

INTERNATIONAL COURT OF JUSTICE

THE GAMBIA'S OBSERVATIONS ON
MYANMAR'S REPORT OF 23 MAY 2025

REPUBLIC OF THE GAMBIA

v.

REPUBLIC OF THE UNION OF MYANMAR

6 June 2025

1. In accordance with the Court’s letter of 23 May 2025 (ref: 164548), the Republic of the Gambia (“The Gambia”) submits these Observations on the Eleventh Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020 (the “Eleventh 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 Eleventh 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 Eleventh Report.

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

¹ *Eleventh Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (23 May 2025) [**hereinafter** the “Eleventh 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”]; *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”]; *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”]; and *Tenth Report of the Republic of the Union of Myanmar Pursuant to Paragraph 86(4) of the Order of 23 January 2020* (22 November 2024) [**hereinafter** the “Tenth 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 that characterize Myanmar's conduct toward the Rohingya, according to the UN Fact-Finding Mission.³ Myanmar's ongoing failure to remove this system has been repeatedly reported by UN bodies, officials, and experts.

5. The Rohingya who remain in Myanmar continue to suffer from the same discriminatory restrictions described in the UN Special Rapporteur's report of 1 July 2024,⁴ which was quoted at paragraph 6 of The Gambia's Observations on Myanmar's Tenth Report. The UN General Assembly expressed deep concern over those restrictions in its resolution adopted on 17 December 2024:

“Expressing deep concern that, 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 food, health and psychosocial care and education, as well as livelihoods”.⁵

6. As in Myanmar's prior reports,⁶ the Eleventh Report refers to alleged reports submitted by Union Ministries and State and Regional Governments in response to the Presidential Directives issued in April 2020 in purported compliance with the Genocide Convention.⁷ Here, as before, the Report does not make those alleged reports available to the Court for examination.

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 Memorial, paras. 9.1-6.89; Reply, Chapter 5.

⁴ UN Human Rights Council, *Courage amid crisis: gendered impacts of the coup and the pursuit of gender equality in Myanmar*, UN Doc. A/HRC/56/CRP.8 (1 July 2024), para. 164.

⁵ UN General Assembly, *Situation of human rights of Rohingya Muslims and other minorities in Myanmar*, UN Doc. A/Res/79/182 (19 December 2024), preamble.

⁶ See Fifth Report, para. 36; Sixth Report, para. 17; Seventh Report, para. 24; Eighth Report, para. 56; Ninth Report, para. 23; Tenth Report, para. 19.

⁷ Eleventh Report, para. 18.

7. There is no indication that any of Myanmar’s discriminatory policies targeting the Rohingya have been repealed. To the contrary, as explained above, the reports of UN officials and bodies confirm that the enforcement of discriminatory policies continues unabated.

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

8. The Eleventh Report confirms that Myanmar has taken no meaningful actions to hold anyone accountable 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 on any investigations “due to the current security conditions in northern Rakhine State”.⁸ Regarding “Civilian accountability”, Myanmar also admits that the Criminal Investigation and Prosecution Body continues to be unable to operate, and so there has been no progress in any of its cases.⁹

9. Furthermore, 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.¹⁰ The Eleventh 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”.

10. The Gambia notes in this context that in November 2024, the Prosecutor of the International Criminal Court requested an arrest warrant for Senior General Min Aung Hlaing, and that in February 2025, a court in Argentina issued arrest warrants for 25 individuals accused of genocide against the Rohingya, including Senior General Hlaing.¹¹

⁸ Eleventh Report, para. 27.

⁹ Eleventh Report, para. 26.

¹⁰ See Memorial, Chapter 9; Reply, Chapter 7.

¹¹ UN Human Rights Council, *Situation of human rights in Myanmar: Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN Doc. A/HRC/58/64 (14 March 2025), paras. 107, 109 [hereinafter the “Special Rapporteur March 2025 Report”].

III. The Court’s Questions for Myanmar from October 2024

11. As discussed in paragraphs 4-6 of The Gambia’s Observations on Myanmar’s Tenth Report, Myanmar’s answers to the questions posed by the Court in October 2024 confirmed that only existing mechanisms were being used to implement Presidential Directive No. 1/2020 on compliance with the Genocide Convention.¹² Myanmar’s Eleventh Report provides further information demonstrating the inadequacy of those existing mechanisms. Myanmar reported that its sole example of a complaint filed with the Myanmar National Human Rights Commission (“MNHRC”)—a claim for compensation by the wife of a victim of the Inn Din massacre¹³—was “archived and recorded” with no further action because Section 37 of the MNHRC Law prevents the Commission from investigating a matter that had been “finally determined by any court”.¹⁴ In other words, because there was a court-martial judgment regarding that massacre, the MNHRC is statutorily unable to undertake a *civil* investigation for potential compensation. It is worth recalling that in the court-martial, the perpetrators were ultimately pardoned by Senior General Hlaing after serving just a few months of a ten-year prison sentence.¹⁵ So under Myanmar’s existing mechanisms, the criminals—if they are ever investigated and prosecuted—can be pardoned by Senior General Hlaing, robbing the victims of both criminal and civil remedies.

IV. Denial of Humanitarian Assistance and Adequate Healthcare

12. Myanmar denies that it “systematically restrict[s] the access of humanitarian agencies”,¹⁶ but the evidence documenting its restrictions on access is consistent and overwhelming. For example, according to the March 2025 report of the UN Special Rapporteur on the situation of human rights in Myanmar:

¹² Tenth Report, paras. 24, 30, 33.

¹³ Tenth Report, para. 27; Reuters, *Rohingya widow seeks compensation from Myanmar government* (11 December 2020), available at <https://www.reuters.com/article/world/rohingya-widow-seeks-compensation-from-myanmar-government-idUSKBN28L267/>.

¹⁴ Eleventh Report, para. 21.

¹⁵ Memorial, para. 11.21.

¹⁶ Eleventh Report, para. 76.

“Displaced and conflict-affected people in Rakhine State have been left to fend for themselves, almost completely cut off from humanitarian assistance due to armed conflict and the junta’s blockade of aid into Rakhine State. The junta has only granted travel authorizations for Sittwe Township, and even those have been provided only intermittently.”¹⁷

13. An investigative report by Reuters has revealed that “Myanmar’s ruling junta has suppressed information about a severe food crisis gripping the country by pressuring researchers not to collect data about hunger and aid workers not to publish it”.¹⁸ Regarding the humanitarian situation affecting the Rohingya, the investigation found that:

“In Rakhine, home to the persecuted Rohingya Muslim minority, the military in recent months has prevented the delivery of food and medicine to severely malnourished children in an area gripped by cholera, according to aid workers. Hunger in Rakhine is so severe it is partly responsible for an exodus of 70,000 refugees this year to Bangladesh, almost 50% more than previously reported. In November, the United Nations Development Program warned that Rakhine is on the brink of an ‘acute famine,’ putting more than two million people at risk of starvation. Tom Andrews, the U.N.’s special envoy for human rights in Myanmar, told Reuters that the junta is ‘systematically restricting’ humanitarian aid access, contributing to the spread of cholera and other infectious diseases. He said he has received reports that many of the hundreds of thousands of needy people cut off from international assistance ‘are on the brink of starvation.’ The junta’s rule has had a ‘catastrophic impact on agriculture and food supply,’ a spokesperson for the British embassy in Yangon said. ‘People are going hungry daily, children are malnourished, and millions are being plunged into poverty.’”¹⁹

14. The UN High Commissioner for Refugees has determined that “[t]he dire humanitarian situation, exacerbated by funding cuts, is having a devastating impact on the lives of Rohingya, with more and more resorting to dangerous journeys to seek safety, protection and a

¹⁷ Special Rapporteur March 2025 Report, para. 39.

¹⁸ Poppy McPherson, et al., REUTERS, *Myanmar junta intimidates aid groups in effort to hide hunger crisis* (16 Dec. 2024), <https://www.reuters.com/investigates/special-report/famine-data-myanmar/>.

¹⁹ *Id.*

dignified life for themselves and their families”.²⁰ These desperate efforts include dangerous attempts to flee Myanmar by boat, which has led to hundreds of Rohingya deaths:

“Given the grave threats in Rakhine State and desperate conditions in the refugee camps in Bangladesh, an increasing number of Rohingya are deciding to risk their lives to seek shelter and safety elsewhere. According to UN data, more than 7,800 Rohingya attempted to flee Myanmar by boat in 2024, an 80 percent increase on the previous year. At least 657 perished or went missing at sea. Boats of Rohingya refugees reached Indonesia, Malaysia, Thailand and Sri Lanka. Women and children accounted for 74 percent of those making these journeys in 2024. More than 1,000 Rohingya have already attempted sea crossings in early 2025.”²¹

15. Myanmar notes the impact of the March 2025 earthquake on the functions of government, but the UN Special Rapporteur reports that Myanmar has also withheld humanitarian aid in the context of earthquake relief:

“After refusing to curtail its attacks to allow earthquake relief to reach those in need, the junta finally announced last week that it would suspend military operations.... Unfortunately, but unsurprisingly, it has chosen to violate its own ceasefire, launching dozens of new attacks with devastating results. Meanwhile, it continues to obstruct aid from reaching untold numbers of those in desperate need. This is making a terrible situation devastatingly worse”.²²

V. Hate Speech Against the Rohingya

16. The Myanmar military continues to incite violence and hatred against the Rohingya in Rakhine State. Myanmar has failed to rebut the evidence of this incitement presented in The Gambia’s Observations on Myanmar’s Ninth (at paragraphs 27-36) and Tenth (at paragraphs 21-23 and 28-29) Reports. New reporting by the Special Rapporteur adds to this body of evidence:

²⁰ UNHCR, *UNHCR fears extreme desperation led to deaths of 427 Rohingya at sea* (23 May 2025), <https://www.unhcr.org/news/press-releases/unhcr-fears-extreme-desperation-led-deaths-427-rohingya-sea>.

²¹ Special Rapporteur March 2025 Report, para. 43.

²² OHCHR, *UN expert calls for emergency Security Council action to address ceasefire violations after devastating Myanmar earthquake* (10 April 2025), <https://www.ohchr.org/en/press-releases/2025/04/un-expert-calls-emergency-security-council-action-address-ceasefire>.

“The junta has forcibly recruited thousands of Rohingya men and boys, sending them to the front lines of the fight against the Arakan Army and involving them in attacks on Rakhine civilians. Rohingya armed groups—including the Arakan Rohingya Salvation Army (ARSA) and Rohingya Solidarity Organization (RSO)—have cynically aligned with junta forces in attacks on the Arakan Army. They have reportedly been involved in the killing of Rakhine civilians and the systematic burning of Rakhine villages.”²³

17. In response to the many reports of forced conscription of Rohingya by the Myanmar military, Myanmar objects to the characterization of “forced conscription” and states instead that it is applying the People’s Military Service Law “uniformly to all Myanmar nationals with the exception of individuals undergoing verification under the Myanmar citizenship process”.²⁴ First, this seems to concede that Myanmar is engaging in this forced recruitment activity. Second, it demonstrates once again that Myanmar denies the Rohingya the rights of citizenship but nonetheless demands of them submission to the military. Third, Myanmar does not deny that, as part of this forced recruitment process, it is also collaborating with ARSA, the very organization that it claims necessitated the genocidal “clearance operations”.

18. In its Eleventh Report, as in previous reports, Myanmar provides no evidence that any of its alleged broadcasts regarding hate speech include any condemnation of anti-Rohingya hate speech.²⁵

VI. Repatriation and Resettlement

19. Myanmar again admits that “repatriations have yet to commence”.²⁶ Instead, due to the violence that the Myanmar military is inciting and the dire humanitarian situation that it is creating, the opposite is occurring—Rohingya are fleeing once again to Bangladesh:

“Members of the Rohingya community are frequently caught between the parties, who target them with complete impunity. Local sources reported at least 40 civilians were killed and 500 houses

²³ Special Rapporteur March 2025 Report, paras. 31-32.

²⁴ Eleventh Report, para. 8.

²⁵ Eleventh Report, para. 30.

²⁶ Eleventh Report, para. 34.

burned in just one incident in Kyauk Ni Maw fishing village in January of this year. Tens of thousands of Rohingya are estimated to have crossed the border into Bangladesh in 2024, despite the border being formally closed. More than 8,000 fled by sea in 2024, an 80 per cent increase over 2023. At least 650 Rohingya, almost half of them children, died at sea. In Western Rakhine, food production is projected to meet only 20 per cent of local needs by mid-2025. The United Nations Development Programme has warned of an imminent threat of famine and a regression into survival mode.”²⁷

20. It is obvious that conditions remain uncondusive to the safe, voluntary, and dignified return of the Rohingya to their homeland. And even if they were, Myanmar has yet to sufficiently process the names of the refugees who would seek to return to Rakhine State. In its Eleventh Report, Myanmar claims that it scrutinized 259,834 individuals in Bangladesh out of a total of 829,192 persons.²⁸ Assuming that is true, it would represent only 31% of the total number.

VII. Change in the Situation in Rakhine State

21. The situation of the Rohingya remaining in Rakhine State continues to deteriorate. Myanmar is responsible for this worsening situation, as it has purposefully engaged in practices—like indiscriminate shelling, forced conscription, and collaboration with ARSA against the Arakan Army—that have placed Rohingya in the line of fire and inflamed communal tensions against them. As reported by the Special Rapporteur:

“The conflict between the Arakan Army and junta forces in Rakhine State has created a humanitarian crisis that is impacting the lives of both ethnic Rakhine and Rohingya people as well as members of other minorities. The conflict has been joined by Rohingya armed groups, with all parties to the conflict accused of human rights abuses. Rohingya civilians, who have faced decades of violence, persecution and discrimination, are again facing dire threats in their homeland. The junta has been unsparing in its use of violence against civilians in Rakhine State, as it has been elsewhere in Myanmar. Junta shelling and airstrikes on towns and villages have

²⁷ OHCHR, *High Commissioner Türk decries “litany of human suffering” in Myanmar* (28 Feb. 2025), <https://www.ohchr.org/en/statements-and-speeches/2025/02/high-commissioner-turk-decries-litany-human-suffering-myanmar>.

²⁸ Eleventh Report, paras. 35-36.

killed hundreds of people, including Rakhine, Rohingya and other minorities. Meanwhile, junta soldiers are also responsible for massacres, such as the May 2024 slaughter of a least 50 Rakhine villagers in Byain Phyu village near Sittwe. In Rakhine State, junta forces have used civilians as human shields, confiscated food aid, and set up bases in villages, camps for internally displaced people and the compounds of humanitarian organizations.”²⁹

22. The UN High Commissioner for Human Rights similarly reported on 26 May 2025 that:

“Fighting was particularly intense in Rakhine, where the Arakan Army took control of the regional military headquarters and numerous bases, obtaining almost full control of the State. Rohingya civilians were caught between the military and the Arakan Army, regularly facing killings, disappearances, mutilations, arbitrary arrests, torture, destruction of villages, and widespread displacement. There are also reports of involvement of Rohingya armed groups and armed elements in hostilities. At the time of writing, conditions remain uncondusive for safe and sustainable returns of Rohingya to Rakhine.”³⁰

23. 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.

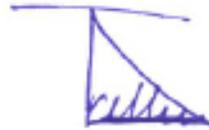
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24. For these reasons, it is The Gambia’s view that the Eleventh Report provides no reason to conclude that Myanmar is discharging its obligations under paragraphs 86(1), 86(2), or 86(3) of the Court’s Order of 23 January 2020, or that it has taken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

²⁹ Special Rapporteur March 2025 Report, paras. 29-31.

³⁰ UN Human Rights Council, *Situation of human rights in Myanmar: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/59/57 (26 May 2025), para. 10.

25. 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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Agent of the Republic of The Gambia

6 June 2025