

INTERNATIONAL COURT OF JUSTICE

THE GAMBIA'S OBSERVATIONS ON
MYANMAR'S REPORT OF 23 NOVEMBER 2023

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

7 December 2023

1. In accordance with the Court’s letter of 23 November 2023 (ref: 160776), the Republic of The Gambia (“The Gambia”) submits these Observations on the Eighth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020 (the “Eighth 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 Eighth 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 Eighth Report.

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

4. The UN General Assembly, in a resolution adopted by the Third Committee last month, expressed its:

¹ *Eighth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 November 2023) [**hereinafter** the “Eighth 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”]; *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”]; *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”]; and *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”].

“*deep concern* that, despite the provisional measures ordered by the International Court of Justice on 23 January 2020 in the case of *The Gambia v. Myanmar*, Rohingya Muslims in Myanmar, including women and children, are not protected and continue to suffer from discrimination, 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 prior reports, conditions for the Rohingya in Myanmar continue to be dire, leaving the Rohingya vulnerable to further acts of genocide.⁴ This remains true. In his report of 12 October 2023, the UN Special Rapporteur on the situation of human rights in Myanmar concluded that:

“Six years after genocidal attacks by the Myanmar military in Rakhine State, the Rohingya continue to face violence, persecution, and neglect no matter their location. The situation in Rakhine State remains fundamentally unchanged since the violence of 2017, except for the additional misery wrought by Cyclone Mocha. Approximately 600,000 Rohingya remain under an apartheid regime, with 140,000 confined to de facto internment camps.”⁵

6. The UN High Commissioner for Human Rights shared a similar assessment in his report of 19 September 2023, finding that:

“When Cyclone Mocha made landfall in Rakhine on 14 May 2023, it caused widespread destruction and affected all communities in Rakhine State. It aggravated protection concerns of the Rohingya community, already marred by decades of extreme discrimination and other gross human rights violations many of which may amount to crimes under international law. Of the estimated 600,000 Rohingya remaining in northern Rakhine, over 150,000

³ UN General Assembly, Third Committee, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/C.3/78/L.40/Rev.1 (8 November 2023), para. 10.

⁴ 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>.

⁵ UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN Doc. A/78/527 (12 October 2023), para. 70 [hereinafter the “Special Rapporteur October 2023 Report”].

are displaced, living with severe limitations on rights and freedoms in camps in central Rakhine. Under these circumstances, Rohingya community members had to endure both the brunt of the storm and the military's actions directed at preventing humanitarian access to the affected areas."⁶

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 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 targeting the Rohingya, one of seven indicators of Myanmar's genocidal intent identified by the UN Fact-Finding Mission.⁷ This fact has been confirmed by UN officials and experts.

9. The UN High Commissioner for Human Rights in September 2023 found that "no action has been taken to address the root causes of severe discrimination and other violations, to address the issue of citizenship, to ensure provision of services, or to guarantee free movement or other critical factors".⁸

10. In his October 2023 report, the UN Special Rapporteur discussed the nature and pervasive effects of this comprehensive system of discrimination:

⁶ UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights, Situation of human rights in Myanmar*, UN Doc. A/HRC/54/59 (19 September 2023), para. 53 [hereinafter the "High Commissioner September 2023 Report"].

⁷ 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"].

⁸ Volker Türk, UN High Commissioner for Human Rights, *Myanmar: Türk calls for new thinking to end "unspeakable tragedy"* (26 September 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/09/myanmar-turk-calls-new-thinking-end-unspeakable-tragedy>.

“The Rohingya continue to face severe restrictions rooted in the denial of citizenship and basic rights under the 1982 Citizenship Law. The military leader in command during the genocidal attacks against the Rohingya now leads the SAC. Rohingya continue to be denied freedom of movement in Rakhine State and have limited access to livelihoods, education, health care, and other basic services. The devastation wrought by Cyclone Mocha, attributable in large part to the SAC’s actions and policies, further underscores the vulnerability of the Rohingya as a result of the systemic discrimination against them.”⁹

11. The UN Deputy High Commissioner for Human Rights in June 2023 described the situation as follows:

“Rohingya Muslims and other minorities in Myanmar have endured decades of persecution and systematic discrimination. Today, eleven years after the 2012 violence in Rakhine State, and six years after the 2017 military operations that killed thousands and displaced hundreds of thousands of Rohingya, more than one million languish in refugee camps in Bangladesh. An estimated 600,000 remain in Myanmar where they continue to be deprived of their basic rights.”¹⁰

12. The UN General Assembly, in its November 2023 Third Committee resolution, reiterated its urgent call on Myanmar to:

“expedite efforts to eliminate statelessness and the systematic and institutionalized discrimination against members of all minorities, in particular relating to Rohingya Muslims, by, inter alia, reviewing and reforming the 1982 Citizenship Law, which has led to deprivation of human rights, 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

⁹ Special Rapporteur October 2023 Report, para. 81.

¹⁰ Nada Al-Nashif, UN Deputy High Commissioner for Human Rights, Statement, 53rd Session of Human Rights Council (21 June 2023), *available at* <https://www.ohchr.org/en/statements/2023/06/durable-solutions-rohingya-crisis-myanmar>.

to freedom of movement and access to civil registration, health and education services and livelihoods”.¹¹

The UN Human Rights Council made a similar call in its July 2023 resolution.¹²

13. As discussed in The Gambia’s Observations to Myanmar’s Seventh Report,¹³ 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. Rohingya caught by Myanmar are subject to multiple years of unjust imprisonment. According to the UN Special Rapporteur, Myanmar “arrested more than 1,000 Rohingya while they were traveling in Myanmar during the first seven months of 2023”.¹⁴ Over 200 Rohingya were arrested just last month for trying to flee their oppression,¹⁵ and over 300 were sentenced to prison terms by July 2023 for such efforts to flee earlier in the year.¹⁶

14. As in Myanmar’s prior reports,¹⁷ the Eighth 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.¹⁸ Here, as before, the Report does not make those alleged reports available to the Court for examination. There is no indication that

¹¹ UN General Assembly, Third Committee, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/C.3/78/L.40/Rev.1 (8 November 2023), para. 16(i).

¹² UN Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/HRC/RES/53/26 (24 July 2023), para. 22.

¹³ See *The Gambia’s Observations on Myanmar’s Report of 23 May 2023* (6 June 2023), paras. 11-13.

¹⁴ Special Rapporteur October 2023 Report, para. 85.

¹⁵ Radio Free Asia, “Myanmar’s navy arrests over 200 Rohingya fleeing Rakhine” (3 November 2023), available at <https://www.rfa.org/english/news/myanmar/rohingya-arrests-11032023065208.html>.

¹⁶ BNI, “Over 300 Arrested Rohingya Sentenced to Prison Terms others were shot dead by the Junta” (19 July 2023), available at <https://www.bnionline.net/en/news/over-300-arrested-rohingya-sentenced-prison-terms-others-were-shot-dead-junta>.

¹⁷ See Fourth Report, paras. 30-32; Fifth Report, para. 36; Sixth Report, para. 17; Seventh Report, para. 24.

¹⁸ Eighth Report, para. 57.

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 Eighth Report confirms that Myanmar has taken no meaningful actions regarding accountability for the acts of genocide committed during the “clearance operations” of 2016-2018.

16. The Eighth Report indicates that the “Court of Inquiry” for Chut Pyin “reached out to police” to gather witness information, but apparently “the villagers had not returned and were not living in nearby villages”.¹⁹ Myanmar failed to rebut or even to deny the evidence provided in The Gambia’s Observations to Myanmar’s Seventh Report indicating that Myanmar officers acting for the “Court of Inquiry” tried to intimidate, threaten, and coerce Rohingya to falsely testify that they burned down their own villages.²⁰

17. Thus, to this day, no indictment or legal proceedings have taken place regarding the crimes committed in Chut Pyin, 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 “clearance operations”.²¹

18. Myanmar’s alleged actions regarding “Civilian accountability” are similarly nonexistent. The Eighth Report indicates that no progress has been made by the Criminal Investigation and Prosecution Body (“CIPB”); in fact, the CIPB did not even meet during the

¹⁹ Eighth Report, para. 65.

²⁰ See *The Gambia’s Observations on Myanmar’s Report of 23 May 2023* (6 June 2023), para. 16 (citing 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>).

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

reporting period.²² The work of the CIPB appears to have remained unchanged over the past two years.²³

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.²⁴ The Eighth 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”.

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.

21. Myanmar continues to falsely assert that it does not restrict access to humanitarian assistance,²⁵ but its deplorable restrictions on humanitarian aid after Cyclone Mocha proves otherwise. As explained by the UN Special Rapporteur in his October 2023 report:

“In the wake of the cyclone, the SAC deliberately blocked humanitarian access to impacted communities, with devastating consequences. In the weeks immediately following the storm’s landfall, UN and humanitarian agencies struggled to secure travel authorizations in Rakhine State, preventing organizations from conducting needs assessments and impeding the emergency response. Then, on 7 June 2023, the SAC suspended all travel authorizations in Rakhine State, including those that had been approved prior to the cyclone. The junta advised humanitarian actors that all cyclone aid should be delivered to the SAC in

²² Eighth Report, para. 59.

²³ See *The Gambia’s Observations on Myanmar’s Report of 23 November 2021* (7 December 2021), para. 24; *The Gambia’s Observations on Myanmar’s Report of 23 May 2022* (7 June 2022), para. 23.

²⁴ See Memorial, Chapter 9.

²⁵ Eighth Report, paras. 131-132.

Yangon. These restrictions paralyzed the humanitarian response to Cyclone Mocha at a critical moment.”²⁶

22. The UN High Commissioner further explained the denial of humanitarian assistance in his September 2023 report, describing the dire health consequences of these restrictions by Myanmar:

“Post-cyclone, the military instrumentalized relief operations. Four weeks after landfall, the military suspended all travel authorizations for all relief operations and instructed that all disaster relief responses and supplies must be directly managed by them. It also obstructed relief efforts of local civil society groups through threats and arrests of those delivering aid or raising funds for relief efforts. Restrictions on humanitarian access affected all communities in Rakhine in urban and rural areas, including those under the control of the Arakan Army. Interviewees from camps and villages reported having received none or very little assistance from the military and living in makeshift shelters with extremely limited access to food, clean water, and medical care. One interviewee stated he could not provide daily food to his children while another said that many widowed women beg for food, exacerbating risks of exploitation and abuse. To seek refuge from the monsoon season, displaced Rohingya scavenged debris to find basic materials to rebuild their dwellings. Repeated calls by senior UN officials for access to address risks of food insecurity and water-borne diseases have been ignored, and Rohingya remain exposed to serious life-threatening conditions.”²⁷

Independent reporting of statements by government officials in Rakhine State indicates that Myanmar’s restrictions on humanitarian aid were motivated by anti-Rohingya discrimination.²⁸

23. Furthermore, Myanmar has sought to cover up the total number of Rohingya killed by Cyclone Mocha. The UN High Commissioner reported:

“While initial reports set the number of Rohingya who died at over 400, the military unilaterally asserted that 116 had died. They also

²⁶ Special Rapporteur October 2023 Report, para. 60.

²⁷ High Commissioner September 2023 Report, para. 55.

²⁸ BBC, “Myanmar army cuts off aid to cyclone survivors” (26 June 2023), *available at* <https://www.bbc.com/news/world-asia-65995101>.

threatened legal action against individuals and outlets reporting different figures, effectively preventing any further documentation. In its submission, the military indicated that ‘a total of 148 persons had lost their lives’ without specifically providing information on Rohingya. Comparing the military figures, it becomes evident that Rohingya have been disproportionately affected compared to other communities, likely due to the numerous vulnerabilities and lack of more decisive preventive actions. One interviewee attributed the larger number of deaths among Rohingya to the limited available evacuation options and the impossibility for Rohingya to freely move to seek refuge. Most deaths reportedly occurred while community members, especially women and children, were attempting to flee rising waters. One Rohingya woman whose family had signed up for evacuation reported being informed one day before the cyclone that all shelters were full. Her young child was swept away by the waves as the family tried to escape the floods.”²⁹

Indeed, the Myanmar military “sentenced a photojournalist to 20 years imprisonment for his coverage of the post-cyclone situation in Rakhine, the highest sentence handed down to a journalist since the coup”.³⁰

24. Contrary to Myanmar’s assertions, it clearly did not take adequate action to warn or protect Rohingya communities from Cyclone Mocha, as demonstrated in the UN Special Rapporteur’s October 2023 report:

“The Rohingya make up the majority of those killed in the cyclone. An estimated 85 percent of shelters in Rohingya IDP camps were destroyed. The SAC appears to have taken few measures to protect the Rohingya as the cyclone approached. The need to obtain travel authorization from the SAC hindered cyclone preparation plans by humanitarian organizations. Warnings, if given at all, were delivered in Burmese and Rakhine and generally not understood by the Rohingya. Poor internet connectivity in Rohingya IDP camps left many unaware of the approaching storm. The SAC provided minimal assistance in relocating Rohingya to emergency shelters. Longstanding restrictions on movement, including the need to

²⁹ High Commissioner September 2023 Report, para. 54.

³⁰ Volker Türk, UN High Commissioner for Human Rights, *Myanmar: Türk calls for new thinking to end “unspeakable tragedy”* (26 September 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/09/myanmar-turk-calls-new-thinking-end-unspeakable-tragedy>.

obtain permission from officials before leaving IDP camps, prevented Rohingya from seeking shelter with relatives or community members in safer locations.”³¹

IV. Hate Speech against the Rohingya

25. UN bodies continue to call attention to Myanmar’s hate speech directed against the Rohingya population. The UN General Assembly, in its Third Committee resolution adopted in November 2023, “[r]eiterated its deep concern over the continued spread of false news and information, hate speech and inflammatory rhetoric, in particular through social media, notably targeting Rohingya Muslims and other minorities”.³²

26. In its Eighth Report Myanmar provides no evidence that any of its alleged broadcasts regarding hate speech include any condemnation of anti-Rohingya hate speech.³³

V. Repatriation and Resettlement

27. Myanmar claims in its Eighth Report that it is “diligently working to repatriate displaced” Rohingya from Bangladesh.³⁴ However, UN officials and bodies unanimously agree that Myanmar has failed to create the conditions for the voluntary, safe, and dignified return of refugees to their home villages.

28. The UN High Commissioner stated in July 2023 that the “conditions for their return to Myanmar are still non-existent. The military continues to carry out atrocities in their

³¹ Special Rapporteur October 2023 Report, para. 58.

³² UN General Assembly, Third Committee, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/C.3/78/L.40/Rev.1 (8 November 2023), preamble.

³³ Eighth Report, paras. 71-74.

³⁴ Eighth Report, para. 77. Myanmar claims to have reviewed, as of 30 September 2023, the names of 111,866 out of 828,824 refugees in Bangladesh. *Id.*, paras. 80-81. Thus, almost six years since this process started, Myanmar has only reviewed 13.5% of the names received from Bangladesh.

home state of Rakhine, where they are denied citizenship”.³⁵ In September 2023, the UN High Commissioner further explained:

“since March, the military has been proposing to carry out the return of thousands of Rohingya refugees from Bangladesh to Rakhine State by the end of the year, despite the clear absence of conditions for safe, dignified, and sustainable returns. Notably, no action has been taken to address the root causes of severe discrimination and other violations, to address the issue of citizenship, to ensure provision of services, or to guarantee free movement or other critical factors.”³⁶

29. The UN Special Rapporteur indicated in his October 2023 report that he “concur[s] with the conclusion of the High Commissioner for Human Rights and UNHCR that the conditions in Myanmar are not conducive to the safe, dignified, and sustainable return of Rohingya refugees.”³⁷ Both the UN General Assembly and the UN Human Rights Council have called on Myanmar to take concrete action to create the conditions necessary for the voluntary, safe, dignified and sustainable return of Rohingya to Myanmar.³⁸

30. As usual, Myanmar invokes the bogeyman of ARSA to assert falsely that ARSA, rather than Myanmar itself, is to blame for the failed repatriation process.³⁹ Myanmar also claims

³⁵ Volker Türk, UN High Commissioner for Human Rights, *Myanmar in “deadly freefall” into even deeper violence, says Türk* (6 July 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/07/myanmar-deadly-freefall-even-deeper-violence-says-turk>.

³⁶ Volker Türk, UN High Commissioner for Human Rights, *Myanmar: Türk calls for new thinking to end “unspeakable tragedy”* (26 September 2023), available at <https://www.ohchr.org/en/statements-and-speeches/2023/09/myanmar-turk-calls-new-thinking-end-unspeakable-tragedy>.

³⁷ Special Rapporteur October 2023 Report, para. 81.

³⁸ UN General Assembly, Third Committee, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/C.3/78/L.40/Rev.1 (8 November 2023), para 16(c); UN Human Rights Council, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/HRC/RES/53/26 (24 July 2023), para. 30.

³⁹ Eighth Report, para. 79.

that 16 Rohingya were killed “due to their active involvement in the repatriation process”, even though the media article cited provides no support for that assertion.⁴⁰

31. Indeed, Myanmar admits in its Eighth Report that returning Rohingya will *not* be permitted to go back to their home villages; instead, they must chose from “15 villages designated for resettlement”.⁴¹

32. Forcing returnees into designated areas rather than allowing them to return to their home villages is similar to what Myanmar has done with resettling Rohingya who were in IDP camps. The Rohingya who were forced to leave the Kyauk Ta Lone camp, for example, are now “facing food shortages and illness at a new camp [that] one camp resident describes as a ‘sea of mud’”.⁴² The new camp is “prone to flooding in the rainy season” and the families there “have no access to employment”.⁴³

33. No wonder Rohingya are unwilling to return under these unacceptable conditions. As reported by the UN Special Rapporteur:

“The Rohingya representatives who visited Myanmar as part of the May visit issued a public statement rejecting the repatriation plans. Rohingya refugees, human rights defenders, activists, and community leaders also expressed opposition to the repatriation pilot project in letters, posters, social media posts, and comments to media. Concerns raised by Rohingya refugees included the inability to return to their places of origin, the continued denial of citizenship and imposition of National Verification Cards on returnees, the ongoing discrimination and denial of human rights, and the risk of further violence and persecution by SAC forces.”⁴⁴

⁴⁰ *Id.*

⁴¹ Eighth Report, para. 101.

⁴² Irrawaddy, “Rohingya IDP Camp Relocated by Myanmar Junta to a ‘Sea of Mud’” (23 June 2023), available at <https://www.irrawaddy.com/news/burma/rohingya-idp-camp-relocated-by-myanmar-junta-to-a-sea-of-mud.html>.

⁴³ *Id.*

⁴⁴ Special Rapporteur October 2023 Report, para. 78.

34. The UN High Commissioner elaborated:

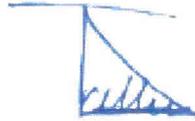
“After visiting Cox’s Bazar in March to identify potential returnees, in May the military supported a ‘go-and-see’ visit for Rohingya refugees to the relocation centers in Rakhine. After the visit, participants declined to return, insisting that basic conditions were not in place and that returns would only occur once there were assurances of safety, restoration of citizenship rights, enjoyment of fundamental freedoms, and access to livelihood and essential services. However, the military offered a plan in which returnees would be initially sent to ‘reception’ and ‘transit’ centers in Maungdaw Township, mostly built on land where Rohingya lived before 2017, before being transferred to areas where they would have to join a work-for-cash programme to build their houses. This plan makes no mention of compensation or reparation for the victimization and other violations suffered by Rohingya community members. Additionally, Rohingya would be forced to accept National Verification Cards, which have been rejected by the Rohingya as a tool of a discriminatory system that entrenches their status as foreign immigrants and denies them full citizenship rights. Since Rohingya were not allowed to freely move to seek assistance even in the aftermath of the cyclone, it is reasonable to expect that returnees would also be denied the right to freedom of movement and the right to access services, such as health, education, and livelihood, forcing them afresh into patterns of exclusion and deprivation of liberty, like the Rohingya living in camps in Sittwe since 2012.”⁴⁵

* * *

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

⁴⁵ High Commissioner September 2023 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
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Agent of the Republic of The Gambia

7 December 2023