

INTERNATIONAL COURT OF JUSTICE

THE GAMBIA'S OBSERVATIONS ON
MYANMAR'S REPORT OF 23 MAY 2024

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

6 June 2024

1. In accordance with the Court’s letter of 23 May 2024 (ref: 162244), the Republic of the Gambia (“The Gambia”) submits these Observations on the Ninth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020 (the “Ninth 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 Ninth Report and 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 the inaccuracies and inadequacies of Myanmar’s Ninth Report.

3. Myanmar’s genocidal state policies against the Rohingya remain entrenched. The Ninth 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 Ninth Report confirms that Myanmar has failed to meaningfully implement the Court’s Order. Finally, Myanmar fails to address the serious changes taking place regarding the situation in Rakhine State, which has heightened the vulnerability of the Rohingya population there to acts of genocide.

¹ *Ninth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 May 2024) [hereinafter the “Ninth 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”]; *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”]; and *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”].

I. Ongoing Discrimination Against the Rohingya as a Group

4. 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.³ This fact has been confirmed by UN officials and experts.

5. In his 1 March 2024 update to the Human Rights Council, the UN High Commissioner for Human Rights noted:

“After suffering decades of systematic discrimination, repression, massive forced displacement, and other serious human rights violations, the Rohingya today remain essentially imprisoned in villages and internment camps. More than a million continue to languish in refugee camps in Bangladesh. In Myanmar, they continue to be denied citizenship rights and free movement, and there is currently no prospect for safe and sustainable return.”⁴

6. The UN Special Rapporteur on the situation of human rights in Myanmar discussed the systematic nature of the discrimination that Rohingya experience in Myanmar in his report of 14 March 2024:

“In previous reports, the Special Rapporteur has described how the SAC [State Administrative Council, *i.e.*, the military junta] has continued its repression of Rohingya in Rakhine State, including the approximately 140,000 Rohingya confined to de facto internment camps (A/77/494). The Rohingya remain under an apartheid regime enforced by the SAC, highlighted the systematic denial of citizenship, severe movement restrictions, and denial of access to livelihoods, education and health care. Rohingya women and girls

³ 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”]; See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Reply of The Gambia (23 May 2024), Chapter 5 [hereinafter “Reply”].

⁴ Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 55th Session of the Human Rights Council, *Myanmar: human rights situation has 'morphed into a never-ending nightmare,' says Türk* (1 March 2024), available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

are especially isolated, suffering both from official repression and from discriminatory practices within the Rohingya community.”⁵

7. The UN General Assembly, in a resolution adopted in December 2023, similarly expressed its “deep concern” regarding this ongoing discrimination:

“in Rakhine, more than 600,000 Rohingya Muslims remain largely segregated and discriminated against with respect to accessing citizenship and enjoying their human rights and fundamental freedoms, a large number of whom remain confined in camps with no freedom of movement and grossly restricted access to basic services, including health and psychosocial care and education as well as livelihoods ”.⁶

8. Myanmar objects to The Gambia’s characterization of the IDP camps as internment camps,⁷ but The Gambia is not alone in characterizing the camps as such. Both the UN High Commissioner and the UN Special Rapporteur call them “internment camps”.⁸ The International Crisis Group also uses that language,⁹ and Human Rights Watch uses a similar phrasing:

“An estimated 630,000 Rohingya remain in Rakhine State under a system of apartheid and persecution, including about 150,000 held in open-air detention camps. Since the February 2021 military coup, the junta has imposed severe movement restrictions and aid blockages on the Rohingya, increasing their vulnerability to forced recruitment.”¹⁰

9. Among the many oppressive discriminatory policies are the movement restrictions that confine the Rohingya in the internment camps or their respective villages and townships. The

⁵ UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Myanmar, Thomas H. Andrews*, UN Doc. A/HRC/55/65 (14 March 2024), para. 81 [hereinafter the “Special Rapporteur March 2024 Report”].

⁶ UN General Assembly, Third Committee, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/RES/78/219 (22 December 2023), preamble.

⁷ Ninth Report, para. 62.

⁸ See *supra* paras. 6-7.

⁹ International Crisis Group, *War in Western Myanmar: Avoiding a Rakhine-Rohingya Conflict* (10 May 2024), available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/war-western-myanmar-avoidingrakhine-rohingya-conflict> (“the regime has conscripted Rohingya men from ... *internment camps* near Sittwe, where some 130,000 continue to live after being forcibly displaced following the 2012 violence.”) (emphasis added).

¹⁰ Human Rights Watch, *Myanmar: Military Forcibly Recruiting Rohingya*, (9 April 2024), available at <https://www.hrw.org/news/2024/04/10/myanmar-military-forcibly-recruiting-rohingya>.

UN Special Rapporteur reported that “SAC officials continue to arrest hundreds of Rohingya for unauthorized travel within Myanmar”.¹¹ Myanmar admits to this in its Ninth Report, where it states that “legal action was taken ... against 598 undocumented Bengalis (313 males and 285 females)”.¹² Of those 598 Rohingya, 198 of them appear to be children, as Myanmar has reportedly sent them to “Youth Training School” or has listed them as “[a]ccompanied to imprisoned mothers”.¹³

10. As in Myanmar’s prior reports,¹⁴ the Ninth 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.¹⁵ 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 explained above, the reports of multiple UN officials and bodies—and Myanmar’s own reports—have confirmed that the enforcement of discriminatory policies continues unabated.

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

11. The Ninth Report confirms that Myanmar has taken no meaningful actions regarding accountability for the acts of genocide committed during the “clearance operations” of 2016-2018. Regarding “Proceedings within the military justice system”, Myanmar admits that no progress has been made, and it links any potential progress with the repatriation of witnesses from Chut Pyin.¹⁶

¹¹ Special Rapporteur March 2024 Report, para. 83.

¹² Ninth Report, para. 117.

¹³ *Id.*

¹⁴ See Fifth Report, para. 36; Sixth Report, para. 17; Seventh Report, para. 24; Eighth Report, para. 56.

¹⁵ Ninth Report, para. 23.

¹⁶ Ninth Report, para. 26.

12. Myanmar's alleged actions regarding "Civilian accountability" are similarly nonexistent. The Ninth Report indicates that no progress has been made by the Criminal Investigation and Prosecution Body ("CIPB"). The work of the CIPB appears to have remained unchanged over the past three years.¹⁷

13. The UN Secretary-General emphasized the pervasive nature of impunity in Myanmar in his report of 15 August 2023:

"A culture of impunity continues unabated in Myanmar. The military continued to maintain effective control over judicial processes, circumventing legal procedures and shielding its soldiers from legal repercussions for criminal acts."¹⁸

14. 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.¹⁹ The Ninth 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

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

16. Myanmar falsely claims that it does not restrict access to humanitarian assistance in Rakhine State.²⁰ The evidence demonstrates that the reality is quite the opposite. As reported by the UN Special Rapporteur in his March 2024 report:

¹⁷ Ninth Report, para. 25.

¹⁸ UN Secretary-General, *Situation of the human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/78/278 (14 August 2023), available at <https://digitallibrary.un.org/record/4019839?ln=en&v=pdf>.

¹⁹ See Memorial, Chapter 9; Reply, Chapter 7.

²⁰ Ninth Report, paras. 95–96.

“The intense conflict between the SAC and Arakan Army has severely impeded the delivery of humanitarian aid to vulnerable people in Rakhine State, including both Rohingya and Rakhine communities. Some humanitarian organizations report that the SAC has stopped approving their travel authorizations in Rakhine State since late 2023. A Rohingya activist who researched the situation in IDP camps told the Special Rapporteur, ‘[Rohingya people] are finding it difficult to get food regularly. Many people are actually starving or eating less. In the past they were eating two times a day and now they are eating once. There are some that are not eating at all.’”²¹

17. The UN High Commissioner elaborated on the effects of Myanmar’s restrictions of humanitarian aid on the population in Rakhine, which includes restrictions on access to healthcare, in his 1 March 2024 update to the Human Rights Council:

“Military-imposed movement restrictions have almost completely disrupted the delivery of life-saving humanitarian aid. Homes have been burned down. Supply routes connecting Rakhine to other parts of Myanmar have been closed, creating an acute food shortage and significant price hikes. Most families are now surviving on one meal a day. We have received reports of malnutrition-related health issues among children. And deaths of several pregnant women lacking access to medical services have also been reported.”²²

18. Human Rights Watch independently confirms the ongoing restrictions on humanitarian assistance and health services:

“The junta has continued to block urgently needed humanitarian aid to civilians in conflict areas, a form of collective punishment that is a war crime. The military is blocking major roads and waterways, destroying nonmilitary supplies, imposing severe restrictions on aid workers, and shutting down telecommunications services. The humanitarian organization Médecins Sans Frontières (MSF) said on January 16 that restrictions are preventing MSF from running any of

²¹ Special Rapporteur March 2024 Report, para. 84.

²² Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 55th Session of the Human Rights Council, *Myanmar: human rights situation has ‘morphed into a never-ending nightmare,’ says Türk* (1 March 2024), available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

the 25 mobile clinics in Rakhine State and warned of a ‘catastrophic impact on people’s health.’”²³

IV. Hate Speech Against the Rohingya

19. UN officials and bodies continue to call attention to Myanmar’s hate speech directed against the Rohingya population. As discussed further below in Section VI, the Myanmar military continues to incite ethnic tensions in Rakhine State. The UN High Commissioner for Human Rights in March 2024 found that:

“In Shan, Rakhine, and Kachin States in particular, the military appears again to be provoking inter-ethnic tensions by employing ultra-nationalist militias and forcibly recruiting members of ethnic communities to attack others.”²⁴

20. Reports of military-orchestrated protests have played a role in driving a wedge between the Rakhine and Rohingya communities:

“Junta authorities in western Myanmar forced hundreds of Rohingya Muslims to protest an ethnic rebel offensive that has the military on the ropes in Rakhine state – and fining them if they didn’t participate It’s the latest bid by the junta to stoke ethnic tensions in the region A participant in Monday’s protest said authorities forced around 1,000 Rohingyas from Rathedaung township’s Bar Sar Ra village and Bu May village in the state capital Sittwe to hold signboards denouncing the ethnic Arakan Army, or AA, and call for an end to the conflict or face fines and other punishment.”²⁵

21. These actions are a continuation of Myanmar’s practices to incite violence and hatred amongst ethnic groups, increasing the risk for potential acts of genocide against the Rohingya group.

²³ Human Rights Watch, *Myanmar: Rohingya at Risk in Rakhine Fighting* (9 February 2024), available at <https://www.hrw.org/news/2024/02/09/myanmar-rohingya-risk-rakhine-fighting>.

²⁴ Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 55th Session of the Human Rights Council, *Myanmar: human rights situation has ‘morphed into a never-ending nightmare,’ says Türk* (1 March 2024), available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

²⁵ Radio Free Asia, *Junta forces Rohingyas to protest ethnic rebels in Myanmar’s Rakhine state* (22 April 2024), available at <https://www.rfa.org/english/news/myanmar/protest-04222024154413.html>.

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

V. Repatriation and Resettlement

23. Myanmar admits that “no repatriation has transpired as of yet”; indeed, it has done nothing to actually “prepar[e] for the[ir] voluntary, safe, and dignified return”.²⁷

24. As reported by the UN High Commissioner in March 2024: “In Myanmar, they continue to be denied citizenship rights and free movement, and there is currently no prospect for safe return.”²⁸ The UN Special Rapporteur further reported in March 2024 that:

“SAC officials and Bangladesh authorities have continued to signal their intention to initiate a repatriation ‘pilot project,’ which would send Rohingya refugees back to newly constructed ‘villages’ in Maungdaw Township—but not to their original villages. The recent resumption of conflict between the Arakan Army and the SAC has seemingly caused the SAC and Bangladesh to back away from any timetable for refugee returns. Even a halt to armed conflict in Rakhine State, however, would not create the conditions necessary for a safe, dignified, and voluntary return of Rohingya refugees.”²⁹

25. Myanmar admits that their current plans for repatriation will not allow the Rohingya to return to their home villages.³⁰ Ironically, Myanmar proclaims in its Ninth Report that: “What should be done at this stage is that the voices of displaced persons who have expressed their desire to return to Myanmar should also be heard.”³¹ If that advice were to be followed, then Myanmar must allow the Rohingya to return to their home villages and enjoy the full citizenship

²⁶ Ninth Report, paras. 28–30.

²⁷ Ninth Report, paras. 33, 36.

²⁸ Volker Türk, UN High Commissioner for Human Rights, Interactive dialogue on Myanmar, 55th Session of the Human Rights Council, *Myanmar: human rights situation has ‘morphed into a never-ending nightmare,’ says Türk* (1 March 2024), available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

²⁹ Special Rapporteur March 2024 Report, para. 87.

³⁰ Ninth Report, paras. 41–42.

³¹ Ninth Report, para. 57.

rights to which they are entitled, as they have consistently conveyed.³² A group of Rohingya who visited the areas that Myanmar has designated for the pilot repatriation project “have questioned the preparations for repatriation and said they will only go back on a permanent basis if their security is guaranteed and they will be granted citizenship”.³³ One participant in the visit said: “We don’t want to be confined in camps. We want to get back to our land and we will build our own houses there”.³⁴

26. In its Ninth Report, Myanmar claims that it scrutinized a total of 182,790 individuals in Bangladesh out of a total of 828,824 persons.³⁵ That represents only 22% of that total number. Thus, not only are the conditions not conducive to the safe, voluntary, and dignified return of the Rohingya refugees, but Myanmar is also woefully unprepared to even process their names for return.

VI. Change in the Situation in Rakhine State

27. The situation of the Rohingya remaining in Rakhine State has deteriorated significantly, placing them under further risk of acts of genocide. Myanmar is responsible for this worsening situation, as it has purposefully engaged in practices like indiscriminate shelling and forced conscription that have placed Rohingya in the line of fire and inflamed communal tensions against them.

28. Indiscriminate shelling by the Myanmar military has killed Rohingya civilians, as reported on 14 March 2024 by the UN Special Rapporteur:

“The Special Rapporteur has received reports of Rohingya people being killed or injured by Myanmar military shelling. Rohingya leaders report that the Arakan Army has often set up camps inside or beside Rohingya villages, leading to military shelling that

³² See Reply, para. 9.58 (“in the 2019 survey, 93% said they would return ‘[i]n the event that the Myanmar Government would provide Rohingya with their rights’”, quoting Xchange Research on Migration, *The Rohingya Survey 2019*, available at <http://xchange.org/reports/TheRohingyaSurvey2019.html>).

³³ Reuters, *Rohingya say will not go home to Myanmar to be stuck in camps* (6 May 2023), available at <https://www.reuters.com/world/asia-pacific/rohingya-say-they-wont-return-myanmar-be-stuck-camps-2023-05-06/>.

³⁴ *Id.*

³⁵ Ninth Report, paras. 34-35.

endangers Rohingya lives as SAC forces make no effort to distinguish between civilians and military targets.”³⁶

29. The Special Rapporteur also reports that the Myanmar military has forcibly conscripted Rohingya, essentially turning them into “human shields”:

“The Special Rapporteur has received disturbing reports that hundreds of Rohingya men in Rakhine State have been forced to undergo military training, provide labor for military units, and act as human shield. SAC officers have reportedly threatened Rohingya with violence and cuts to food rations and have offered citizenship scrutiny cards to Rohingya in exchange for military services, leveraging the Rohingya’s statelessness and vulnerability against them. The Special Rapporteur is concerned about potential retaliation by the Arakan Army against Rohingya populations, despite the involuntary nature of the Rohingya’s service to SAC forces.”³⁷

30. The UN High Commissioner for Human Rights also noted reports of forced conscription of Rohingya in his 1 March 2024 report to the UN Human Rights Council: “In Rakhine State, we have heard reports that displaced Rohingya youth are being offered money, food and even citizenship if they join the ranks of those who displaced them years ago. They are

³⁶ Special Rapporteur March 2024 Report, para. 41. *See also* Human Rights Watch, *Myanmar: Rohingya at Risk in Rakhine Fighting* (9 February 2024), available at <https://www.hrw.org/news/2024/02/09/myanmar-rohingya-risk-rakhine-fighting>.

³⁷ Special Rapporteur March 2024 Report, para. 41.

threatened with punishment if they refuse.”³⁸ These reports of coerced and forced conscription have been confirmed by Human Rights Watch³⁹ and independent media outlets.⁴⁰

31. On 10 May 2024, the International Crisis Group reported that thousands of Rohingya are now likely forcibly serving in the Myanmar military:

“Desperate to hold on to power, the military regime has sought to foment inter-communal tensions, rallying some Rohingya to its side through a mix of coercion and inducements. ... Although authorities in Myanmar have long persecuted the Rohingya, including by denying citizenship to the vast majority of them and constraining their freedom of movement, the military has no qualms about using them as cannon fodder against the Arakan Army. Facing the prospect of further defeats in Rakhine, the regime has conscripted Rohingya men from villages across the state’s north, where the Rohingya still make up most of the population, and from internment camps near Sittwe, where some 130,000 continue to live after being forcibly displaced following the 2012 violence. As the Arakan Army has ramped up its offensive in Muslim-majority Maungdaw and Buthidaung townships, along the border with Bangladesh, the military has intensified this recruitment. While exact figures are difficult to confirm, especially given the internet outage imposed on

³⁸ Volker Türk, UN High Commissioner for Human Rights, Interactive Dialogue on Myanmar, 55th Session of the Human Rights Council, *Myanmar: human rights situation has ‘morphed into a never-ending nightmare,’ says Turk* (1 March 2024), available at <https://www.ohchr.org/en/statements-and-speeches/2024/03/myanmar-human-rights-situation-has-morphed-never-ending-nightmare>.

³⁹ Human Rights Watch, *Myanmar: Military Forcibly Recruiting Rohingya*, (9 April 2024), available at <https://www.hrw.org/news/2024/04/10/myanmar-military-forcibly-recruiting-rohingya> (“The Myanmar military has abducted and forcibly recruited more than 1,000 Rohingya Muslim men and boys from across Rakhine State since February 2024 ... Rohingya described being picked up in nighttime raids, coerced with false promises of citizenship, and threatened with arrest, abduction, and beatings. The military has been sending Rohingya to abusive training for two weeks, then deploying them. Many have been sent to the front lines in the surging fighting between the junta and the Arakan Army armed group, which broke out in Rakhine State in November 2023, and a number have been killed and injured. ... Officials have also threatened to beat Rohingya to death if they refuse to join or to punish their families if they fled.”).

⁴⁰ See, e.g., Radio Free Asia, *Myanmar junta threatens to block food aid for Rohingyas who refuse military training* (May 29 2024), available at <https://www.rfa.org/english/news/myanmar/junta-block-food-aid-rohingya-recruitment-05292024163347.html> (“Myanmar’s junta is forcibly recruiting Rohingyas in the Rakhine state capital Sittwe and threatening to block monthly international aid supplies if they refuse to join military training”); Radio Free Asia, *Rohingya ordered by Myanmar officer to ‘fight for our faith’* (9 April 2024), available at <https://www.rfa.org/english/news/myanmar/rohingya-conscription-04092024152737.html> (“Given the scant training, once they are sent to the frontlines, the Rohingya fighters appear to be little more than human shields. The Rohingya witness said that those sent off to fight were dying at an extraordinarily high rate.”).

Rakhine State since fighting resumed, thousands of Rohingya are now likely serving in the Myanmar military as militia members.”⁴¹

32. The International Crisis Group further reported that Myanmar has collaborated with ARSA and coerced Rohingya to demonstrate against the Arakan Army to further inflame tensions:

“In an effort to stoke inter-communal tensions to destabilise its opponent, the regime has also coerced Rohingya into staging demonstrations against the Arakan Army and collaborated with Rohingya armed groups, particularly the Arakan Rohingya Salvation Army, the outfit whose attacks provided the pretext for the 2017 crackdown and which the military has long designated a ‘terrorist organisation’.”⁴²

33. Myanmar helpfully provided the Court in its Ninth Report with direct evidence, including photographs, of these coerced demonstrations, to which it misleadingly refers to as “peaceful demonstrations against the AA [Arakan Army] ... organized by Bengali communities in Sittwe and Buthidaung Townships”.⁴³

34. These efforts to stoke communal tensions have succeeded in causing mass violence against and displacement of Rohingya, as reported by the Office of the High Commissioner for Human Rights on 24 May 2024:

“Tens of thousands of civilians have been displaced in recent days by the fighting in Buthidaung and Maungdaw townships. ... Testimonies, satellite images, and online videos and pictures indicate that Buthidaung town has been largely burned. We have received information indicating that the burning started on 17 May, two days after the military had retreated from the town and the Arakan Army claimed to have taken full control. ... In the weeks leading up to the burning of Buthidaung, the UN Human Rights Office has documented renewed attacks on Rohingya civilians by both the Arakan Army and military in northern Rakhine State. As well as aerial strikes, including by unmanned aerial vehicles, we

⁴¹ International Crisis Group, *War in Western Myanmar: Avoiding a Rakhine-Rohingya Conflict* (10 May 2024), available at <https://www.crisisgroup.org/asia/south-east-asia/myanmar/war-western-myanmar-avoidingrakhine-rohingya-conflict>.

⁴² *Id.* See also Radio Free Asia, *Junta forces Rohingyas to protest ethnic rebels in Myanmar’s Rakhine state* (22 April 2024), available at <https://www.rfa.org/english/news/myanmar/protest-04222024154413.html>.

⁴³ Ninth Report, para. 22 & Annex 2.

have received reports of shooting at unarmed fleeing villagers, beheadings, disappearances, burnings of homes. For years, the military has targeted the Rohingya and actively enforced draconian and discriminatory restrictions affecting all aspects of their lives.”⁴⁴

35. In a statement on 23 May 2024, the UN Special Rapporteur highlighted the Tatmadaw’s role in generating this explosive situation: “the military’s role is clear in fostering toxic conditions in Rakhine State, from propaganda fueling ethnic tensions to the forced recruitment of young Rohingya men into the junta’s military”.⁴⁵ The Office of the High Commissioner for Human Rights warned of the risk of a further spread of violence to other parts of Rakhine State where Rohingya are present:

“We see clear and present risks of a serious expansion of violence as the battle for neighbouring Maungdaw town has begun -- where the military maintains outposts and where a large Rohingya community lives, including hundreds of displaced Rohingya who moved to town from villages seeking safety. In this appalling situation, civilians are once more victimized, killed, their properties destroyed and looted, their demands for safety and security ignored, and they are again forced to flee their homes in a recurring nightmare of suffering.”⁴⁶

36. The Gambia is deeply concerned about the elevated risk of acts of genocide against the Rohingya group given these serious changes in the situation in Rakhine State, and in this context notes the potential relevance of Article 76 of the Rules of Court.

* * *

37. For these reasons, it is The Gambia’s view that the Ninth Report provides no reason to conclude that Myanmar is discharging its obligations under paragraphs 86(1), 86(2), or 86(3) of

⁴⁴ Liz Throssell, Spokesperson for the UN High Commissioner for Human Rights, Press Briefing Notes, *Myanmar: Growing human rights crisis in Rakhine state* (24 May 2024), available at <https://www.ohchr.org/en/press-briefing-notes/2024/05/myanmar-growing-human-rights-crisis-rakhine-state>.

⁴⁵ UN Office of the High Commissioner, press release, *Myanmar: Urgent international action crucial to save lives of thousands of Rohingya in Rakhine State says UN Expert* (23 May 2024) available at <https://www.ohchr.org/en/press-releases/2024/05/myanmar-urgent-international-action-crucial-save-lives-thousands-rohingya>.

⁴⁶ Liz Throssell, Spokesperson for the UN High Commissioner for Human Rights, Press Briefing Notes, *Myanmar: Growing human rights crisis in Rakhine state* (24 May 2024), available at <https://www.ohchr.org/en/press-briefing-notes/2024/05/myanmar-growing-human-rights-crisis-rakhine-state>.

the Court's Order of 23 January 2020, or that it has taken the needed steps to depart from its genocidal state policy.

38. 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

6 June 2024