

“Access to healthcare is an additional challenge. Now enduring a difficult pregnancy with her third child, Zaw Bedah is unwilling to seek medical care due to a cumbersome and costly administrative process involving the need for approval from local administrators, male escorts, and navigating security checkpoints where extortion is common.”³⁵

25. UN OCHA notes that the ongoing reliance of the Rohingya IDP population on humanitarian assistance is due to Myanmar’s pervasive restrictions on their access to livelihoods, freedom of movement, and access to basic services. Those restrictions on the Rohingya, along with funding limitations and operational restrictions on humanitarian actors imposed by Myanmar, prevent the humanitarian needs of the Rohingya population in Myanmar from being met:

“These IDPs in Rakhine State continue to heavily rely on humanitarian assistance and their needs remain high, as the root cause of their displacement remains unaddressed, including their freedom of movement and access to basic services. For the past 10 years, humanitarian partners have been providing food, health, nutrition, shelter and NFIs, water and sanitation, education, and protection services, including GBV and child protection. Camp coordination and management services for Rohingya IDPs are also part of humanitarian interventions. In addition to the restrictions imposed on the humanitarian actors and the challenging

³⁴ UN Human Rights Council, *Conference room paper of the Special Rapporteur on the situation of human rights in Myanmar; Losing a generation: how the military junta is devastating Myanmar’s children and undermining Myanmar’s future*, UN Doc. A/HRC/50/CRP.1 (14 June 2022), para 132.

³⁵ UN High Commissioner for Refugees, UN Myanmar, “Stateless Rohingya continue to struggle for survival in Myanmar” (9 September 2022), available at <https://myanmar.un.org/en/198548-stateless-rohingya-continue-struggle-survival-myanmar>.

operational context, funding limitations have impacted the ability of partners to deliver effective assistance, in particular, for shelter partners.”³⁶

IV. Inadequate Efforts to Curtail Hate Speech against the Rohingya

26. Despite the Sixth Report’s claims to the contrary, Myanmar continues to disseminate hate speech that targets the Rohingya.³⁷ The UN High Commissioner, in her June 2022 oral update to the UN Human Rights Council, confirmed that “the military has continued to use hostile and derogatory language to threaten and marginalize the Rohingya”.³⁸

27. The Gambia’s Observations on the Fifth Report highlighted a December 2021 report by the U.S. Institute of Peace that describes the dissemination of anti-Rohingya propaganda, including through inflammatory statements made by the junta’s spokesperson.³⁹ The Sixth Report makes no effort to deny this. Instead, in response to separate allegations that the Tatmadaw propagated such hate speech through the distribution of pamphlets,⁴⁰ Myanmar states:

“Regarding the allegations in The Gambia’s observations on Myanmar’s Fifth Report that anti-Muslim leaflets were dropped from helicopters *in Rakhine State*, these allegations are groundless and there have been no such incidents.”⁴¹

28. However, the sources referred to in The Gambia’s Observations did not report that the materials were “dropped from helicopters in *Rakhine State*”, but rather in the *Sagaing*

³⁶ UN Office for the Coordination of Humanitarian Affairs, *Myanmar Humanitarian Update No. 19* (28 June 2022), p. 3, available at <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-19-28-june-2022>.

³⁷ See Memorial, Chapter 7.

³⁸ Michelle Bachelet, UN High Commissioner for Human Rights, *Oral update on Myanmar*, UN Human Rights Council, 50th Session (14 June 2022), available at <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar>.

³⁹ *The Gambia’s Observations on Myanmar’s Report of 23 May 2022* (7 June 2022), para. 32 (citing Billy Ford and Zarchi Oo, “Myanmar Coup: Military Regime Seeks to Weaponize Religion”, U.S. Institute of Peace (16 December 2021), available at <https://www.usip.org/publications/2021/12/myanmar-coup-military-regimeseeks-weaponize-religion>).

⁴⁰ *The Gambia’s Observations on Myanmar’s Report of 23 May 2022* (7 June 2022), para. 33.

⁴¹ Sixth Report, para. 33 (emphasis added).

and Magway Regions.⁴² Moreover, those reports are consistent with the findings in the U.S. Institute of Peace report and others. According to an investigative report by *Frontier Myanmar*, “the pamphlets dropped in Sagaing reflect a growing effort by the junta to leverage offline distribution methods to spread hate speech, disinformation and propaganda, much of it aimed at inflaming religious tensions”.⁴³ Another report, by *Myanmar Witness*, concluded:

“This rhetoric encourages discontent with Muslims and anti-military groups, as seen in the 2017 Rakhine clearance operations, which target[ed] the Rohingya, a minority Muslim group. The narratives and patterns of behaviour identified in this investigation and by the UN’s probe, could not only support claims that the military are dropping these pamphlets but also, worryingly, indicate the repeat of behaviours which occurred in the lead up to the clearance operations in the Rakhine State”.⁴⁴

V. Inadequate Efforts for Repatriation and Resettlement

29. Nothing in the Sixth Report indicates that Myanmar is taking the necessary steps to allow for repatriation of Rohingya refugees and for resettlement of internally displaced Rohingya who are confined to internment camps, most since 2012. UN experts agree that conditions are not suitable for the safe, dignified, and voluntary return of the Rohingya refugees.

30. In remarks to the UN General Assembly in June 2022, the Special Envoy of the UN Secretary-General on Myanmar (“UN Special Envoy”) concluded that “conditions in

⁴² Zaw Ye Thwe, “Propaganda flyers become latest weapon in junta’s arsenal”, *Myanmar NOW* (7 January 2022), available at <https://www.myanmar-now.org/en/news/propaganda-flyers-become-latest-weapon-in-juntas-arsenal>; Chris Barrett, “Divide and rule: Myanmar junta ‘weaponising’ racial tensions”, *The Sydney Morning Herald* (4 December 2021), available at https://www.smh.com.au/world/asia/divide-and-rulemyanmar-junta-weaponising-racial-tensions-20211203-p59eid.html?fbclid=IwAR3YhrwX6-QmR0BLNr9T46EVeXKgCuzJhRMf-DbZ_8mO925PKmvoIWLZGuc.

⁴³ Andrew Nachemson, “Military disinformation moves offline amid internet restrictions”, *Frontier Myanmar* (28 January 2022), available at <https://www.frontiermyanmar.net/en/military-disinformation-moves-offline-amid-internet-restrictions/>.

⁴⁴ Myanmar Witness, “Report: Using Pamphlets for Propaganda, Misinformation, Intimidation, and Division” (12 July 2022), p. 27, available at https://www.myanmarwitness.org/_files/ugd/06ca64_373fab80e7ad4560b483bf271a56a5b7.pdf.

Myanmar are currently not conducive to the repatriation of Rohingya refugees”.⁴⁵ The former UN High Commissioner concurred, finding that “conditions in Rakhine State remain far from adequate for Rohingya who fled to Bangladesh, or for those who have been living in internal displacement camps in Myanmar for 10 years now, to return to their homes”.⁴⁶ And, the Acting UN High Commissioner likewise determined that “conditions for safe, dignified and sustainable returns are not yet evident”.⁴⁷

31. The UN Special Envoy noted some of the steps that Myanmar must take to create the conditions suitable for the safe, dignified, and voluntary return of the Rohingya refugees:

“Ultimately, better conditions for the Rohingya in Rakhine State and the sustainable repatriation of refugees from the region will not be possible until the key issues of citizenship, structural discrimination, security, civil registration, land ownership, political participation, freedom of movement, the right to family life and access to basic services are resolved.”⁴⁸

32. Nor does the Sixth Report deny the reports by the UN Special Rapporteur regarding the Tatmadaw’s destruction of Rohingya villages and building in their place new structures for use by the government:

“Many of the properties which belonged to Rohingya in villages from which they were driven by attacks in 2012, 2016 and 2017

⁴⁵ Noeleen Heyzer, Special Envoy of the Secretary-General on Myanmar, *Remarks before the UN General Assembly* (13 June 2022), available at https://dppa.un.org/sites/default/files/sesg_heyzer_13june2022.pdf.

⁴⁶ Michelle Bachelet, UN High Commissioner for Human Rights, *Oral update on Myanmar*, UN Human Rights Council, 50th Session (14 June 2022), available at <https://www.ohchr.org/en/statements/2022/06/50th-session-human-rights-council-oral-update-myanmar>.

⁴⁷ Nada Al-Nashif, UN Acting High Commissioner for Human Rights, *Oral update on the human rights situation in Myanmar*, UN Human Rights Council, 51st Session (26 September 2022), available at <https://www.ohchr.org/en/statements-and-speeches/2022/09/oral-update-human-rights-situation-myanmar-human-rights-council>.

⁴⁸ Noeleen Heyzer, Special Envoy of the Secretary-General on Myanmar, *Remarks before the UN General Assembly* (13 June 2022), available at https://dppa.un.org/sites/default/files/sesg_heyzer_13june2022.pdf.

have been razed and are now the site of new commercial projects, government buildings or military installations.”⁴⁹

33. For example, recent reporting indicates that Myanmar plans to permanently transfer “more than 700 acres in two townships—Maungdaw and Buthidaung ... to the military-controlled No. 1 Border Guard Police Division Office”.⁵⁰

34. Finally, Myanmar claims to have reviewed, as of 15 October 2022, the names of 61,308 refugees in Bangladesh and, of those, verified 35,003 as former residents of Rakhine State.⁵¹ According to the Fifth Report, as of 15 April 2022, Myanmar had reviewed 58,214 people and verified only 32,898 as residents of Rakhine State.⁵² Thus, in six months, Myanmar reviewed only an additional 3,094 names, verifying just an additional 2,105 residents of Rakhine State. In the approximately five years since this process started, Myanmar has only reviewed 7% of the 828,829 names received from Bangladesh.

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35. For these reasons, it is The Gambia’s view that the Sixth Report provides no reason to conclude that Myanmar is discharging its obligations under paragraphs 86(1), 86(2), or 86(3) of the Court’s Order of 23 January 2020, or that it has taken the needed steps to depart from its genocidal state policy.

⁴⁹ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights, *Situation of human rights in Myanmar since 1 February 2021*, UN Doc. A/HRC/49/72 (15 March 2022), para. 87, available at https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_72_AdvanceEditedVersion.docx.

⁵⁰ Sa Tun Aung and Tin Htet Paing, “Myanmar junta strips Rohingya of ownership of land they were forced to flee in 2017”, *Myanmar NOW* (25 October 2022), available at <https://www.myanmar-now.org/en/news/myanmar-junta-strips-rohingya-of-ownership-of-land-they-were-forced-to-flee-in-2017>.

⁵¹ Sixth Report, para. 36.

⁵² Fifth Report, para. 56.

36. The Gambia appreciates the opportunity the Court has afforded it to submit these Observations, and it reserves the right to present further evidence of Myanmar's non-compliance with the Court's Order, as such evidence becomes available.



H.E. Mr. Dawda Jallow

**Attorney General and Minister of Justice
of the Republic of The Gambia**

Agent of the Republic of The Gambia

7 December 2022