

INTERNATIONAL COURT OF JUSTICE

**THE GAMBIA'S OBSERVATIONS ON**  
**MYANMAR'S REPORT OF 23 MAY 2023**

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

6 June 2023

1. In accordance with the Court’s letter of 23 May 2023 (ref: 159380), the Republic of The Gambia (“The Gambia”) submits these Observations on the Seventh Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020 (the “Seventh Report”).<sup>1</sup>

2. These Observations, like those The Gambia submitted in response to the previous reports of the Republic of the Union of Myanmar (“Myanmar”),<sup>2</sup> are intended to highlight the principal shortcomings in the Seventh 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 Seventh Report.

3. Myanmar’s genocidal state policies against the Rohingya remain entrenched. The Seventh 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 Seventh Report confirms that Myanmar has failed to meaningfully implement the Court’s Order.

4. Indeed, the UN General Assembly, in its most recent resolution on the Rohingya situation in Myanmar, expressed its:

“deep concern that, despite the provisional measures ordered by the International Court of Justice on 23 January 2020, Rohingya

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<sup>1</sup> *Seventh Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 May 2023) [hereinafter the “Seventh Report”].

<sup>2</sup> *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”]; *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”]; and *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”].

Muslims in Myanmar, including women and children, continue to suffer from targeted killings, indiscriminate violence and serious injuries, including by indiscriminate fire, shelling, landmines or unexploded ordnance”.<sup>3</sup>

5. As noted in The Gambia’s Observations on Myanmar’s prior reports, conditions for the Rohingya in Myanmar continue to deteriorate, leaving the Rohingya even more vulnerable to further acts of genocide.<sup>4</sup> In his report of 9 March 2023, the UN Special Rapporteur on the situation of human rights in Myanmar concluded that:

“The situation in Rakhine State remains dire, with the Rohingya population suffering systematic discrimination, extreme deprivation, severe restrictions on movement, and scant access to livelihoods, education, and health care. The military coup has further dimmed hopes of the safe, voluntary, and dignified return of Rohingya from Bangladesh to Myanmar.”<sup>5</sup>

6. The UN High Commissioner for Human Rights shared a similar assessment in his report of 2 March 2023, finding that:

“10 years after the 2012 violence and 5 years after the military operations in Rakhine State that killed thousands and displaced over 700,000 Rohingya, the estimated 600,000 community members still residing in central and northern Rakhine State remain exposed to grave risks and violations”.<sup>6</sup>

7. As The Gambia has noted before, the ongoing persecution and pervasive discrimination against the Rohingya, Myanmar’s ongoing denial of their very identity, and the

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<sup>3</sup> UN General Assembly, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/RES/77/227 (15 December 2022), para. 9.

<sup>4</sup> 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>.

<sup>5</sup> UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Thomas H. Andrews, UN Doc. A/HRC/52/66 (9 March 2023), para. 55 [hereinafter the “Special Rapporteur March 2023 Report”].

<sup>6</sup> UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Myanmar since 1 February 2022*, UN Doc. A/HRC/52/21 (2 March 2023), para. 39 [hereinafter the “High Commissioner March 2023 Report”].

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, one of seven indicators of Myanmar’s genocidal intent identified by the UN Fact-Finding Mission.<sup>7</sup>

9. As noted by the UN High Commissioner for Human Rights in remarks to the UN Human Rights Council on 6 March 2023, “[t]he Rohingya community still remaining in Myanmar, which has already endured decades of persecution, continues to face widespread and systematic discrimination in every area of life.”<sup>8</sup> In his report of 2 March 2023, the UN High Commissioner elaborated:

“Systemic discrimination persists, with no progress on the restoration of citizenship rights. Rohingya newborns are usually not registered, deepening the spiral of exclusion. After 10 years, Rohingya students, who were allowed back to Sittwe University, but only in certain subjects, had to agree to sign up for national verification cards, a tool rejected by the community at large as it effectively forces them to decide between their rights to citizenship and education.”<sup>9</sup>

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<sup>7</sup> 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 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”].

<sup>8</sup> Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 52nd Session of the Human Rights Council, *Myanmar: High Commissioner details severe violations amid shocking violence* (6 March 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/03/myanmar-high-commissioner-details-severe-violations-amid-shocking>.

<sup>9</sup> High Commissioner March 2023 Report, para. 40.

10. The UN Human Rights Council, in its resolution on the situation of human rights in Myanmar adopted on 4 April 2023, detailed some of these discriminatory laws. The Council stressed:

“the need to expedite efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of ethnic and religious minorities, in particular relating to the Rohingya, by, inter alia, reviewing and reforming the 1982 Citizenship Law, which has led to the deprivation of human rights, complete disenfranchisement and forced displacement, by ensuring equal access to full citizenship through a transparent, voluntary and accessible procedure and to all civil and political rights by allowing for self-identification, by amending or repealing all discriminatory legislation and policies, including discriminatory provisions of the set of ‘protection of race and religion laws’ enacted in 2015 covering religious conversion, interfaith marriage, monogamy and population control, and by lifting all local orders restricting rights to freedom of movement and access to civil registration, health and education services and livelihoods”.<sup>10</sup>

The Council further emphasized:

“the need to restore full citizenship status and related civil and political rights of the Rohingya and others, including voting rights and their free and fair participation in elections and other democratic processes”.<sup>11</sup>

11. Myanmar’s pervasive system of oppression, which imposes conditions of life calculated to bring about the destruction of the Rohingya group, has compelled thousands of Rohingya to take dangerous journeys, often resulting in death. As recounted by the UN High Commissioner in his remarks on 6 March 2023:

“Over the past year, thousands more Rohingya have sought to flee unbearable conditions. At least 3,500 attempted sea crossings in

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<sup>10</sup> UN Human Rights Council, *Situation of human rights in Myanmar*, UN Doc. A/HRC/RES/52/31 (4 April 2023), para. 20.

<sup>11</sup> *Id.*, para. 21.

2022— a 360 percent increase from 2021. At least 348 of them died or went missing at sea. It is a tragedy.”<sup>12</sup>

12. Those Rohingya caught by Myanmar traveling within the country or returned thereto when caught trying to flee are subjected to imprisonment of multiple years. The UN High Commissioner explained:

“Credible sources report that the number of Rohingya arrested for unauthorized travel doubled in 2022 to around 2,000 cases. According to United Nations figures, at least 119 Rohingya were reported dead or missing while attempting the risky escape by sea during the reporting period – the total figure is likely much higher. Credible local sources confirmed that, once arrested, Rohingya are predominantly convicted on charges under the 1949 Registration Act or the 1947 Immigration Act. During the reporting period, a minimum of 350 Rohingya have been reportedly convicted based on forced confessions under opaque legal processes that fail to meet international fair trial standards. Sources confirmed that no interpretation or translation into the Rohingya language is available in court and that prosecutions are often rushed through, sometimes being completed in a day. Judges and lawyers often mislead defendants into pleading guilty by promising a shorter jail sentence, which usually amounts to a two-year term.”<sup>13</sup>

13. The UN High Commissioner reported that these discriminatory restrictions on movement have increased in recent months:

“Rohingya interviewees confirmed that their freedom of movement to access services and livelihood opportunities have been further restricted. In March, the military announced that citizenship scrutiny cards were mandatory for internal travel, and in July, local authorities reinstated “form 4”, a mandatory temporary travel document for those without documents. As a result, the Rohingya are forced by officials to pay exorbitant fees or to provide other forms of compensation in order to obtain travel authorizations to

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<sup>12</sup> Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 52nd Session of the Human Rights Council, *Myanmar: High Commissioner details severe violations amid shocking violence* (6 March 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/03/myanmar-high-commissioner-details-severe-violations-amid-shocking>.

<sup>13</sup> High Commissioner March 2023 Report, para. 42.

cross checkpoints and are increasingly pressured to apply for the national verification card.”<sup>14</sup>

14. As in Myanmar’s prior reports,<sup>15</sup> the Seventh Report refers to alleged reports submitted by Union Ministries and State and Regional Governments in response to Directives issued in April 2020 by the Office of the President in purported compliance with the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>16</sup> Here, 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. To the contrary, as the reports of multiple UN officials and bodies have confirmed, enforcement of discriminatory policies continues unabated.

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

15. The Seventh Report confirms that Myanmar has taken no meaningful actions regarding accountability for the acts of genocide committed during the “clearance operations” of 2016-2018. To the contrary, it appears to be using a military inquiry to coerce testimony from Rohingya.

16. The Seventh Report indicates that the “Special Court of Inquiry” established to investigate the “incidents in Chut Pyin” was “re-constituted”, and that team members visited Buthidaung from late February to early March, where they collected testimonies.<sup>17</sup> Independent reporting indicates that Myanmar officers tried to coerce Rohingya to falsely testify that they burned down their own villages.<sup>18</sup> Witnesses said that “[t]he junta officers told them it would create difficulties for them if they testified in the same way as before”; that the officers “asked if

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<sup>14</sup> High Commissioner March 2023 Report, para. 41.

<sup>15</sup> See Fourth Report, paras. 30-32; Fifth Report, para. 36; Sixth Report, para. 17.

<sup>16</sup> Seventh Report, para. 24.

<sup>17</sup> Seventh Report, para. 31.

<sup>18</sup> Poe U, “Regime seeking out Rohingya witnesses for Myanmar’s ICJ defence”, *Myanmar NOW* (6 March 2023), available at <https://myanmar-now.org/en/news/regime-seeking-out-rohingya-witnesses-for-myanmars-icj-defence>.

they could testify that they set fire to their own houses and ran away”; that the Rohingya “were told they would be ‘creating difficulties for themselves’ if they said that the villagers were killed and the houses were burned down by [the military’s] Light Infantry Division 33”; and that “they were reportedly threatened with arrest”.<sup>19</sup>

17. Even with the “re-constitution” of the Myanmar military’s “Special Court of Inquiry”, no indictment or legal proceedings have taken place, 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.<sup>20</sup>

18. Myanmar’s alleged actions regarding “Civilian accountability” are equally meaningless. The Seventh Report indicates that a “Special Task Force of the Criminal Investigation and Prosecution Body” was formed on 2 February 2023 to support the work of the Criminal Investigation and Prosecution Body (“CIPB”). But the work of the CIPB has remained unchanged for at least a year, with no new cases and no new progress in the existing 139 cases, none of which is against members of the Tatmadaw.<sup>21</sup>

19. 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.<sup>22</sup> The Seventh Report confirms that no action has been taken, and no plans have been made, to address the crimes of sexual violence during the “clearance operations”. The UN High Commissioner has reported that new claims of sexual violence against Rohingya have been received in the context of armed clashes between Myanmar’s military and the Arakan Army.<sup>23</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> See *The Gambia’s Observations on Myanmar’s Report of 23 November 2021* (7 December 2021), paras. 17-21.

<sup>21</sup> See *The Gambia’s Observations on Myanmar’s Report of 23 May 2022* (7 June 2022), para. 23.

<sup>22</sup> See Memorial, Chapter 9.

<sup>23</sup> High Commissioner March 2023 Report, para. 39.

### III. Denial of Humanitarian Assistance and Adequate Healthcare

20. As discussed above in Section I, discriminatory policies targeting the Rohingya, including restrictions on movement, continue to deny the Rohingya adequate access to healthcare, humanitarian assistance, and livelihoods. Indeed, the UN Special Rapporteur reported that the “lack of access to education, livelihoods, and health care” were the primary reasons that many Rohingya have sought to flee from Myanmar altogether.<sup>24</sup>

21. Myanmar asserts in its Seventh Report that it does not restrict access to health care and humanitarian assistance,<sup>25</sup> but independent reporting from the United Nations shows otherwise. The Special Envoy of the Secretary-General on Myanmar reported on 16 March 2023 that “[a]ccess to northern Rakhine remains restricted, however, and the situation of the Rohingya remains precarious.”<sup>26</sup> The UN Security Council, in Resolution 2669 (2022), adopted on 12 December 2022,

“Reiterate[d] the necessity for full, safe and unhindered humanitarian access, and underlines the need for scaled up humanitarian assistance to all people in need in Myanmar and to ensure the full protection, safety and security of humanitarian and medical personnel”.<sup>27</sup>

22. Similarly, in its resolution on Myanmar adopted on 15 December 2022, the UN General Assembly:

“Expresse[d] grave concern about the ongoing restrictions on humanitarian access in all conflict areas across Myanmar, including in Rakhine and Chin States, as well as the limited steps taken to ensure access to health care for Rohingya, and urges the granting of full, unrestricted and safe access to all humanitarian

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<sup>24</sup> Special Rapporteur March 2023 Report, para. 84.

<sup>25</sup> Seventh Report, paras. 73, 77, 79.

<sup>26</sup> UN General Assembly, *Remarks by Noeleen Heyzer, Special Envoy of the Secretary-General on Myanmar at the General Assembly* (16 March 2023), available at <https://myanmar.un.org/en/223582-remarks-noeleen-heyzer-special-envoy-secretary-general-myanmar-general-assembly>.

<sup>27</sup> UN Security Council, Resolution 2669 (2022), UN Doc. S/RES/2669 (21 December 2022), para 9.

actors and all United Nations mandate holders and human rights mechanisms”.<sup>28</sup>

23. The aftermath of Cyclone Mocha tragically exposed these ongoing restrictions. According to a situation report dated 25 May 2023 from the UN Office for the Coordination of Humanitarian Affairs (“OCHA”), “[i]n northern Rakhine, 8,000 people in need of food assistance remain out of reach *due to lack of travel authorization*.”<sup>29</sup> The health situation is similar: “Delays in approving access for health partners to operate in Rakhine have limited the health interventions across the state.”<sup>30</sup> The situation is the same regarding education: “Bureaucratic hurdles, such as lack of travel authorizations and necessary approvals from the authorities, limit access to some regions, are hindering the distribution of humanitarian aid.”<sup>31</sup>

#### **IV. Inadequate Efforts to Curtail Hate Speech against the Rohingya**

24. UN officials and bodies continue to call attention to Myanmar’s hate speech directed against the Rohingya population. The UN High Commissioner, in his report of 2 March 2023, noted that the Myanmar “military narratives and actions toward the Rohingya have continued to be discriminatory and dehumanizing”.<sup>32</sup> The UN General Assembly, in its resolution adopted on 15 December 2022, similarly “[r]eiterat[ed] its deep concern over the continued spread of false news, hate speech and inflammatory rhetoric, in particular through social media, notably targeting Rohingya Muslims and other minorities”.<sup>33</sup>

25. Consistent with its promotion of hate speech against the Rohingya, the leader of Myanmar’s junta, Senior General Min Aung Hlaing, bestowed one of Myanmar’s highest awards

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<sup>28</sup> UN General Assembly, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/RES/77/227 (15 December 2022), para 10.

<sup>29</sup> UN OCHA, *Myanmar: Cyclone Mocha, Situation Report No.1* (25 May 2023), p. 4 (emphasis added).

<sup>30</sup> *Id.*, p. 4.

<sup>31</sup> *Id.*, p. 3.

<sup>32</sup> High Commissioner March 2023 Report, para 43.

<sup>33</sup> UN General Assembly, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/RES/77/227 (15 December 2022), preamble.

on the ultranationalist monk Ashin Wirathu.<sup>34</sup> As detailed in the Memorial, Wirathu is notorious for disseminating vile anti-Rohingya hate speech, and he traveled throughout Rakhine State with military escort during the “clearance operations”, inciting support for Myanmar’s genocide.<sup>35</sup>

26. Myanmar denies reports that anti-Rohingya leaflets were dropped from helicopters in the Sagaing and Magway regions,<sup>36</sup> but this rote denial lacks any credibility in the face of multiple independent reports that included images of the leaflets as recovered by witnesses on the ground.<sup>37</sup> Furthermore, as noted in The Gambia’s Observations on the Sixth Report,<sup>38</sup> Myanmar does not deny its dissemination of anti-Rohingya propaganda through other channels, including the junta’s spokesperson.<sup>39</sup>

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<sup>34</sup> “Wirathu, preacher of hate, receives top honour from Myanmar junta chief”, *Myanmar NOW* (3 January 2023), available at <https://myanmar-now.org/en/news/wirathu-preacher-of-hate-receives-top-honour-from-myanmar-junta-chief/>; “Myanmar Military Hands Top Honor to Nationalist Monks”, *The Irrawaddy* (20 February 2023), available at <https://www.irrawaddy.com/news/burma/myanmar-military-hands-top-honor-to-nationalist-monks.html>.

<sup>35</sup> See Memorial, Chapter 7, paras. 7.56-7.62.

<sup>36</sup> Seventh Report, para. 38.

<sup>37</sup> 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](https://www.smh.com.au/world/asia/divide-and-rulemyanmar-junta-weaponising-racial-tensions-20211203-p59eid.html?fbclid=IwAR3YhrwX6-QmR0BLNr9T46EVeXKgCuzJhRMf-DbZ_8mO925PKmvoIWLZGuc); 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/>; “Report: Using Pamphlets for Propaganda, Misinformation, Intimidation, and Division”, *Myanmar Witness* (12 July 2022), p. 27, available at [https://www.myanmarwitness.org/\\_files/ugd/06ca64\\_373fab80e7ad4560b483bf271a56a5b7.pdf](https://www.myanmarwitness.org/_files/ugd/06ca64_373fab80e7ad4560b483bf271a56a5b7.pdf).

<sup>38</sup> *The Gambia’s Observations on Myanmar’s Report of 23 November 2022* (7 December 2022), para. 27.

<sup>39</sup> 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>.

## V. Inadequate Efforts for Repatriation and Resettlement

27. Myanmar claims in its Seventh Report that it is working to repatriate Rohingya from Bangladesh,<sup>40</sup> but it has done nothing to create the conditions for the voluntary, safe, and dignified return of refugees to their home villages. Indeed, it is the consensus of UN officials and bodies that conditions are not safe for Rohingya to return to Myanmar under current conditions.

28. The UN Special Rapporteur for Myanmar explained in an interview on 12 April 2023 that:

“No one, including the United Nations, should be supporting a repatriation process in which the Rohingya who are in Bangladesh under very harsh conditions are nonetheless brought to Myanmar in very unsafe conditions — conditions that are not conducive whatsoever to a safe, dignified return; repatriation that does not include protection of human rights, protection of citizenship, protection of life and safety. No one should be supporting that kind of repatriation process, because it won't work. It's unfair. We could see even more hardship for those people who are in Bangladesh, who have suffered so much. So, whether it's the United Nations or any other entity, we should not be moving forward with any repatriation process, including a pilot program, under these conditions.”<sup>41</sup>

29. The UN High Commissioner for Refugees stated clearly on 19 March 2023 that “conditions in Myanmar’s Rakhine State are currently not conducive to the sustainable return of Rohingya refugees”.<sup>42</sup> The Special Envoy of the Secretary-General on Myanmar explained on 16 March 2023 that:

“Return cannot be the mere act of closing camps or moving people. It must be a process that achieves durable solutions and guarantees

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<sup>40</sup> Seventh Report, paras. 39-49. Myanmar claims to have reviewed, as of 15 April 2023, the names of 87,818 out of 828,879 refugees in Bangladesh. *Id.*, para. 40. Thus, in over five years since this process started, Myanmar has only reviewed 10.5% of the names received from Bangladesh.

<sup>41</sup> “Q&A: Tom Andrews, UN Special Rapporteur for Myanmar”, *VOA News* (12 April 2023), available at <https://www.voanews.com/a/q-a-tom-andrews-un-special-rapporteur-for-myanmar/7047940.html>.

<sup>42</sup> UNHCR, “UNHCR statement on Bangladesh, Myanmar bilateral pilot project on Rohingya returns” (19 March 2023), available at <https://www.unhcr.org/news/unhcr-statement-bangladesh-myanmar-bilateral-pilot-project-rohingya-returns-0>.

the safety and wellbeing of the population concerned. Issues such as citizenship, freedom of movement, land ownership and access to education, schools and livelihoods must be properly addressed.”<sup>43</sup>

30. In remarks to the UN Human Rights Council on 6 March 2023, the UN High Commissioner likewise concluded that:

“The necessary conditions for voluntary, safe and dignified returns of refugees to Rakhine State simply do not exist, and the over one million Rohingya who remain in forced exile in Bangladesh and other countries, as well as hundreds of thousands who are internally displaced, face a bleak present, and worse future.”<sup>44</sup>

31. The UN Security Council, in Resolution 2669 (2022) of 21 December 2022,

“Express[ed] concern that recent developments in Myanmar pose particularly serious challenges for the voluntary, safe, dignified, and sustainable return of Rohingya refugees and internally displaced persons, and underlin[ed] the risks that the Rohingya situation poses for the wider region”.<sup>45</sup>

32. The UN General Assembly also expressed its concern on various grounds that developments in Myanmar pose a serious challenge to the voluntary, safe, dignified, and sustainable return of Rohingya to their home villages, and placed responsibility on Myanmar for failing to create the necessary conditions in Rakhine State for repatriation.<sup>46</sup>

33. Even though the conditions are not safe for repatriation, Myanmar seems determined to repatriate a number of refugees through a “Pilot Project”, which would entail the returnees staying in isolated, newly-constructed reentry centers under the control of the military

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<sup>43</sup> UN General Assembly, *Remarks by Noeleen Heyzer, Special Envoy of the Secretary-General on Myanmar at the General Assembly* (16 March 2023), available at <https://myanmar.un.org/en/223582-remarks-noeleen-heyzer-special-envoy-secretary-general-myanmar-general-assembly>.

<sup>44</sup> Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 52nd Session of the Human Rights Council, *Myanmar: High Commissioner details severe violations amid shocking violence* (6 March 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/03/myanmar-high-commissioner-details-severe-violations-amid-shocking>.

<sup>45</sup> UN Security Council, Resolution 2669 (2022), UN Doc. S/RES/2669 (21 December 2022).

<sup>46</sup> UN General Assembly, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/RES/77/227 (15 December 2022), preamble and para. 14(d).

rather than their home villages.<sup>47</sup> As Myanmar explained in its letter to the Registrar of 14 March 2023 seeking an extension of time for its Counter-Memorial:

“Myanmar also needs additional time to take statements from witnesses who are presently living in camps in Bangladesh. ... Myanmar considers that statements should be taken from relevant witnesses after their repatriation from Bangladesh to Myanmar.”<sup>48</sup>

34. Myanmar’s instrumentalization of the repatriation process for the purposes of taking witness statements from a captive and vulnerable refugee population is reprehensible. Given that Myanmar has already tried to coerce testimony from Rohingya in Rakhine State,<sup>49</sup> it is clear that the “Pilot Project” is not a serious repatriation effort, but one designed to manufacture coerced testimony for use in these proceedings.

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35. For these reasons, it is The Gambia’s view that the Seventh 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.

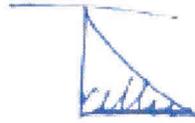
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<sup>47</sup> “UNHCR: Rakhine not safe for Myanmar’s Rohingya repatriation pilot project”, *Radio Free Asia* (16 March 2023), available at <https://www.rfa.org/english/news/myanmar/rakhine-rohingya-unhcr-03162023105237.html>. Similarly, Myanmar notes that it is working to close certain IDP camps, including the Kyauk Ta Lone camp, but this is happening “without any commitments to repair destroyed homes and infrastructure, and without assurances for their personal safety and security”. UN OCHA, Myanmar Humanitarian Update No. 29 (6 May 2023), p. 10.

<sup>48</sup> Letter from Myanmar to the Registrar (14 March 2023), p. 3.

<sup>49</sup> See *supra* para. 16.

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.



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**H.E. Mr. Dawda Jallow**

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**Agent of the Republic of The Gambia**

**6 June 2023**