

CR 2026/2

**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2026

Public sitting

held on Monday 12 January 2026, at 3 p.m., at the Peace Palace,

President Iwasawa presiding,

in the case concerning **Application of the Convention on the Prevention and Punishment
of the Crime of Genocide (The Gambia v. Myanmar: 11 States intervening)**

VERBATIM RECORD

ANNÉE 2026

Audience publique

tenue le lundi 12 janvier 2026, à 15 heures, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

*en l'affaire relative à l'Application de la convention pour la prévention et la répression
du crime de génocide (Gambie c. Myanmar ; 11 États intervenants)*

COMPTE RENDU

Present: President Iwasawa
 Vice-President Sebutinde
 Judges Tomka
 Abraham
 Nolte
 Charlesworth
 Brant
 Gómez Robledo
 Cleveland
 Aurescu
 Tladi
 Hmoud
Judges *ad hoc* Pillay
 Kress

 Registrar Gautier

Présents : M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi
Hmoud, juges
M^{me} Pillay
M. Kress, juges *ad hoc*

M. Gautier, greffier

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The PRESIDENT: Please be seated. The sitting is open.

The Court meets this afternoon to resume hearing the first round of oral argument of The Gambia on the merits in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 11 States intervening)*.

I now invite Mr Reichler to address the Court. You have the floor, Sir.

Mr REICHLER:

V. THE RELIABILITY AND WEIGHT OF THE GAMBIA'S EVIDENCE

1. Mr President, Members of the Court, good afternoon. As adverted this morning, I will address you on the nature and reliability of The Gambia's evidence, and the weight that it merits in your deliberations on whether The Gambia has proven its case that Myanmar committed genocide against the Rohingya people. The evidence itself will be presented by the speakers who follow me. My job is to explain why you should regard this evidence as trustworthy and convincing, and give it the weight that we say it deserves. As a preliminary matter, Mr President, you may recall that I cut my morning speech a bit short in the interest of time. I will be including two excerpts from that speech this afternoon, and for the benefit of the esteemed interpreters, these inserts will come in paragraph 8 of the current speech after the third line, and again after paragraph 36 of this speech.

2. Mr President, our case was filed in November 2019, shortly after the publication of a report, in September of that year, by a United Nations Fact-Finding Mission (FFM), appointed by the Human Rights Council and endorsed by the General Assembly. This was the second such report prepared by the FFM, following its initial report of September 2018. Together, these reports comprise more than 600 pages and provide, *inter alia*, detailed descriptions of the so-called "clearance operations" carried out by Myanmar's army, the Tatmadaw, in northern Rakhine State, where the majority of the Rohingya group lived.

3. In conducting their investigation and producing these reports, the FFM interviewed 1,294 victims, witnesses, perpetrators and former Myanmar officials. They also reviewed satellite imagery, video and photo material, as well as internal documents, laws, policies and directives of Myanmar. Taken together, the FFM's two reports appear to be the most voluminous, comprehensive and detailed investigative reports ever produced by a United Nations Fact-Finding Mission. These

reports confirmed The Gambia's conclusion that Myanmar had committed genocide against the Rohingya Muslim group, and that there was a compelling need to hold Myanmar accountable under the 1948 Convention by bringing these proceedings.

4. After this case was initiated in 2020, the UN Human Rights Council established the Independent Investigative Mission for Myanmar (IIMM) to follow up on the FFM's work. According to its mandate, the IIMM would do so by "collect[ing], consolidat[ing] and analys[ing] evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011 and to prepare files in order to facilitate and expedite fair and independent criminal proceedings"¹. To this date, the IIMM has published six what it calls analytical reports, which are all part of the record of this case, and it has produced 41 witness statements, of which 12 have been introduced into evidence by The Gambia and 18 by Myanmar. Also part of the record is the affidavit of Assistant Secretary-General Nicholas Koumjian, the Head of the IIMM, in which he describes the Mechanism's mandate and the work it has performed to date.

5. The Gambia's evidence also includes reports from other authoritative United Nations bodies, including the Office of the High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in Myanmar, as well as satellite imagery from UNOSAT, the UN Satellite Centre. The Gambia has also submitted no less than 50 reports from experienced and highly credible non-governmental organizations, including the United States Holocaust Memorial Museum, Médecins sans Frontières, Amnesty International, Human Rights Watch, Physicians for Human Rights, Save the Children, the International Crisis Group and Fortify Rights, as well as a report produced in 2018 by the United States Department of State.

6. Not least, The Gambia has submitted 48 signed witness statements from victims and eyewitnesses providing first-hand testimony of the events surrounding Myanmar's "clearance operations" in the Rohingya villages of northern Rakhine State. In 14 of these, the names have been redacted at the request of the witness who expressed fear of reprisal by Myanmar against themselves or family members remaining in the country. Names do appear in the other 34 witness statements. Three of the witnesses will testify here next Wednesday and Thursday.

¹ Affidavit of Nicholas Koumjian (15 November 2025), para. 10.

7. We place special emphasis on the reports by the FFM and the IIMM, including all of the underlying material on which the reports are based. While the rest of our evidence, including the witness testimony, is highly probative and significant in itself, its value also lies in its consistency with, and confirmation of, the findings of the FFM and the IIMM, which serves to underscore and enhance the reliability and weight of the FFM's two comprehensive reports and the IIMM's six analytical reports. All of these reports — from the FFM and the IIMM, from UN OHCHR and the Special Rapporteurs, from the NGOs and the United States — as well as the witness statements, corroborate one another and provide strong assurances of the evidence's reliability and convincing nature.

8. We submit that all of these reports come from disinterested third parties, especially those from United Nations bodies. They should be given significant evidentiary weight by the Court in determining the facts of the case for this reason. Myanmar disagrees. It has three words for all of these reports and statements: “[n]o evidential weight”². They argue that our evidence should be rejected in its entirety by the Court, because none of it arose from judicial proceedings, such as those conducted by the ICTY, cited by the Court in the *Bosnia and Croatia* cases. For Myanmar, the Court cannot rely on the reports of the UN Fact-Finding Mission, or of any other independent and authoritative non-judicial entity, without, in their words, “delegat[ing] its fact-finding” responsibility to such third parties³. Mr President, it does not take a Newton — Professor Michael of Vanderbilt or Sir Isaac of the English Enlightenment — to appreciate the lack of gravity in Myanmar's argument: with the evidence so overwhelmingly against it, Myanmar has no choice but to invent a reason, no matter how unreasonable, to disqualify that evidence. Myanmar has got it completely wrong. In fact, the Court has regularly relied on the reports of independent fact-finding bodies, especially UN bodies, to assist it in its own determination of the facts. To be sure, as its jurisprudence makes clear, it has done so only after carefully scrutinizing these reports to ensure that they meet the standards, articulated in its case law, for establishing their reliability. Doing so here would be consistent with the Court's long-standing practice. Earlier today, I cited some examples, including the Court's

² RM, para. 6.17.

³ RM, para. 6.17.

express reliance on the report of the Secretary-General in the *Bosnia* case, and the consideration it gave to the Special Rapporteur's report in the *Croatia* case.

9. In fact, the Court's jurisprudence is replete with examples of its reliance on independent and authoritative reports from United Nations bodies and from other highly credible third parties, including other international organizations and NGOs, in finding the facts of a particular case. A brief tour through that jurisprudence demonstrates the Court's consistent approach to this kind of evidence.

10. I begin — where I myself began some 40 years ago — with the case of *Nicaragua v. United States of America*. The 1986 Judgment in that case is one of the first in which the Court took the occasion to elaborate generally on its role as finder of fact. The Court made it clear that “its role is not a passive one”: “it has freedom in estimating the value of the various elements of evidence”⁴. The Court identified two forms of evidence which it regarded as “prima facie of superior credibility”: (1) the evidence of a disinterested witness, that is, someone who is not a party; and (2) evidence of a party which is against its own interest⁵.

11. It is the first of these categories that is of most interest to us here: the “superior credibility” of the evidence supplied by a disinterested witness who is not a party to the proceedings. This is the basis for the Court's reliance on evidence from disinterested third parties when the circumstances demonstrate to the Court's satisfaction that such evidence has probative value. Such was the case in *Democratic Republic of the Congo v. Uganda*, in particular with regard to reports by United Nations bodies, specifically, reports by the Secretary-General and the Special Rapporteur, which were submitted by the Democratic Republic of the Congo and objected to by Uganda. The Court determined that it would consider this evidence because it was appropriate to “give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains”⁶. On this basis, it found that the UN reports furnished “sufficient and convincing evidence” to support the Democratic Republic of the Congo's claims regarding the

⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 40, para. 60.

⁵ *Ibid.*, p. 43, para. 69.

⁶ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, p. 201, paras. 60-61.

looting of its natural resources⁷. The Court also placed reliance on the findings of the “Porter Commission”, a judicial-like inquiry conducted under the auspices of the Ugandan Government, to reach its conclusion⁸.

12. Unlike the findings of the Porter Commission, the UN reports were not based on witness testimony taken under oath or subject to cross-examination. In objecting to them, Uganda argued that the United Nations “did not have a mission appropriate to investigations of a specifically legal character”, and that its reports were thus “inappropriate as a form of assistance in any assessment accompanied by judicial rigour”⁹. If this sounds familiar, it is because it is not dissimilar to the argument that Myanmar makes here, in objecting to The Gambia’s evidence. The Court rejected Uganda’s argument, and decided that it would “take into consideration evidence contained in certain United Nations documents to the extent that they are of probative value and are corroborated, if necessary, by other credible sources”¹⁰. In doing so, the Court found that a “coincidence of reports from credible sources” was sufficient to establish that Ugandan forces had committed human rights violations and breaches of international humanitarian law¹¹. In particular, it found that the reports of the Secretary-General and the Special Rapporteur were “consistent in the presentation of facts, support each other and are corroborated by other credible sources” and thus constituted what the Court called “convincing evidence”¹².

13. I come next on the tour to the *Bosnia* case. This morning, I mentioned the Court’s reliance on the Secretary-General’s 113-page report on *The Fall of Srebrenica*, as well as on the findings of the ICTY. In regard to the Secretary-General’s report, the Court determined that “[t]he care taken in preparing the report, its comprehensive sources and the independence of those responsible for its preparation all lend considerable authority to it”¹³. In reaching this determination, the Court noted that the “comprehensive sources” on which the report relied included interviews conducted on a

⁷ *Ibid.*, p. 249, para. 237. See also *ibid.*, p. 253, para. 250.

⁸ *Ibid.*, pp. 251-252, paras. 242, 246.

⁹ *Ibid.*, p. 235, para. 191.

¹⁰ *Ibid.*, p. 239, para. 205. See also *ibid.*, p. 239, para. 206.

¹¹ *Ibid.*, p. 239, para. 207. See also *ibid.*, p. 241, para. 211.

¹² *Ibid.*, p. 241, paras. 209-210.

¹³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 137, para. 230.

“non-attribution” basis with approximately 80 people who had knowledge of the events; on accounts from survivors; on satellite imagery; on other UN reports; on information from governmental sources and NGOs; on information from press reports; and on forensic evidence from the ICTY¹⁴.

14. In the *Croatia* case, as I also mentioned this morning, the Court determined that a report by the UN Special Rapporteur, submitted by Serbia, should be given “evidential weight” owing to the “independent status of its author” and the fact that it was “prepared at the request of organs of the United Nations, for purposes of the exercise of their functions”¹⁵.

15. More recently, in *Ukraine v. Russia*, where Ukraine submitted reports by the Secretary-General, the High Commissioner for Human Rights and the CERD Committee (Committee on the Elimination of Racial Discrimination) to prove that Russia discriminated against Crimean Tartars in occupied Ukrainian territory, the Court “attribute[d] considerable weight to reports of several United Nations organs and monitoring bodies” as well as a report by the Council of Europe¹⁶. In its 2024 Judgment in that case, the Court explained that it “generally ascribes particular weight to reports by international organizations that are specifically mandated to monitor the situation in a given area”¹⁷.

16. The Court has taken a similar approach in its advisory proceedings. Although these are not contentious cases, the Court’s advisory opinions are authoritative statements of international law, and the factual predicates for its rulings are often critical. There is no reason to assume that the Court has employed a lower threshold of reliability in assessing the evidence in such cases; in fact, its jurisprudence tells us that it employs the same principles as in contentious cases. In its Opinion on the *Legality of Israel’s Policies and Practices in the Occupied Palestinian Territory*, for example, the Court relied on various reports and statements by UN organs and bodies, including the Secretary-General, the High Commissioner for Human Rights, the Independent International Commission of Inquiry, and the Special Rapporteur for the Occupied Palestinian Territory, explaining that “[t]hese

¹⁴ *Ibid.*, pp. 135-136, paras. 228-229.

¹⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), pp. 133-134, paras. 458-459.

¹⁶ *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, I.C.J. Reports 2024 (I), p. 171, para. 238.

¹⁷ *Ibid.*, p. 165, para. 215.

reports rely on a variety of sources, including first-hand accounts, to set out a detailed factual analysis of Israel's settlement policy"¹⁸.

17. In the same 2024 Advisory Opinion, the Court cited as precedent for its reliance on these UN reports its practice in contentious cases, including, expressly, the *Democratic Republic of the Congo*, *Bosnia* and *Ukraine* cases. Consistent with its approach in those cases, the Court explained that, in determining the *probative value* of such third-party evidence, it takes into account: "(1) the source of the item of evidence (for instance partisan, or neutral), (2) the process by which it has been generated (for instance an anonymous press report or the product of a careful court or court-like process), and (3) the quality or character of the item (such as statements against interest, and agreed or uncontested facts)"¹⁹. With regard to the *weight* to be given to such evidence, the Court considers: "[1] the care taken in preparing a report, [2] the comprehensiveness of its sources and [3] the independence of those responsible for preparing it"²⁰.

18. Applying these criteria to the evidence submitted by The Gambia, especially the FFM and the IIMM reports, there can be no doubt of their probative value, or that they merit great evidentiary weight. *First*, let us consider the independence, neutrality and lack of partisanship of those responsible for preparing these reports. The FFM was an independent body established by the Human Rights Council, composed of three prominent individuals distinguished by their experience and neutrality: Marzuki Darusman of Indonesia as chairperson, and Radhika Coomaraswamy of Sri Lanka and Christopher Sidoti of Australia as members. A secretariat was recruited by the Office of the United Nations High Commissioner for Human Rights. The core team was composed of a co-ordinator, a fact-finding team leader and five human rights officers, a legal adviser, a military adviser, a sexual and gender-based violence adviser, a security officer, and two language assistants, in addition to administrative support²¹. The FFM's members and staff were mandated to employ only

¹⁸ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 113.

¹⁹ *Ibid.*, p. 26, para. 76 (quoting *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Judgment, I.C.J. Reports 2024 (I), p. 54, para. 175.

²⁰ *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion of 19 July 2024*, para. 76.

²¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 1. MG, Vol. II, Annex 40.

the “best practices established for . . . fact-finding missions” as detailed in the OHCHR’s published *Guidance and Practice for Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law*²². These best practices require strict adherence “to the principles of ‘do no harm’, independence, impartiality, objectivity, transparency and integrity”²³. Myanmar has produced no evidence that the Mission failed to adhere to these principles.

19. *Second*, in regard to the comprehensiveness of the FFM’s sources, as I have already mentioned, the sources relied upon by the Mission included: confidential interviews conducted by the Mission or its staff with more than 1,200 victims, witnesses, perpetrators and former Myanmar officials with direct knowledge of the issues; satellite imagery; authenticated video and photo material; publicly available admissions of relevant facts by Myanmar officials; laws, policies and directives of Myanmar; internal Myanmar documents; and statistics, surveys and other quantitative information generated by Myanmar or the United Nations²⁴.

20. *Third*, the FFM’s reports were prepared with diligence and care. As stated in the 2018 Report, the FFM carefully assessed the “reliability and credibility of each source” and “considered the information’s relevance to the fact-finding work, its internal consistency and coherence, and its consistency with and corroboration by other information, among other factors”²⁵. In particular: “Individual cases or incidents contained in the report are based on at least one credible source of first-hand information, which was independently corroborated by at least one other credible source of information. Specific major incidents, such as those set out in Chapter V on Rakhine State, are based on multiple accounts from eyewitnesses and victims, allowing for in-depth fact-finding and detailed event reconstruction. Where the report describes patterns of conduct, these are based on multiple credible sources of first-hand information, which are consistent with and corroborated by the overall body of credible information collected”²⁶.

²² UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 9.

²³ *Ibid.*, paras. 8, 10.

²⁴ *Ibid.*, para. 13.

²⁵ *Ibid.*, paras. 16-17.

²⁶ *Ibid.*, para. 11.

21. For its 2018 report alone, the FFM “conducted 875 in-depth interviews with victims and eyewitnesses”, in Bangladesh, Indonesia, Malaysia, Thailand and the United Kingdom — taking care to “diversify its sources of information” by interviewing “individuals from different ethnic and religious backgrounds” and “a number of members of non-State armed groups, as well as some former officials of Myanmar State institutions”²⁷. For its 2019 report, “the mission conducted more than 400 interviews with victims and eyewitnesses”²⁸. When selecting witnesses, the FFM employed “various methodological approaches”, including random selection (e.g. “visiting different areas of a refugee camp or different refugee centres without pre-arrangement”), prioritizing those “most recently arrived from Myanmar to ensure the receipt of ‘fresh’ information”, “target[ing] interviewees to corroborate specific incidents or patterns”, and striving “to only speak with persons who had not previously spoken with any other organization or media outlet”²⁹. To further ensure the reliability of the evidence obtained from witnesses, the FFM factored in “the witness’ political and personal interests, potential biases and past record of reliability, where known; the witness’ apparent capacity to recall events correctly, considering his or her age, trauma, how far back the events occurred, and so on; the position of the witness in relation to the subject of the information; where and how the witness obtained the information; and the reasons for which the witness provided the information”³⁰.

22. Myanmar does not, and cannot, dispute any of this. It cannot disprove the independence of the FFM, the comprehensiveness of its sources of evidence, or the meticulous care it displayed in its collection of evidence and the preparation of its reports. Myanmar does not, and cannot, tell us anything that would diminish the high probative value or the significant evidential weight to which these reports are entitled.

23. Likewise, for the IIMM’s reports. The IIMM, too, is an independent body created by the UN Human Rights Council. Its investigations are carried out by experienced investigators, analysts and legal officers under the strategic direction and oversight of an Assistant-Secretary-General,

²⁷ *Ibid.*, paras. 8, 19.

²⁸ UN Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, UN doc. A/HRC/42/50 (8 Aug. 2019), para. 36. MG, Vol. III, Annex 47.

²⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 20. MG, Vol. II, Annex 40.

³⁰ *Ibid.*, para. 16.

Nicholas Koumjian³¹. Thus far, the IIMM has published six reports, (i) on Myanmar's propagation of anti-Rohingya hate speech on Facebook, (ii) on its encouragement of Buddhist settlement into Rakhine State to replace or dilute the Rohingya population, (iii) on its refusal to investigate and punish gender-based crimes against the Rohingya, (iv) on ARSA's weapons possession and use, (v) on Myanmar's abusive detention of Rohingya in Buthidaung prison, and (vi) on its destruction of Rohingya villages. All six reports reflect the due care attendant to best practices in international investigations. They plainly meet the Court's standards — the independence of the authors, the comprehensiveness of their sources and the care with which they were prepared — for giving significant evidentiary weight to UN investigative reports.

24. Mr President, we do not suggest that the Court should accept and attribute the weight they deserve to the FFM reports and the IIMM reports relied on by The Gambia simply because they were produced by United Nations bodies. The Court is the ultimate finder of facts and its role is not a passive one; and it must determine for itself, in the exercise of its discretion, the reliability and weight of the evidence submitted to it by the Parties. Our contention is that, applying the well-established criteria for evaluating evidence emanating from third-party sources, as set out consistently in the Court's jurisprudence, it is inevitable that the FFM and IIMM reports be given great evidentiary weight.

25. We note that the joint interveners — Germany, France, Canada, Denmark, the Netherlands and the United Kingdom — have expressed the same view:

“Specifically, certain sources must be regarded as having particular probative value in establishing the elements required to demonstrate the existence of genocide, including the facts that allow the Court to draw inferences as to specific intent. In this regard, the Declarants submit that reports generated by the United Nations, such as reports produced by fact finding missions, commissions of inquiry, and reports that the Secretary-General of the United Nations may prepare for the United Nations Security Council or the General Assembly, can have special importance. Indeed, such reports can be particularly credible because they emanate from a ‘disinterested witness’”³².

26. Myanmar alone disagrees. As I said earlier, they take the extreme position that the FFM and IIMM reports have “no evidential weight” whatsoever. Zero, nothing, *rien*. Of course, they take

³¹ Affidavit of Nicholas Koumjian (15 Nov. 2025), para. 16.

³² Joint Declaration of intervention of Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands, and the United Kingdom of Great Britain and Northern Ireland Pursuant to Article 63 of the Statute of the International Court of Justice (15 November 2023), para. 76.

this position! They know that the two FFM and six IIMM reports provide compelling evidence that Myanmar committed the *actus reus* of genocide, and acted with genocidal intent, against the Rohingya group. Their only hope of avoiding an adverse judgment by the Court is to somehow disqualify that evidence. To that end, Myanmar takes three different swings at the FFM and IIMM reports. Every one of them misses by a wide margin.

27. *First*, Myanmar argues that these reports are “incomplete and one-sided” because Myanmar itself did not participate in the investigative process³³. Now, that is far from a convincing argument, but we cannot help but be impressed by its audacity. It is true that Myanmar did not participate in the investigative process; but let us not forget that this was because Myanmar refused to co-operate with the United Nations in any way, including by refusing to allow any FFM or IIMM personnel entry into its territory, or to accommodate any of their requests for information or access to witnesses³⁴. In other words, Myanmar now invokes its own refusal to co-operate to undermine the value of the reports. Yet, it is undisputed that the FFM reached out to Myanmar on at least five occasions to request in-country access, and it submitted to Myanmar a detailed list of questions to obtain information and documents, and that Myanmar refused to respond to any of these overtures³⁵. It is also uncontested that prior to the publication of each report, in 2018 and again in 2019, the FFM shared its draft findings and recommendations with Myanmar, offering an opportunity to comment or make factual corrections, and that, again, Myanmar made no response³⁶.

28. Similarly, as Assistant Secretary-General Koumjian attests, as of 17 November 2025, the IIMM had issued 26 requests for information to the Government of Myanmar, “including information that the Myanmar authorities may deem to be ‘potentially exonerating’, such as information on

³³ RM, para. 6.5.

³⁴ Affidavit of Nicholas Koumjian (15 November 2025), para. 22; UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 3. MG, Vol. II, Annex 40; 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. 29. MG, Vol. III, Annex 49.

³⁵ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 3. MG, Vol. II, Annex 40; UN Human Rights Council, *Report of the independent international fact-finding mission on Myanmar*, UN doc. A/HRC/42/50 (8 August 2019), para. 4. MG, Vol. III, Annex 47.

³⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 3. MG, Vol. II, Annex 40; 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. 29. MG, Vol. III, Annex 49.

alleged attacks by ARSA”. However, “[t]he Myanmar authorities have not responded to any of these requests”³⁷.

29. How can they now complain to the Court about allegedly one-sided reports when they have been given multiple opportunities to present their side and review the materials, but they refused to do so? In any event, both the FFM and the IIMM have attempted in good faith to obtain evidence from sources close to Myanmar that might be supportive of Myanmar’s position, including evidence on the nature of the threat supposedly posed by ARSA. And they have included in their reports Myanmar’s public statements explaining the objectives and execution of the “clearance operations” in the Rohingya villages of northern Rakhine State and denying that their intention was to destroy the Rohingya group.

30. Myanmar’s refusal to co-operate with these investigations cannot be a basis for disqualifying or diminishing reports by United Nations bodies that satisfy all the requirements set by the Court for reliability and evidentiary weight. Imagine the precedent this would set if it were otherwise! States accused of serious breaches of international law would have a free pass to avoid accountability simply by refusing to allow international investigative missions into the country and rejecting their requests for co-operation. This appears to have been Myanmar’s strategy in this case. It should not be rewarded for its obstructive behaviour.

31. Myanmar’s second argument is that the Court’s reliance on the FFM, IIMM and other reports submitted by The Gambia would be, what they call, an “abnegation” of its judicial function, because it would amount to a “delegat[ion]” of its fact-finding responsibilities to other, non-judicial entities³⁸. They are wrong about that, too. We say, when the Court receives, reviews and decides to accord evidentiary weight to the report of an independent and authoritative United Nations body, that is a legitimate *exercise* of its fact-finding responsibility, not an *abnegation*. We are supported in this by the long line of cases I reviewed earlier, in each of which the Court determined, upon its own analysis and according to its own criteria, that such reports were reliable and should be accorded due evidentiary weight.

³⁷ Affidavit of Nicholas Koumjian (15 November 2025), para. 22.

³⁸ RM, para. 6.17.

32. Myanmar reads these cases selectively and draws a different — we say erroneous — conclusion. They say the case law establishes that the Court may rely on third-party findings only when they result from judicial proceedings, like the findings of the ICTY cited by the Court in *Bosnia and Croatia*, or from judicial-like proceedings like the findings of the Porter Commission in *Democratic Republic of the Congo v. Uganda*. They completely ignore the Court’s reliance on the Secretary-General’s report in *Bosnia*, the Special Rapporteur’s report in *Croatia* and the reports of the Secretary-General and the Special Rapporteur, among others, in *Democratic Republic of the Congo v. Uganda*. Nor do they have an answer for the Court’s reliance on the reports of the High Commissioner for Human Rights and the CERD Committee in *Ukraine v. Russia*.

33. Myanmar’s argument not only runs counter to the Court’s jurisprudence and long-standing practice. It also misperceives how the Court necessarily conducts its business. The mission of the Court is to resolve disputes peacefully between States in accordance with international law. It is not to determine guilt or innocence of individual perpetrators or impose sentence on them. That is the role of the International Criminal Court, which, as a criminal court empowered to deprive the accused of their liberty and property, must afford them their due process rights to directly confront and cross-examine the witnesses against them. Those are not the rules of procedure that apply here, and they never have been. Of course, respondent States are entitled to cross-examine the witnesses who do appear in the Court to testify against them. But there is no right to exclude evidence obtained from witnesses by authoritative and independent entities, especially UN bodies, whose reports the Court, in the exercise of its judicial function, determines are entitled to evidentiary weight.

34. It would be impractical and serve no higher purpose for the rules of criminal procedure to be imported into the ICJ. In this case, it is not disputed that the FFM reached its factual findings after interviewing more than 1,200 victims and witnesses, from scores of Rohingya villages where the “clearance operations” were carried out. If the Court could not make findings of fact without hearing the testimony of these witnesses first-hand in the Peace Palace, in a situation where there had been no prior prosecutions by a war crimes’ tribunal, how many of them would it have to hear to find that the “clearance operations” were carried out with a similar *modus operandi* in at least 54 different villages, as the Fact-Finding Mission concluded? That extreme brutality and sexual violence were

inflicted in all of these villages? That nearly 200 Rohingya villages were burned to the ground by the Tatmadaw?

35. From how many witnesses would the Court have to hear to determine what happened in a single one of these villages, let alone scores of them? In cases of mass atrocity or injury, be it by genocide, war crimes, crimes against humanity, or cross-border environmental catastrophe, hearings involving examination, cross-examination and redirect examination of the requisite number of witnesses would occupy the Court, full-time, for several months, at least.

36. The effect of Myanmar's effort to put a straitjacket on the Court in regard to its ability to rely on investigative reports by United Nations and other authoritative bodies would be to make it all but impossible for the Court to hold a State accountable under the Genocide Convention, absent the State's prior submission to the jurisdiction of a war crimes' tribunal, an effect which Myanmar apparently does not find inconvenient. I think we can safely assume that it has no intention of subjecting Senior General Aung Hlaing and his accomplices to such proceedings. There is no benefit in the approach Myanmar urges you to take. It is true that this Court is, uniquely, a Court of first as well as last instance. But why shouldn't the Court, in its wisdom and when the circumstances warrant, continue to rely on convincing evidence responsibly and reliably obtained by independent, impartial and authoritative third-party entities — especially other organs of the United Nations — in making its findings of fact? If the Court determines, to quote from its July 2024 Advisory Opinion, that “the care taken in preparing a report, the comprehensiveness of its sources and the independence of those responsible for preparing it” are such as to ensure reliability and to warrant evidentiary weight, why should the Court be precluded from treating it as such? We say, far from an abnegation of its responsibility, this is an entirely proper and necessary exercise of that responsibility, and, in many cases, the only practical way in which its job of fact-finding can be done.

37. Mr President, Myanmar is undoubtedly aware of the weakness of its attempt to turn the ICJ into the ICC, and the improbability of your willingness to redefine your mandate. That is why they expend so many pages of their written pleadings purporting to find technical flaws in the UN reports. In doing so, they give nitpicking a new meaning. For the most part, these alleged “flaws” are not even nits, but micro-nits, or even nano-nits, where they exist at all. None of them can detract from the reliability of The Gambia's evidence, or the evidentiary weight to which it is entitled.

38. For example, Myanmar complains that the FFM's reports fail to set out their methods of work³⁹. But, in fact, the reports have entire sections dedicated precisely to that purpose and they confirm that, in carrying out their investigation, the Mission's members and staff scrupulously employed and adhered to the "best practices" spelled out in the OHCHR's guidelines⁴⁰.

39. Myanmar also claims that the interviews of victims and witnesses conducted by the FFM "appear to have been cursory"⁴¹. How do they know this if they refused to participate in the interviews? The answer is, they speculate. They say, for example: "Given the very small size of the FFM's staff, it is apparent that the interviews of 875 people in that very short space of time can hardly have been 'in-depth', and that the process can hardly have been careful and detailed"⁴². This is pure conjecture, and it is belied by the facts. According to its 2018 report, the Mission deployed to the refugee camps in Bangladesh in September 2017, immediately after the "clearance operations" had been conducted, and interviewed many of the newly arrived survivors who had witnessed them; further interviews were conducted during numerous additional field missions between September 2017 and July 2018, which lasted many weeks⁴³. For the 2019 report, the Mission made six field missions to collect evidence between February and June 2019⁴⁴. There is no reason to believe that the amount of time spent, or the number of staff involved, were inadequate to the task at hand. Again, both reports confirm that the Mission's interviews were conducted in conformity with the OHCHR's "best practices"⁴⁵.

40. Myanmar also attempts to undermine the probative value of the 2018 and 2019 reports on the further speculation that the victims and witnesses interviewed by the FFM were fearful of ARSA,

³⁹ CMM, para. 6.36.

⁴⁰ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), paras. 8-32. MG, Vol. II, Annex 40; UN Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5 (16 Sept. 2019), paras. 31-35. MG, Vol. III, Annex 49.

⁴¹ RM, para. 6.20.

⁴² RM, para. 6.20.

⁴³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 23. MG, Vol. II, Annex 40.

⁴⁴ UN Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5 (16 Sept. 2019), para. 34. MG, Vol. III, Annex 49.

⁴⁵ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 8. MG, Vol. II, Annex 40.

and subject to its influence⁴⁶. The FFM did not ignore this possibility. That is why, as stated in its 2018 report, it took particular care not to take the interviewees' statements at face value, but to take into account "the witness' political and personal interests, potential biases and past record of reliability" as well as "where and how the witness obtained the information" he or she was providing, and "the reasons for which the witness provided the information"⁴⁷. Myanmar offers no evidence — none — that any of the witnesses interviewed by the FFM was, in fact, influenced by ARSA.

41. Myanmar has much less to say about the six IIMM reports. It argues only that they are "not the 'best evidence' of the facts stated in them" because they provide "second-hand descriptions of the evidence"⁴⁸. But this cannot be a reason for distrusting the reports. All investigative reports, including those on which the Court has previously relied, are necessarily "second-hand" accounts since the investigators who author the report are not themselves eyewitnesses to the events that are described. What matters, as the Court has explained, is their independence, the comprehensiveness of their sources, and the care they have taken in investigating and reporting the facts. Myanmar has nothing to say about any of this in respect of the IIMM's reports.

42. Instead of attacking those reports, Myanmar criticizes The Gambia for not placing more reliance on them in our written pleadings, suggesting that our alleged omission constitutes an admission that they are not supportive of our claims. It is "inexplicable", they claim, that "The Gambia has not sought to base its claim on materials provided by the IIMM"⁴⁹. Frankly, we do not know what they are talking about. First, all six of the IIMM's reports are very supportive of our case. In fact, we annexed five of these reports to our Reply and quoted extensively from them within it. The only one we did not address was published in September 2025, 16 months after our Reply was submitted. You will hear about that one, too, from my colleagues.

43. I turn next, and more briefly, to the evidence contained in the reports of non-governmental organizations. The Gambia has submitted 50 such reports, including from leading human rights organizations with well-earned reputations for expertise, independence and objectivity, some of

⁴⁶ RM, para. 6.26.

⁴⁷ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 16. MG, Vol. II, Annex 40.

⁴⁸ RM, para. 7.153.

⁴⁹ RM, para. 6.13.

which I identified earlier in my speech. The Gambia does not rely on these reports as its principal sources of evidence, but — consistent with the Court’s jurisprudence — as material that corroborates and confirms the evidence contained in the two reports by the Fact-Finding Mission and the six reports by the IIMM. The Gambia considers it impressive that these reports, more than four dozen of them, fully support the factual findings and the conclusions reached by the two United Nations bodies.

44. Myanmar cannot credibly object to giving them evidentiary weight, because it, too, has offered into evidence certain NGO reports, including from two of the same sources relied on by The Gambia: Amnesty International and the International Crisis Group. Myanmar relies on their reports to support its narrative on ARSA. We, of course, do not object to their reliance on these reports, although we read them differently. In fact, we ourselves have called attention to the following passage from the Amnesty International report that Myanmar submitted as Annex 268 to its Counter-Memorial:

“Myanmar’s security forces, and in particular the military, responded to the attacks and subsequent clashes with an unlawful and grossly disproportionate campaign of violence marked by killings, rape and other sexual violence, torture, village burning, forced starvation tactics, and other human rights violations and crimes under international law, all of which has been well documented by Amnesty International and others. The military’s attacks, which targeted the entire Rohingya population living in northern Rakhine State, have been both widespread and systematic . . .

Nothing can justify such violations”⁵⁰.

45. This, I emphasize, is from their evidence. I come next, and last, to the probative value of the witness statements that have been submitted. There should be no debate about the value of the witness statements obtained by the IIMM, which it shared with both Parties. As I pointed out earlier, there were 41 such testimonies, of which The Gambia has submitted 12 and Myanmar has introduced 18. The IIMM redacted the names of these witnesses for their protection. Nevertheless, both Parties rely on them, thereby waiving any objection they might have to the Court’s reliance on witness statements that have been redacted in this manner and for this purpose.

46. As previously noted, The Gambia has also submitted another 48 signed witness statements, 34 in unredacted form and 14 with the names and other identifying information redacted at the request

⁵⁰ Amnesty International, *Myanmar: New Evidence Reveals Rohingya Armed Group Massacred Scores in Rakhine State* (22 May 2018), pp. 7-8. CMM, Vol. VI, Annex 268.

of the witnesses for their own protection. Notably, none of the statements from Rohingya victims or witnesses were obtained by The Gambia. All were obtained by non-parties to these proceedings. Forty-four of the statements submitted by The Gambia were obtained by an independent organization, Legal Action Worldwide, which relied on a team of senior criminal investigators, including members of the Royal Canadian Mounted Police. The Gambia submits that these statements, which further corroborate the findings of the UN Fact-Finding Mission and the IIMM, have significant probative value and are entitled to evidentiary weight. As the Court said in *Croatia*: “Although some of these statements were made several years after the events in question, they are by victims or eyewitnesses of acts of ill-treatment, torture and rape. The Court gives evidential weight to these statements”⁵¹.

47. Despite this, Myanmar objects to them. It objects to all of the witness statements where the names have been redacted, except, of course, for those on which Myanmar itself relies. In this regard, we refer again to what the Court said about unsigned statements in *Croatia*:

“[T]he absence of signatures of the persons who made the statements or took them does not in principle exclude these documents. However, the Court has to ensure that documents, which purport to contain the statements of individuals who are not called to give oral testimony, faithfully record the evidence actually given by those individuals.”⁵²

That assurance exists here because the statements are, in fact, signed by the witnesses, with some of the signatures subsequently redacted, and vouched for by the entities that took the statements.

48. Myanmar objects, in particular, to the statements obtained by the Royal Canadian Mounted Police (RCMP) — on the ground that Canada is biased against Myanmar, due to its intervention in these proceedings, and the RCMP must therefore be regarded as partisan rather than neutral. According to Myanmar, this requires that the statements it obtained be disregarded by the Court because “Canada overtly sides with The Gambia against Myanmar”⁵³.

49. This is a rather broad definition of partisan — too broad in our estimation. But if witness statements obtained by a party or an intervener are to be disregarded, then the 28 witness statements obtained by Myanmar itself for the purposes of this case, and submitted as annexes to its Counter-

⁵¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), p. 100, para. 304.

⁵² *Ibid.*, p. 77, para. 196.

⁵³ RM, para. 7.76.

Memorial and Rejoinder, would certainly fall into that category. As the Court said in *Bosnia*: it “will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source”⁵⁴. In *Croatia*, the Court declined to give evidential weight to statements obtained by the Croatian police where “the words used appear to be those of the police officers themselves”⁵⁵. Are written statements given under the watchful eye of the Tatmadaw any more reliable? The question answers itself. In contrast to the witness statements obtained by Myanmar, as I have indicated, none of the statements submitted by The Gambia were obtained by The Gambia itself.

50. Mr President, Members of the Court, I have given you the reasons why we believe you should consider The Gambia’s evidence to be reliable and to merit great evidentiary weight. I trust that this will be of assistance to you as you hear and consider that evidence in the course of these proceedings, commencing with the next speaker. I thank you again for your kind courtesy and patient attention, especially for the second time in the same day, and I ask that you please call my esteemed colleague, Ms Pasipanodya, to the podium — unless, Mr President, you believe it would be appropriate to take the afternoon break at this time.

The PRESIDENT: I thank Mr Reichler for his statement. I now invite Ms Pasipanodya to address the Court. You have the floor, Madam.

Ms PASIPANODYA:

VI. MYANMAR’S DISCRIMINATORY LAWS AND POLICIES TO REDUCE THE PROPORTION OF ROHINGYA IN RAKHINE STATE REVEAL ITS GENOCIDAL INTENT

1. Introduction

1. Mr President, distinguished Members of the Court, it is a privilege to appear before you on behalf of The Gambia. For decades, Myanmar built a discriminatory State system that denationalized the Rohingya, suppressed births and marriages, and made life impossible through segregation,

⁵⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 130, para. 213 (quoting *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 41, para. 64).

⁵⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, I.C.J. Reports 2015 (I), p. 78, para. 198.

confinement and deprivation. That system did not arise by accident; it was designed to reduce the Rohingya population in Rakhine State and, ultimately, facilitate their destruction as a group. As Raphael Lemkin explained, “genocide” is

“a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”⁵⁶

2. That is precisely what Myanmar has done to the Rohingya. I will show that Myanmar built, and then tightened, a comprehensive legal, administrative and coercive system to reduce and eliminate the Rohingya in Rakhine State. I will highlight five steps in that system. *First*, in the years following independence, Myanmar recognized the Rohingya as citizens, officeholders and participants in public life (Section 2). *Second*, after the 1962 military coup, the State recast the nation along racial lines, culminating in the 1982 Citizenship Law, which excluded the Rohingya from the so-called “national races” and laid the legal groundwork for mass denationalization (Section 3). *Third*, the 1982 Law was implemented to strip the Rohingya of their rights — through discriminatory registration, arbitrary decision-making, and violent citizenship “verification” campaigns expelling hundreds of thousands of Rohingya from Myanmar (Section 4). *Fourth*, from 1993 onward, Myanmar sought to suppress Rohingya births and family life through marriage permits, child limits and denial of birth registration (Section 5). *Fifth*, beginning in 1997, Myanmar segregated and confined the Rohingya in camps and ghettos, severely restricted movement, and deprived them of food and healthcare (Section 6).

3. As the UN Fact-Finding Mission observed, taken together, these discriminatory policies indicate Myanmar’s genocidal intent⁵⁷.

⁵⁶ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace 1944), p. 79. MG, Vol. VIII, Annex 208; MG, para. 5.5.

⁵⁷ See UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), paras. 1425-1427, MG, Vol. II, Annex 40.

2. The Rohingya belonged in Burmese society

4. Mr President, Myanmar denies the Rohingya's very existence as a constituent group of its nation. It has steadfastly refused to refer to them by name throughout the many years of this proceeding. That is consistent with a 1993 statement by its Permanent Mission to the United Nations:

“The so-called ‘Rohingyas’ never belonged to the national races or national racial groups of Myanmar. *The Rohingyas do not exist in Myanmar either historically, politically or legally.* Nor do they in any way represent any segment of the population in Myanmar including those professing the Islamic faith.”⁵⁸

5. But as Mr Suleman made clear this morning, the historical record shows otherwise. Myanmar's first Prime Minister stated in 1954 that “[l]ocated to the southwest of the Union [Burma] is ‘Rakhine’ . . . There are two townships [there]: Maungdaw and Buthidaung. The majority of the *nationals* residing in those townships are Rohingya who are Muslims.”⁵⁹

6. The Rohingya were an integral part of Burmese society. Accordingly, two Rohingya served on the country's first governing body, the Constituent Assembly, in 1947. In the photo on the screen, you see Rohingya leader Mr Gaffar with Burma's Prime Minister U Nu and Burma's founding father, Mr Aung San.

7. Documentation collected by the United States Holocaust Memorial Museum on its online exhibition entitled “Burma's Path to Genocide” reflects the integration of the Rohingya in Burmese public life. The Rohingya held elected office, taught in schools, served as police officers, judges, doctors, and worked as farmers and fishers.

8. In this 1950s photo before you now, the Rohingya Students Association of Rangoon University appears with Mr Raschid, a cabinet minister and founding father of Burma.

⁵⁸ UN Commission on Human Rights, *Report submitted by Mr Angelo Vidal d'Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986*, UN doc. E/CN.4/1993/62 (6 Jan. 1993), para. 46 (emphasis added), MG, Vol. II, Annex 6.

⁵⁹ United States Holocaust Memorial Museum, “Burma's Path to Genocide”, Chap. 1 “Belonging”, available at <https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-1/prime-minister-recognizes-rohingya> (emphasis added). MG, para. 6.25, fn. 386; RG, paras. 5.7, 5.24, fns. 309, 310, 348.

9. In the next, you see Irshad, now over 100 years old and living in a refugee camp in Bangladesh. He served as a Rohingya radio broadcaster in the 1960s, when Burma Broadcasting Services provided Rohingya-language programming alongside airtime for other ethnic groups⁶⁰.

10. And in the next, you see examples of National Registration Cards that the Rohingya held, just like other nationals. As Rohingya former Member of Parliament U Kyaw Min explains, holders of those cards “had the right to possess immovable properties, the right to public jobs, insurance, social security and professional educations”⁶¹. He also recounts how Rohingya representatives were invited to Union Day Celebrations as part of the “Union races”⁶².

11. In sum, the Rohingya community had a recognized place in Myanmar’s post-independence nationhood. The UN Fact-Finding Mission confirms that “most Muslims who then lived in what currently constitutes Rakhine State were therefore included, whether their ancestry could be traced to pre-colonial times, or whether they were colonial-era migrants from the region”⁶³.

3. Denationalisation and exclusion of the Rohingya

12. The exclusion of the Rohingya from Burmese society began after the 1962 military coup. As Professor Cheesman, Director of the Myanmar Research Centre at the Australian National University, explains, at that time, the concept of “national races” — *taingyintha* in Burmese — assumed an “unprecedented place in state lexicon, and thereafter, in the state-building programme”⁶⁴. General Ne Win’s régime began to construct a vision for a utopian Burmese society defined by a unified set of national races. Professor Cheesman chronicles the various books on national races that

⁶⁰ United States Holocaust Memorial Museum, “Burma’s Path to Genocide”, Chapter 1 “Belonging” (emphasis added), available at <https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-1/prime-minister-recognizes-rohingya>, MG, para. 6.25, fn. 386; RG, paras. 5.7, 5.24, fns. 309-310, 348. See also, RG, para. 5.7; U Kyaw Min, Shamsul Anwarul Haque, An Assessment of the Question of Rohingya’s Nationality: Legal Nexus between Rohingya and the State (25 Aug. 2012), available at https://www.netipr.org/policy/downloads/20120825_rohingyas-nationality-by-u-kyaw-min.pdf, p. 11.

⁶¹ U Kyaw Min, Shamsul Anwarul Haque, An Assessment of the Question of Rohingya’s Nationality: Legal Nexus between Rohingya and the State (25 Aug. 2012), available at https://www.netipr.org/policy/downloads/20120825_rohingyas-nationality-by-u-kyaw-min.pdf, p. 5.

⁶² *Ibid.*, p. 12-13.

⁶³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 473. MG, Vol. II, Annex 40.

⁶⁴ N. Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya” (15 Mar. 2017), *Journal of Contemporary Asia*, Vol. 47 (3), p. 465, RG, Vol. III, Annex 32. See also, Fortify Rights, “*Tools of Genocide*”: *National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar* (Sept. 2019), pp. 35-39, MG, Vol. V, Annex 126.

were published by General Ne Win's political party in the 1960s and how following the return of his military régime in 1988, "national races were invoked on every broadcast and publication, and at every major event"⁶⁵. A few days before the promulgation of the 1982 Citizenship Law, General Ne Win declared: "Racially, only pure-blooded nationals will be called citizens"⁶⁶.

13. That statement captures the decisive shift of the 1982 Law: citizenship ceased to be a civic status tied to residence and descent and became primarily contingent on racial categorization⁶⁷. Section 4 (2) of the 1948 Union Citizenship Act had provided that "any person" would be deemed a citizen if their ancestors had, for at least two generations, made a territory of the Union their permanent home and both the person and their parents were born there⁶⁸. Reflecting the insignificance of race, National Registration Cards did not identify the cardholder's race.

14. By contrast, the 1982 Law anchored citizenship in "national races", identifying as citizens persons belonging to eight ethnic groups⁶⁹ that were later divided by military instruction into 135⁷⁰. Neither the 1982 Law, the military instruction, nor any other State communication ever explained or justified Myanmar's formulation of the national races⁷¹. Crucially, the Rohingya were excluded from both lists⁷². That exclusion — coupled with discriminatory implementation of the law — denationalized roughly one million Rohingya, creating, as the French Representative to the UN Security Council Mission to Bangladesh observed, "the largest group of stateless persons in the

⁶⁵ N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya" (15 Mar. 2017), *Journal of Contemporary Asia*, Vol. 47 (3), p. 467, RG, Vol. III, Annex 32.

⁶⁶ General Ne Win, "Speech at Meeting Held in the Central Meeting Hall" (President House, Athlone Road, 8 Oct. 1982), p. 4 (emphasis added), MG, Vol. VI, Annex 144.

⁶⁷ N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya" (15 Mar. 2017), *Journal of Contemporary Asia*, Vol. 47 (3), pp. 470-471, RG, Vol. III, Annex 32.

⁶⁸ Republic of the Union of Myanmar, The Union Citizenship Act (1948), Section 4 (2) (emphasis added), MG, Vol. VI, Annex 172.

⁶⁹ MG, para. 6.16; Republic of the Union of Myanmar, *Citizenship Law* (15 October 1982) (original and translation), Sec. 3, MG, Vol. VI, Annex 174.

⁷⁰ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 85, MG, Vol. II, Annex 40.

⁷¹ UN Fact-Finding Mission, *Report of the Detailed Findings* (2018), para. 85, MG, Vol. II, Annex 40; N. Cheesman, "How in Myanmar 'National Races' Came to Surpass Citizenship and Exclude Rohingya" (15 Mar. 2017), *Journal of Contemporary Asia*, Vol. 47 (3), pp. 468-469, RG, Vol. III, Annex 32.

⁷² CMM, para. 10.30.

world”⁷³. History shows that utopian projects of race and nation begin with bureaucratic reclassification and lead, ultimately, to deprivation, expulsion and death⁷⁴.

4. The enforcement of the 1982 Citizenship Law to exclude and remove the Rohingya

15. As Myanmar notes, Section 6 of the 1982 Law preserved existing citizens⁷⁵. On paper, that should have prevented mass statelessness⁷⁶. In practice, it did not. As Professor Cheesman explains, “registration officers apparently acting on orders from superiors refused to re-register people who were entitled to pink cards [i.e. ‘citizenship scrutiny cards’]”⁷⁷. Even university graduates and civil servants who had already had to pass through numerous background checks were denied the cards⁷⁸.

16. The UN Fact-Finding Mission identifies wide administrative discretion that enabled discriminatory and arbitrary implementation, such as provisions permitting those enforcing the law to act without providing reasons for their decisions⁷⁹. Even Myanmar’s own Advisory Commission on Rakhine State reported in 2017 that, out of roughly one million stateless Muslims in Rakhine State, only about 4,000 were recognized as citizens or naturalized citizens. Thus, over 99 per cent were denied even associate or naturalized citizenship⁸⁰.

17. This bureaucratic assault was accompanied by violence. In 1978, Operation Nagamin or Dragon King, ostensibly a registration exercise ahead of a census, saw military assaults and destruction of property that led to the flight of over 200,000 Rohingya to Bangladesh⁸¹. The image on the screens was taken then.

⁷³ UN Security Council, “Briefing by Security Council Mission to Bangladesh and Myanmar (28 April to 2 May 2018)”, UN doc. S/PV.8255 (14 May 2018), p. 11 (emphasis added), MG, Vol. II, Annex 34.

⁷⁴ Eric Weitz, *A Century of Genocide: Utopias of Race and Nation* (2003), pp. 14-15, RG, Vol. III, Annex 27.

⁷⁵ CMM, para. 10.25.

⁷⁶ N. Cheesman, “How in Myanmar ‘National Races’ Came to Surpass Citizenship and Exclude Rohingya” (15 Mar. 2017), *Journal of Contemporary Asia*, Vol. 47 (3), p. 472, RG, Vol. III, Annex 32.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 479, MG, Vol. II, Annex 40 (citing Republic of the Union of Myanmar, *Citizenship Law* (15 Oct. 1982) (original and translation), Art. 71, MG, Vol. VI, Annex 174).

⁸⁰ Advisory Commission on Rakhine State, “Towards a Peaceful, Fair and Prosperous Future for the People of Rakhine: Final Report of the Advisory Commission on the Rakhine State”(Aug. 2017), pp. 26, 29, MG, Vol. IV, Annex 103.

⁸¹ United States Holocaust Memorial Museum, “Burma’s Path to Genocide”, Chap. II “Targeted” — “Driving Out ‘Foreigners’”, available at <https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-2/gradualerasure>, MG, para. 6.25, fn. 386; RG, paras. 5.7, 5.24, fns. 309, 310, 348. See also, N. Cheesman, “How in Myanmar ‘National Races’

18. Another operation, Operation Pyi Thaya—which means “Clean and Beautiful Nation”—was carried out in Rakhine State between 1991 and 1992. The information received by Special Rapporteur d’Almeida indicated that this operation entailed extrajudicial executions, torture, arbitrary detention, enforced disappearances, rape, forced labour, robbery, arson, eviction, land confiscation and the destruction of mosques—forcing flight at a rate of 5,000-7,000 persons per day by March 1992⁸². A subsequent report by UN Secretary-General Boutros Boutros-Ghali recorded over 250,000 Rohingya fleeing to neighbouring Bangladesh to seek asylum⁸³.

19. After confiscating prior National Registration Cards, Myanmar began issuing Temporary Registration Cards—“white cards”—to members of the Rohingya in 1995. These cards expressly denied citizenship and residence rights⁸⁴. The cards also introduced race and religion identification, branding the Rohingya as “Bengali”⁸⁵.

20. In 2014, Myanmar launched another “verification” process⁸⁶. White cards were exchanged for National Verification Cards (NVCs), which emphasized that they do not evidence citizenship and that card holders are persons “who need to apply for citizenship”⁸⁷. Although the cards themselves did not identify race, authorities compelled applicants to forswear their Rohingya identity and

Came to Surpass Citizenship and Exclude Rohingya” (15 Mar. 2017), *Journal of Contemporary Asia*, Vol. 47 (3), p. 472, RG, Vol. III, Annex 32.

⁸² UN Special Rapporteur d’Almeida and UN Secretary-General Boutros Boutros-Ghali, UN Commission on Human Rights, Report submitted by Mr Angelo Vidal d’Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986, UN doc. E/CN.4/1993/62 (6 Jan. 1993), p. 64, para. 45, MG, Vol. II, Annex 6.

⁸³ UN Secretary-General, Report on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN doc. E/CN.4/1996/88 (26 Jan. 1996), para. 45, available at https://ap.ohchr.org/documents/alldocs.aspx?doc_id=780. See also, Francis Wade, “IIMM Rohingya Report” (January 2022), pp. 14-15, RG, Vol. II, Annex 4.

⁸⁴ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 479, MG, Vol. II, Annex 40; Witness Statement No. 001, dated 7 Nov. 2014, pdf, p. 2. MG, Vol. X, Annex 335.

⁸⁵ United States Holocaust Memorial Museum, “Burma’s Path to Genocide”, Chap. 2 “Targeted”, Video “Gradual Erasure”, available at <https://exhibitions.ushmm.org/burmas-path-to-genocide/chapter-2/gradual-erasure>, MG, para. 6.25, fn. 386; RG, paras. 5.7, 5.24, fns. 309, 310, 348.

⁸⁶ UN Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5 (16 Sept. 2019), paras. 64-66. MG, Vol. III, Annex 49; Fortify Rights, “*Tools of Genocide*”: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar (September 2019), p. 43. MG, Vol. V, Annex 126.

⁸⁷ Fortify Rights, “*Tools of Genocide*”: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar (Sept. 2019), pp. 39, 92. MG, Vol. V, Annex 126.

register as “Bengali,” to obtain the cards. Thereby conditioning access to food, healthcare, fishing licences and other employment on rejection of their Rohingya identity⁸⁸.

5. Reducing the Rohingya through the suppression of births

21. Myanmar also pursued policies aimed at suppressing Rohingya family formation and births — deliberate demographic engineering cloaked in administrative language. A Maungdaw Regional Order from February 2008, titled “Regional Order and Processes for Controlling Bengali Population” justified “control” on “extremely high” population density, population increase “beyond the international standard” and “children who are not controlled and systematically taken care of by the parents” creating “problems for the human environment”⁸⁹.

22. The order imposed a prior-permission régime on all Islamic marriages, requiring review by various authorities and border police, as well as registration with the “Illegal Entry Prevention People’s Group”⁹⁰. While certain aspects of the order applied to Maungdaw’s non-Muslim minority, particularly onerous conditions applied uniquely to Muslims. A dedicated annex listed additional requirements solely for “Bengalis who apply for permission to marry”, confirming the Order’s discriminatory focus on Rohingya⁹¹.

⁸⁸ MG, para. 6.28; Fortify Rights, *“Tools of Genocide”: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar* (Sept. 2019), p. 59, MG, Vol. V, Annex 126 (citing Republic of the Union of Myanmar, Ministry of Labour, Immigration and Population Department, “National Verification Card Relevant Facts” (undated), MG, Vol. VI, Annex 170). See also Republic of the Union of Myanmar, Ministry of Livestock, Fisheries, and Rural Development, Ministry of Transport, and the Immigration Department, *Announcement about Fishing, Fishing Vessels, and Boats* (undated) (original and translation). MG, Vol. VI, Annex 169.

⁸⁹ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, Regional Order 1/2005 (1 May 2005), in *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 Feb. 2008) (original and translation), PDF pp. 4-5, para. 1. MG, Vol. VI, Annex 177. See also *ibid.*, Addendum on “Requirements for Bengalis who apply for Permission to Marry”, pdf, p. 9, paras. (a)-(k).

⁹⁰ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, Regional Order 1/2005 (1 May 2005), in *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), PDF pp. 4-5, para. 1, p. 6, para. (c). MG, Vol. VI, Annex 177. See also MG, para. 6.41; RG, para. 10.61.

⁹¹ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, Addendum on “Requirements for Bengalis who apply for Permission to Marry”, in *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 Feb. 2008) (original and translation), PDF p. 9. MG, Vol. VI, Annex 177. See also MG, para. 6.44; UN Human Rights Council, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, UN doc. A/HRC/13/48 (10 March 2010), para. 89. MG, Vol. II, Annex 23.

23. Even where permission was granted, couples were required to “limit the number of children, in order to control the birth rate”⁹². The order also restricted marriage timelines, banned under-18 marriages and criminalized relations outside wedlock⁹³. The order specified various punishments for violations of its provisions, including up to ten years imprisonment⁹⁴. The order expressly justified itself as being “for the good of the region and the race”⁹⁵. “The race” referred to here is, of course, to the exclusion of the Rohingya.

24. Myanmar also attacked legal identity at its source. It denied birth certificates to Rohingya newborns⁹⁶. Even Myanmar concedes that birth registration of Rohingya babies “came almost to a halt after the violence of 2012”⁹⁷. In fact, as reported by the UN Fact-Finding Mission⁹⁸, the UN Special Rapporteur⁹⁹ and the UN High Commissioner for Human Rights¹⁰⁰, Myanmar stopped registering Rohingya births in the 1990s. As the Fact-Finding Mission observed, “[l]egal identity starts with a birth certificate”¹⁰¹. Denying the issuance of birth certificates to Rohingya newborns is a deliberate tool to erase the Rohingya.

⁹² Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, *Regional Order 1/2005* (1 May 2005), in *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), pdf pp. 4-5, para. 1 (f) (emphasis added). MG, Vol. VI, Annex 177.

⁹³ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), Addendum on “Population Control Activities”, pdf, p. 8. MG, Vol. VI, Annex 177.

⁹⁴ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), pdf, p. 8, para. 5. MG, Vol. VI, Annex 177.

⁹⁵ Republic of the Union of Myanmar, Border Regional Immigration Control Headquarters, *Regional Order and Processes for Controlling Bengali Population (circulating Regional Order of 1993, Regional Order 1/2005 and Various Addenda)* (11 February 2008) (original and translation), pdf, p. 3, para. 2 (emphasis added). MG, Vol. VI, Annex 177.

⁹⁶ Francis Wade, “IIMM Rohingya Report” (January 2022), section 2.2.1, p. 15. RG, Vol. II, Annex 4.

⁹⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Counter-Memorial of The Republic of the Union of Myanmar (24 August 2023), para. 10.164.

⁹⁸ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 494. MG, Vol. II, Annex 40.

⁹⁹ 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, available at <https://www.ohchr.org/Documents/Countries/MM/GA76report-annex-SR-Myanmar.pdf>, para. 17 (cited in The Gambia’s Observations to Myanmar’s Fourth Implementation Report (23 Nov. 2021), para. 12).

¹⁰⁰ UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights: Situation on human rights in Myanmar since 1 February 2022, UN doc. A/HRC/52/21 (2 Mar. 2023), available at <https://docs.un.org/en/a/hrc/52/21>, para. 39 (cited in The Gambia’s Observations to Myanmar’s Seventh Implementation Report (23 May 2023), para. 9).

¹⁰¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 461, MG Vol. II, Annex 40.

6. Confinement, segregation, and deprivation: destruction by attrition

25. Finally, I turn to confinement, segregation and deprivation. Mr President, genocide can proceed by “indirect methods of destruction”¹⁰². As scholars have noted in other contexts, confinement and systematic deprivation can cause death even before overt killing¹⁰³.

26. In this regard, a former humanitarian worker who spent months in Rakhine State testified to the UN Independent Investigative Mechanism for Myanmar that, beyond the large-scale acts of violence against the Rohingya that made the headlines, it was “the everyday, systematic human rights violations that added to an unbearable pressure of Rohingya daily lives”¹⁰⁴. He said he considered Myanmar’s conduct “tantamount to genocide” because “the Rohingya just simply couldn’t live. Every avenue of survival was closed down around them”¹⁰⁵.

27. Myanmar does not dispute that, after the 2012 riots, the Rohingya in and around Sittwe, the capital of Rakhine, were segregated into camps distinct from those housing Rakhine communities, and that until today, 13 years on, 18 Rohingya camps remain, while all those for other ethnic groups have been closed¹⁰⁶. These are not ordinary IDP camps. Given the severe deprivation of liberty imposed on camp populations, some humanitarian actors and analysts have referred to the camps as “internment camps”¹⁰⁷. In these open-air prisons, approximately 126,000 Rohingya are being held indefinitely. Human Rights Watch reports that the Rohingya remain in these “*de facto* detention camps surrounded by fences, police, and military”¹⁰⁸. The International Crisis Group indicates that the Rohingya there are subject to “apartheid-like bans” on access to hospitals and schools¹⁰⁹. And a UNICEF spokesperson testifies to the dire sanitary conditions there:

¹⁰² Sheri Rosenberg, “Genocide is a Process, Not an Event (2012), *Genocide Studies and Prevention: An International Journal*, Vol. 7 (1)”, p. 18 (emphasis in original), RG, Vol. III, Annex 29. See also, Raphael Lemkin, *Axis Rule in Occupied Europe* (1944), p. 86, MG, Vol. VIII, Annex 208.

¹⁰³ “Genocide is a Process, Not an Event” (2012), *Genocide Studies and Prevention: An International Journal*, Vol. 7 (1), p. 18, RG, Vol. III, Annex 29.

¹⁰⁴ United Nations Independent Investigative Mechanism for Myanmar, Witness Statement of Andrew Riley, No. IIMM0001557475 (10 Feb. 2022), para. 54 (emphasis added). RG, Vol. IV, Annex 48.

¹⁰⁵ *Ibid.*

¹⁰⁶ CMM, paras. 10.182-10.183.

¹⁰⁷ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), paras. 517-518. RG, Vol. II, Annex 1 (additional excerpts to MG, Vol. II, Annex 40).

¹⁰⁸ Human Rights Watch, “Pandemic Adds New Threat for Rohingyas in Myanmar” (29 May 2020), available at <https://www.hrw.org/news/2020/05/29/pandemic-adds-new-threat-rohingyas-myanmar#>.

¹⁰⁹ RG, para. 5.57; International Crisis Group, Watch List 2020: Spring Edition (26 May 2020), “Myanmar: Rakhine State Faces a Third Crisis”, available at <https://www.crisisgroup.org/global/watch-list-2020-spring-edition>.

“The first thing you notice when you reach the camps is the stomach-churning stench. Part of the camps are literally cesspools. Shelters teeter on stilts above garbage and excrement . . . One camp manager reported four deaths among children ages 3-10 within the first 18 days of December [2018].”¹¹⁰

28. Outside the camps, Rohingya have also been forced to live separately in the Aung Mingalar ghetto in Sittwe¹¹¹. Contrary to Myanmar’s assertions of freedom of movement there¹¹², independent parties such as Médecins Sans Frontières report that for over a decade the Rohingya “have been confined to this small neighbourhood, denied freedom to move and with police outposts guarding it day and night”¹¹³. The UN Fact-Finding Mission also stressed that, in Aung Mingalar, the Rohingya “are trapped” and “guarded by armed police, checkpoints and barbed wire”¹¹⁴. When George Soros, founder of the Open Society Institute, visited it in 2015, he reported as follows:

“In Aung Mingalar, I heard the echoes of my childhood. You see, in 1944, as a Jew in Budapest, I too was a Rohingya. Much like the Jewish ghettos set up by Nazis around Eastern Europe during World War II, Aung Mingalar has become the involuntary home to thousands of families who once had access to health care, education and employment. Now, they are forced to remain segregated in a state of abject deprivation.”¹¹⁵

29. The Rohingya who are not confined in camps or ghettos are subjected to severe movement restrictions that confine them to their villages and surrounding areas. The UN Fact-Finding Mission describes a layered system of written and unwritten rules enforced through village- and township-level curfews, permits and numerous security checkpoints, administered arbitrarily and conditioned on bribes¹¹⁶. To travel between townships, Rohingya must obtain temporary “Form 4” permits —

¹¹⁰ Marixie Mercado, “The Situation of Children in Rakhine State, Myanmar”, *UNICEF* (9 Jan. 2018) (emphasis added), available at <https://www.unicef.org/press-releases/geneva-palais-briefing-note-situation-children-rakhine-state-myanmar>; RG, para. 5.66.

¹¹¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), paras. 643, RG, Vol. II, Annex 1 (additional excerpts to MG, Vol. II, Annex 40).

¹¹² See Documentary video of the daily activities of residents in Aung Mingalar war, produced by the Rakhine State Government (Aug. 2024). RMM, Vol. 3, Annex 81.

¹¹³ Médecins sans Frontières, *After 10 Years in Camps in Myanmar, Rohingya Mental Health Continues to Suffer* (14 July 2022), available at <https://www.msf.org/after-10-years-camps-myanmar-rohingya-mental-health-continues-suffer>.

¹¹⁴ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 520, MG, Vol II, Annex 40.

¹¹⁵ George Soros, “As a Jew in Budapest, I too Was a Rohingya”, *Newsweek* (31 May 2015), MG, Vol. IX, Annex 256.

¹¹⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, paras. 500-501 and 508-511. See also UN Human Rights Council, *Detailed findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5 (16 Sept. 2019), paras.144-155. MG, Vol. III. Annex 49; MG, paras. 6.76-6.77.

departure certificates, from their village administrators¹¹⁷. The UN Mission records that by August 2017, there were more than 160 checkpoints in northern Rakhine where Rohingya were uniquely subjected to questioning, extortion and intimidation, unlike ethnic Rakhine¹¹⁸.

30. The Rohingya in Rakhine State had long sustained themselves through fishing, farming and trading. But since 2012, curfews have curtailed early-morning and night fishing; fishermen are required to pay checkpoint fees and surrender part of their catch; and those found in the “wrong” area risk ill-treatment, arrest and violence¹¹⁹. The UN Mission finds that Myanmar’s movement restrictions and specific limitations on access to fishing grounds, agricultural lands and forests impede access to food and livelihood¹²⁰.

31. Myanmar’s restrictions on humanitarian access exacerbate these harms. The UN Mission documents that access to Maungdaw, Buthidaung and Rathedaung was severely restricted after the 2012 violence and again in mid-2017, prior to the August 2017 clearance operations¹²¹. In one example, Myanmar chose to revoke the travel and activity permissions of all humanitarian agencies assisting the Rohingya in Rakhine State in 2017 simply because the World Food Programme had published a report about malnutrition in Rakhine pointing out that “virtually no Rohingya children under two years of age met minimal diet requirements”¹²². A former humanitarian worker of Action contre la Faim who was operating in Rakhine State at that time reflected that:

“[i]t was a cruel irony that a report exposing malnutrition was used to sever the vital lifeline of humanitarian aid. I recall the ACF nutrition team leader, Laura, saying in no uncertain terms that this decision would have immediate consequences; children would die because our aid was being cut off.”¹²³

¹¹⁷ Republic of the Union of Myanmar, Immigration and National Registration Department of Rakhine State, *Instruction relating to travelling of foreigners, persons who are doubted as foreigners and Bangali races residing within Rakhine State* (June 1997) (original and translation), p. 3, MG, Vol. VI, Annex 175. See also UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), available at <https://digitallibrary.un.org/record/1643079?ln=en&v=pdf>, paras. 503-512.

¹¹⁸ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 525. MG, Vol. II, Annex 40.

¹¹⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), paras. 533, 538, 540. MG, Vol. II, Annex 40.

¹²⁰ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), para. 533. MG, Vol. II, Annex 40.

¹²¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 573-574. MG, Vol. II, Annex 40.

¹²² United Nations Independent Investigative Mechanism for Myanmar, Witness Statement of Andrew Riley, No. IIMM0001557475 (10 February 2022), para. 96. RG, Vol. IV, Annex 48.

¹²³ *Ibid.*

32. Discriminatory movement controls also translate directly into barriers to healthcare. The UN Mission reports that restrictions on access to medical facilities “have been enforced strictly”, even in emergencies such as “obstructed labour, infants needing oxygen, or heart attacks”. It observes that through these movement restrictions, Myanmar has exposed the Rohingya to “unnecessary suffering, immediate and long-term health risks, and preventable deaths”¹²⁴.

33. Members of the Court, Myanmar’s policies targeting the Rohingya operated in tandem with an affirmative State programme to alter the demography of northern Rakhine by inviting foreign Buddhists to settle in Rohingya-majority areas. The UN Independent Investigative Mechanism for Myanmar has analysed official documents and State media showing that, from 2013 to 2018, authorities encouraged Buddhist communities from Bangladesh’s Chittagong Hill Tracts to immigrate to and settle in Rakhine State¹²⁵. The Government’s own newspaper reported that “742 households and 3,433 family members who moved from Bangladesh are being accommodated in Na Ta La model villages and subsidized with household commodities and food for a one-year period”¹²⁶. Not only were Buddhists from Bangladesh invited to immigrate to Rohingya-majority areas in Myanmar, Government agencies incentivized their resettlement by providing housing, farmland, rations and cash, and issuing immigration permits and travel authorizations enabling free movement — legal capacities categorically withheld from the Rohingya born and living in Myanmar¹²⁷. Significantly, Myanmar also placed these Buddhist migrants on an expedited path to citizenship and granted them citizenship scrutiny cards¹²⁸.

¹²⁴ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 550 and 570. MG, Vol. II, Annex 40. See also United States Holocaust Memorial Museum, *Practical Prevention: How the Genocide Convention’s Obligation to Prevent Applies to Myanmar* (24 June 2020), p. 7. MG, Vol. VII, Annex 195.

¹²⁵ United Nations Independent Investigative Mechanism for Myanmar, *Analysis of the Myanmar’s Government Encouragement Resettlement by Buddhists from Bangladesh to Rakhine State* (22 March 2024), para. 5. RG, Vol. II, Annex 7.

¹²⁶ United Nations Independent Investigative Mechanism for Myanmar, *Analysis of the Myanmar’s Government Encouragement Resettlement by Buddhists from Bangladesh to Rakhine State* (22 March 2024), para. 15 (emphasis added). RG, Vol. II, Annex 7.

¹²⁷ United Nations Independent Investigative Mechanism for Myanmar, *Analysis of the Myanmar’s Government Encouragement Resettlement by Buddhists from Bangladesh to Rakhine State* (22 March 2024), paras. 25, 26. RG, Vol. II, Annex 7.

¹²⁸ United Nations Independent Investigative Mechanism for Myanmar, *Analysis of the Myanmar’s Government Encouragement Resettlement by Buddhists from Bangladesh to Rakhine State* (22 March 2024), paras. 28-30. RG, Vol. II, Annex 7.

34. Myanmar's enactment of these policies while denationalizing, suppressing births, segregating, confining and depriving the Rohingya of access to food, healthcare and livelihood provides further evidence of its intent to diminish and erase the Rohingya in Rakhine State.

35. As the UN Fact-Finding Mission observed, considered alongside the criminal acts that followed, Myanmar's discriminatory policies support the inference that it deliberately imposed conditions of life calculated to bring about the Rohingya's destruction, in whole or in part¹²⁹.

36. In 1946, the Nuremberg Tribunal found that a "series of discriminatory laws" aimed at "eliminat[ing] Jews from German life and economy" "paved the way for the 'final solution'"¹³⁰. So too here: Myanmar's discriminatory policies paved the way for the genocidal "clearance operations".

37. Mr President, Members of the Court, this concludes my submissions. I thank you for your attention, and may I respectfully invite you to call Mr Suleman to the podium after the afternoon break.

The PRESIDENT: I thank Ms Pasipanodya for her statement. Before I give the floor to the next speaker, the Court will observe a break of 15 minutes. The sitting is suspended.

The Court adjourned from 4.30 p.m. to 4.45 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now give the floor to Mr Arsalan Suleman. You have the floor, Sir.

Mr SULEMAN:

VII. MYANMAR'S ANTI-ROHINGYA HATE SPEECH AND PROPAGANDA REVEAL ITS GENOCIDAL INTENT

1. Introduction

1. Thank you, Mr President, Members of the Court, before the break you heard about Myanmar's decades-long programme of otherizing the Rohingya by de-nationalizing them and implementing policies to persecute them. I will now focus on related but distinct indicators of

¹²⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 622, 1427 and 1441. MG, Vol. II, Annex 40.

¹³⁰ International Military Tribunal (Nuremberg), Final Judgment of 1 October 1946, pp. 76, 119.

genocidal intent: Myanmar's campaign of hate speech and propaganda against the Rohingya, and the hateful utterances of Myanmar soldiers during the "clearance operations".

2. As I will discuss in detail, Myanmar's anti-Rohingya hate campaign served to dehumanize the Rohingya group and incite hatred and violence against them. At its core, this propaganda portrayed the Rohingya as subhuman and as an existential threat to the Buddhist-majority population of Myanmar such that violence against the Rohingya was not just acceptable, it was necessary.

3. This hate campaign stretched over many years and was disseminated through various forms of media, including through speeches by the chief of Myanmar's military junta, Senior General Min Aung Hlaing. It included admitted fabrications about the Rohingya group, as well as the clandestine military use of Facebook accounts to spread hatred of the Rohingya. The anti-Rohingya propaganda served both to justify and incite the genocidal violence during the 2017 "clearance operations". And the hateful utterances of Myanmar soldiers during the "clearance operations" confirm both the impact of that propaganda campaign and Myanmar's genocidal intent.

4. I begin my presentation by showing — with the assistance of historical comparisons — that anti-Rohingya hate speech and propaganda are compelling indicators of genocidal intent (2). I will then focus on representative examples of anti-Rohingya hate speech and propaganda disseminated through various means, including: openly by Myanmar officials (3), surreptitiously through Facebook accounts (4), collaboratively by and through extremist Buddhist monks (5) and finally by Myanmar soldiers during the "clearance operations" (6). The inescapable conclusion is that Myanmar acted with genocidal intent as it engaged in its brutal "clearance operations" against the Rohingya group.

2. Anti-Rohingya hate speech and propaganda, and hateful utterances of soldiers, are compelling indicators of genocidal intent

5. The UN Fact-Finding Mission identified two indicators of genocidal intent related to what The Gambia refers to as hate speech or anti-Rohingya propaganda. Those are: (1) "the insulting, derogatory, racist and exclusionary utterances of Myanmar officials and others prior, during and after the 'clearance operations'", and (2) "the Government's tolerance for public rhetoric of hatred and

contempt for the Rohingya”¹³¹. The Gambia has addressed both of these indicators together because of their intertwined nature.

6. There is ample support in case law regarding hate speech or anti-group propaganda serving as an indicator of genocidal intent. Some trial chambers of the International Criminal Tribunal for Rwanda, for example, cite the use of derogatory language towards members of the Tutsi group as an indicator of genocidal intent¹³², and others also cite the specific utterances of perpetrators as an indicator of intent¹³³.

7. The historical record of other genocides helps to vividly demonstrate hate speech or anti-group propaganda as an indicator of genocidal intent. Key themes of the hate speech and anti-group propaganda used in other such genocides are abundantly present in Myanmar’s anti-Rohingya propaganda. I will focus on three of those themes — dehumanization, accusations in a mirror and threats to group purity — as defined by the Dangerous Speech Project, a non-profit group of experts focusing on speech that incites violence¹³⁴.

A. Dehumanization

8. The first theme is dehumanization, a critical element in the path to genocide. Hate speech or propaganda that dehumanizes the target group prepares a population to tolerate or engage in violence against that group. Dehumanizing rhetoric often compares the target group to animals, insects or biological hazards. The point of such comparisons is to make the desired outcome of the speaker — destruction of the targeted group — the natural response to such a threat.

9. In Rwanda, Hutu hate speech against the Tutsi group notoriously referred to them as “inyenzis”, or cockroaches, that required extermination¹³⁵. During the Cambodian genocide, the Khmer Rouge régime’s enemies were called “microbes” or a “sickness” that needed to be eliminated

¹³¹ 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.

¹³² See e.g. *Prosecutor v. Muhimana*, ICTR-95-1B-T, Trial Judgment (28 April 2005), para. 496; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Judgment (21 May 1999), para. 93.

¹³³ *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998), para. 728; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-A, Judgment (1 June 2001), para. 148; *Prosecutor v. Jelacic*, IT-95-10-T, Judgment (14 December 1999), para. 75; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Judgment (7 June 2001), para. 63; *Prosecutor v. Gacumbitsi*, ICTR-2001-64-T, Judgment (17 June 2004), para. 259.

¹³⁴ Dangerous Speech Project, *Dangerous Speech: A Practical Guide* (4 August 2020). MG, Vol. V, Annex 131.

¹³⁵ *Ibid.*

or removed¹³⁶. The Nazis carried out a long propaganda campaign against Jews portraying them as “vermin”, “subhuman” and an inferior race¹³⁷.

10. As I will show later, various types of Myanmar’s anti-Rohingya propaganda and hate speech dehumanized the Rohingya by using slurs like “kalar” and referring to them as dogs, carp, crows, maggots, ogres, fleas and thorns that required elimination.

B. Accusations in a mirror

11. The second theme is called “accusations in a mirror”. According to the Dangerous Speech Project, the “most powerful way to foment intergroup conflict is to frame violence as the only way to protect an in-group against greater harm, even annihilation”¹³⁸. To accomplish this, propagandists use a tactic called “accusations in a mirror”, in which they attribute to their enemies the very acts of violence that they plan to commit against the target group.

12. The term “accusations in a mirror” originates from a propaganda manual found in Rwanda. Hutu propagandists like Léon Mugesera used this tactic to justify and foment violence against the Tutsis. In one example, Mugesera stated: “These people called Inyenzi [cockroaches] are now on their way to attack us . . . They only want to exterminate us: they have no other aim.”¹³⁹

13. The Nazis employed the same tactic against Jews. For example, a 1941 pamphlet authored by Josef Goebbels asks: “Who should die, the Germans or the Jews? . . . You know what your eternal enemy and opponent intends for you. There is only one instrument against his plans for annihilation.”¹⁴⁰

14. General Ratko Mladić, the “Butcher of Bosnia” who was found guilty of genocide for directing the killings at Srebrenica, had claimed that Muslims “were planning for ‘the complete annihilation of the Serbian people’”¹⁴¹.

¹³⁶ *Ibid.*

¹³⁷ Gregory S. Gordon, “The Propaganda Prosecutions at Nuremberg: The Origin of Atrocity Speech Law and the Touchstone for Normative Evolution” (2017) *Loyola of Los Angeles International and Comparative Law Review* 209, available at <https://digitalcommons.lmu.edu/ilr/vol39/iss1/10>.

¹³⁸ Dangerous Speech Project, *Dangerous Speech: A Practical Guide* (4 August 2020), available at <https://www.dangerousspeech.org/libraries/guide>.

¹³⁹ S. Benesch, “Vile Crime or Inalienable Right: Defining Incitement to Genocide”, *Virginia Journal of International Law*, Vol. 48, No. 3, 2008, available at <https://ssrn.com/abstract=1121926>, p. 505.

¹⁴⁰ *Ibid.*

¹⁴¹ Dangerous Speech Project, *Dangerous Speech: A Practical Guide* (4 August 2020). MG, Vol. V, Annex 131.

15. The use of “accusations in a mirror” by these individuals in their respective historical contexts in Rwanda, Nazi Germany and Bosnia exposes their genocidal intent. And as I will soon show, Myanmar, and Senior General Min Aung Hlaing in particular, unambiguously made very clear use of “accusations in a mirror”. They falsely accused the Rohingya of posing a genocidal threat to Myanmar’s Buddhist-majority population in order to justify the genocidal “clearance operations” against them and incite other ethnic groups, especially the Buddhists of Rakhine State, to join and support the slaughter.

C. Threats to group purity

16. The last theme is threats to group purity. In such messaging, the hate speech or anti-group propaganda focuses on the threat that the targeted group poses to the purity of one’s group.

17. Nazi propaganda often focused on the threat to Aryan racial purity posed by Jews and other targeted groups accused of corrupting German society¹⁴². Similarly, much of Myanmar’s anti-Rohingya propaganda focuses on the threat posed by the Rohingya to the racial purity of Myanmar’s so-called “national races”.

18. All three of these propaganda themes, which featured decisively in past genocides, are central components of Myanmar’s anti-Rohingya hate propaganda. This historical context affirms that hate speech and anti-group propaganda is a powerful indicator of Myanmar’s genocidal intent against the Rohingya group.

19. Mr President, before I proceed to discuss the content of Myanmar’s hate propaganda, I pause to address Myanmar’s argument that much of what The Gambia calls “hate speech” is not actually hate speech.

20. First, whether the content at issue meets a specific definition of “hate speech” is immaterial. What the Court must determine is whether Myanmar’s use of this messaging constitutes an indicator of genocidal intent, as argued by The Gambia and as supported by historical comparison and international jurisprudence.

21. Second, Myanmar does not propose its own definition of hate speech, nor is there an established definition of it under international law. Both the UN Fact-Finding Mission and the IIMM

¹⁴² United States Holocaust Memorial Museum, Holocaust Encyclopedia, *Nazi Propaganda*, available at <https://encyclopedia.ushmm.org/content/en/article/nazi-propaganda>.

provided their own definition of the term for purposes of their respective reports. The Fact-Finding Mission used the term to “refer to any expression of violent or discriminatory hatred towards people”¹⁴³. In its report entitled “Anti-Rohingya Hate Speech on Facebook”, the IIMM considered content as hate speech if, in its view, it “was intended or likely to influence its ... audience to fear the target group, hate the target group and/or to encourage, support or excuse discriminatory measures or violence directed against the target group”¹⁴⁴. To the extent that a definition of “hate speech” is necessary or helpful, The Gambia considers the Mechanism’s most relevant.

22. Myanmar also argues that hate speech is a global problem and not a challenge unique to Myanmar. That may be true, but most States have not engaged in years-long, anti-group hate propaganda campaigns, including clandestine ones on social media. Nor do most States launch military attacks on civilians with its soldiers uttering hateful anti-group messages as they engage in brutal, genocidal violence. In any event, whether similarly dangerous anti-group hate speech and propaganda exists in other countries is not the focus of this case.

3. Myanmar’s official messaging

23. Mr President, Members of the Court, I will now focus on representative examples of Myanmar’s anti-Rohingya hate speech and propaganda as it has been disseminated by senior Myanmar officials and institutions.

A. Senior General Min Aung Hlaing

24. I begin at the top, with the head of the military junta government, Senior General Min Aung Hlaing. In early September 2017, just days after the second wave of “clearance operations” commenced, in a widely-disseminated speech, Senior General Hlaing said the following:

“Rakhine ethnics lost their land in the Alethankyaw crisis that broke out in Rakhine State in 1942 in which Bengalis attacked, murdered and coerced them into leaving their homes. We will never let such a terrible occurrence happen again . . . During the Alethankyaw crisis in 1942, over 20,000 ethnic Rakhine people were slaughtered. Bengalis after murdering ethnic Rakhine people seized their land and villages and lived there . . . *The Bengali problem was a long-standing one which has*

¹⁴³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1307. MG, Vol. II, Annex 40.

¹⁴⁴ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), para. 13. RG, Vol. II, Annex 5.

become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem.”¹⁴⁵

25. This is an example of “accusations in a mirror” with a historical twist, where Senior General Hlaing is blaming the Rohingya for historical violence and using that to justify the government’s violence against them to resolve the “unfinished job”. The UN Fact-Finding Mission found that

“the Commander-in-Chief’s explicit link between the 2017 ‘clearance operations’ in Rakhine State and an ‘unfinished’ ‘Bengali problem’ dating back to 1942 reveals that the 2017 military operation was not (only) to respond to the ARSA attacks and to quell the threat posed by this group, as has been claimed. It rather speaks to a broader objective on the part of the Tatmadaw with historical roots and reinforces the narrative that *all* ‘Bengali’ are a problem and that a distinction between ‘terrorists’ and civilians/victims is not relevant.”¹⁴⁶

26. Later that same month, September 2017, while the “clearance operations” were still in progress, Senior General Hlaing, in another widely-disseminated speech, said:

“[T]he Bengali population exploded and the aliens tried to seize the land of local ethnics . . . Race cannot be swallowed by the ground but only by another race. All must be loyal to the State in serving their duties, so that such cases will never happen again.”¹⁴⁷

27. Here again, Senior General Hlaing is deploying “accusations in a mirror”. He accuses the Rohingya of trying to seize Rakhine land. He invokes the Myanmar government’s motto of racial paranoia, raising the threat that the Rohingya will swallow up the Rakhine race. And he demands loyalty to the State which, he says, is carrying out its “duties” to make sure that such violence from the Rohingya does not happen again.

28. There is a third example of Senior General Hlaing deploying “accusations in a mirror”, this time explicitly regarding genocide. In a public speech in December 2017, Senior General Hlaing said:

“During the latest terrorist attack in Rakhine State on 25 August 2017, . . . villages of local national races were threatened and many local national races people were murdered . . . Our Tatmadaw have to safeguard the national races forever and carry

¹⁴⁵ Senior General Min Aung Hlaing, “Entire government institutions and people must defend the country with strong patriotism” (2 September 2017) (emphasis added). MG, Vol. VI, Annex 150. See also UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 753. MG, Vol. II, Annex 40.

¹⁴⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1336 (emphasis in original). MG, Vol. II, Annex 40.

¹⁴⁷ Senior General Min Aung Hlaing, “Gallant Efforts to Defend the HQ Against Terrorist Attacks and Brilliant Efforts to Restore Regional Peace, Security are Honoured” (20 September 2017). MG, Vol. VI, Annex 152.

out for them to live in unity and peace. Tatmadaw must fully protect the ethnic minorities in Rakhine region *not to have the genocide*.”¹⁴⁸

29. This was a clear message that the Rakhine must be protected from genocide by the Rohingya. This propaganda — blaming the Rohingya for potential genocide to justify violence against them — is as direct an expression of genocidal intent as that by Mugesera, Goebbels and Mladić. There should be no doubt about Senior General Hlaing’s genocidal intent against the Rohingya.

B. The Tatmadaw

30. Mr President, the same intent vis-à-vis the Rohingya is evident in the Tatmadaw generally as well. Tatmadaw training materials from 2012 entitled “Fear of Extinction of Race” propagates the narrative that the Rohingya pose a threat to Buddhist existence. It also uses dehumanizing slurs and invokes threats to Buddhist racial purity. It contains the following propaganda:

- “[T]he danger of being swallowed up by Bangladeshi Chittagonian kowtow kalars truly exists.”
- “No race faces extinction from being swallowed up by the earth, but by human beings.”
- “Bengali Muslims . . . infiltrate the people to propagate their religion.”
- “We need to protect our race and religion as much as possible . . . Otherwise, Buddhism may vanish.”¹⁴⁹

31. The UN Fact-Finding Mission observed that through its training programme, the Tatmadaw indoctrinates cadets with the concept that Islam constitutes an existential threat to Buddhism, such that the “probability of (population) extinction . . . truly exists”¹⁵⁰.

32. A book from the 1980s, with the same title as the Tatmadaw training programme — *Fear of Extinction of the Race* — had been distributed by the Government. Like the training programme,

¹⁴⁸ Senior General Min Aung Hlaing, “Try to be good officers who are reliable for higher officials, given respect by lower ranks, be trustworthy of the populace” (2 December 2017) (emphasis added). MG, Vol. VI, Annex 156.

¹⁴⁹ Tatmadaw, Nyi Pyi Taw Divisional Military Headquarters, “Fear of Extinction of Race” (No. 13 Combatants Organizing School 2012) (original and translation, translator’s note implemented), pp. 4-5, 9. MG, Vol. VI, Annex 146.

¹⁵⁰ Tatmadaw, Nyi Pyi Taw Divisional Military Headquarters, “Fear of Extinction of Race” (No. 13 Combatants Organizing School 2012) (original and translation), p. 4. MG, Vol. VI, Annex 146; UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 716. MG, Vol. II, Annex 40.

the book presents Islam as an existential threat to Buddhism¹⁵¹. One passage states: “If we are not careful, it is certain that the whole country will be swallowed by the Muslim Kalars . . . When we study world history, we can see that different races of the world did not get swallowed to extinction by the earth, but only by other humans.”¹⁵² Here again, the anti-Rohingya propaganda uses dehumanizing slurs and presents the Rohingya as an existential threat to Buddhist-majority Myanmar.

33. It should perhaps come as no surprise that the Tatmadaw has a department called the “Directorate of Public Relations and Psychological Warfare”. This department, in July 2018 — that is, after the main “clearance operations” — published a 117-page treatise called “Myanmar Politics and the Tatmadaw: Part (I)”. This document blamed the Rohingya for instigating armed conflict against other ethnic groups in Myanmar based on fabricated evidence.

34. A picture that the Tatmadaw captioned as “Bengalis killed local ethnics brutally”¹⁵³ was actually an image from Bangladesh’s 1971 independence war¹⁵⁴. In another fabrication, a long line of migrants is captioned: “Bengalis intruded into the country after the British Colonialists occupied the lower part of Myanmar”¹⁵⁵. The image was actually of refugees who had fled Rwanda in 1996¹⁵⁶. And in yet another fabrication, an image of a boat full of people, captioned as “Bengalis entered Myanmar via the watercourse”, is actually an altered picture of Rohingya who were trying to escape Myanmar in 2015¹⁵⁷. Reuters exposed these fabrications and Myanmar admitted to two of them¹⁵⁸.

¹⁵¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 697-698 and 1328-1341, MG, Vol. II, Annex 40.

¹⁵² UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 697 and 1328-1341 (ellipsis in original), MG, Vol. II, Annex 40.

¹⁵³ Republic of the Union of Myanmar, *Myanmar Defence Services, Myanmar Politics and the Tatmadaw: Part (I)* (July 2018), p. 14. MG, Vol. VI, Annex 159.

¹⁵⁴ Poppy McPherson, “Exclusive: Fake photos in Myanmar army’s ‘True News’ book on the Rohingya crisis”, *Reuters* (30 Aug. 2018). MG, Vol. IX, Annex 294.

¹⁵⁵ Republic of the Union of Myanmar, *Myanmar Defence Services, Myanmar Politics and the Tatmadaw: Part (I)* (July 2018), p. 7. MG, Vol. VI, Annex 159.

¹⁵⁶ Poppy McPherson, “Exclusive: Fake photos in Myanmar army’s ‘True News’ book on the Rohingya crisis”, *Reuters* (30 Aug. 2018). MG, Vol. IX, Annex 294.

¹⁵⁷ Poppy McPherson, “Exclusive: Fake photos in Myanmar army’s ‘True News’ book on the Rohingya crisis”, *Reuters* (30 Aug. 2018). MG, Vol. IX, Annex 294. Republic of the Union of Myanmar, *Myanmar Defence Services, Myanmar Politics and the Tatmadaw: Part (I)* (July 2018), p. 6. MG, Vol. VI, Annex 159.

¹⁵⁸ Antoni Slodkowski and Shoon Naing, “Myanmar army apologizes for mistaken photos in book on Rohingya crisis”, *Reuters* (3 Sept. 2018), MG, Vol. IX, Annex 295.

C. Other government ministries, political parties and outlets

35. Other ministries of Myanmar's Government also disseminated anti-Rohingya hate propaganda. For example, in 2018, Myanmar's Ministry of Foreign Affairs sent to several UN offices links to propaganda videos containing anti-Rohingya messaging, including "accusations in a mirror". One such video by an anti-Rohingya activist claimed that Myanmar faces a "threat posed by 'encroaching Islamic forces' that wish to 'annihilate [the ethnic Rakhine community] and all other non-Muslims and destroy the deeply-rooted indigenous Buddhist culture, and even Buddhism itself'"¹⁵⁹.

36. Myanmar's Embassy in London disseminated similar materials in 2018. In a letter to a British parliamentary committee, the Embassy listed an article, which states in part: "[T]he Bengali Muslims have again and again attacked others, and they will again and again do the same if they are allowed to live there. Enough is enough, and the Bengali Muslims have now forfeited their right to live in the land of Rakhine State"¹⁶⁰.

37. Major political parties in Myanmar have called for genocide against the Rohingya, with no legal repercussions. In 2012, when it held the majority in the Rakhine State legislature, the Rakhine Nationalities Development Party ("RNDP") called for a "final solution" for the Rohingya in a printed publication. It said:

"Today, the Union Government and the citizens collectively need to have a decisive stand on the issue of Bengali Muslims . . . For our citizens, for the maintenance of Buddhism, for the protection of our culture, it is now time to sacrifice . . . Although Hitler and Eichmann were the greatest enemies of the Jews, they were probably heroes to the Germans . . . If inhumane acts are sometimes permitted to maintain a race, a country and the sovereignty . . . our endeavours to maintain the Rakhine race and the sovereignty and longevity of the Union of Myanmar cannot be labelled as inhumane."¹⁶¹

38. The Chair of another political party, the (so-called) Peace and Diversity Party, incited violence against the Rohingya in 2015 to an audience in Yangon. He said:

"I won't say much, I will make it short and direct. Number one, shoot and kill them! (the Rohingya). Number two, kill and shoot them! (the Rohingya). Number three,

¹⁵⁹ Emanuel Stoakes and Ben Dunant, "Myanmar foreign ministry emails UN agencies weblinks to anti-Rohingya film", *Frontier* (18 Sept. 2018) (brackets in original), MG, Vol. IX, Annex 297.

¹⁶⁰ Rick Heizman, "Some People Will Say — With Ignorance, Arrogance, Or Both — That The Rakhine Buddhists — In Fact All Of The Buddhists Of Myanmar — Have An Irrational Fear Of Islam. They Do Have A Fear, A Very Rational Fear" (23 Sept. 2017), p. 15, RG, Vol. III, Annex 40; Ben Dunant, "Yangon Region minister hosts American anti-Rohingya activist", *Frontier* (9 Nov. 2018), MG, Vol. IX, Annex 301.

¹⁶¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1328. MG, Vol. II, Annex 40.

shoot and bury them! (the Rohingya). Number four, bury and shoot them! (the Rohingya). If we do not kill, shoot, and bury them, they will keep sneaking into our country!”¹⁶²

None of these incidents resulted in prosecution.

39. State-controlled media also published content that dehumanized the Rohingya around the time of the “clearance operations”, calling them “thorns” that needed to be removed and blood sucking “fleas”¹⁶³.

4. Myanmar’s clandestine anti-Rohingya propaganda campaign on Facebook

40. Mr President, Members of the Court, I now turn to Myanmar’s clandestine anti-Rohingya hate propaganda campaign on Facebook, used to justify its genocidal violence and incite rank-and-file soldiers and other ethnic groups to attack the Rohingya brutally and indiscriminately. Myanmar denies that it engaged in such a clandestine programme. As I will show, however, the evidence of Myanmar’s covert programme is overwhelming and indisputable.

41. First, Facebook, which is now called Meta, conducted internal investigations using confidential methods and technology in late 2018, that uncovered this vast campaign. In an affidavit annexed to The Gambia’s Reply, Nathaniel Gleicher, Head of Security Policy at Meta Platforms, Inc., testified that in August 2018, “six Facebook Accounts, six Pages, and one Instagram Account were . . . removed after the individuals or entities associated with those Accounts and Pages were categorically banned from Meta on human rights grounds.”¹⁶⁴ This included the official page for junta chief Senior General Min Aung Hlaing.

42. Later that month, Meta removed an additional 12 accounts and 46 pages that it determined were linked to the Myanmar military and the original accounts taken down on human rights grounds. The evidence for that link was based on shared page administrators, shared digital cookies and shared

¹⁶² UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 Sept. 2018), paras. 1328 (parenthesis in original; emphasis omitted), 1423, MG, Vol. II, Annex 40; see also YouTube, Video “SHOCKING VIDEO! YOU WILL LOSE FAITH IN HUMANITY (Call for the Genocide of the Rohingya people)” (28 May 2015), available at <https://www.youtube.com/watch?v=O59n9M6jB28>; UN General Assembly, *Report of the Special Rapporteur on the situation of human rights in Myanmar*, UN doc. A/70/412 (6 Oct. 2015), para. 31, MG, Vol. II, Annex 27.

¹⁶³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1328. MG, Vol. II, Annex 40 quoting Khin Maung Oo, “The Thorn Needs Removing If It Pierces!”, *The Global New Light of Myanmar* (31 Oct. 2016), MG, Vol. IX, Annex 260 and Khin Maung Oo, “A Flea Cannot Make a Whirl of Dust, But”, *The Global New Light of Myanmar* (26 Nov. 2016), MG, Vol. IX, Annex 261.

¹⁶⁴ Affidavit by Nathaniel Gleicher (Head of Security Policy at Meta Platforms, Inc.) (2 Nov. 2022), para. 8, RG, Vol. IV, Annex 52.

IP addresses associated with the Myanmar military from which the accounts were accessed. Meta determined that these accounts were engaging in something called co-ordinated inauthentic behaviour, or CIB. By the end of 2018, in total, Meta took down 163 Facebook accounts, 485 pages, 17 groups, and 16 Instagram accounts, all found to be connected to the Myanmar military.

43. Myanmar argues that these accounts were not removed on the basis of human rights concerns or hate speech. First, several accounts, including the official account of Senior General Min Aung Hlaing, were in fact taken down over human rights concerns. Second, Myanmar ignores the meaning of CIB. According to Mr Gleicher’s testimony, “Meta considers CIB to be coordinated efforts to manipulate public debate for a strategic goal where fake accounts are central to the operation.”¹⁶⁵ In other words, Meta determined that the Myanmar military was disguising its identity through these accounts to manipulate the public. Here, the goal of its manipulation was to spread anti-Rohingya hate propaganda¹⁶⁶.

44. Meta’s findings were confirmed by the independent investigative reporting by the *New York Times* in October 2018. Based on information obtained from former military officials, researchers and civilian officials in Myanmar, the *Times* reported that hundreds of “[m]embers of the Myanmar military were the prime operatives behind a systematic campaign on Facebook that stretched back half a decade and that targeted the country’s mostly Muslim Rohingya minority group”¹⁶⁷.

45. A separate, independent investigation by the IIMM confirmed that the accounts taken down by Meta formed an interconnected military network. The Mechanism — which was given access to many of these accounts, including their public posts and metadata — found “conclusively” that these accounts “formed part of a network on Facebook that was connected to the Myanmar military”¹⁶⁸. Those links include “overlapping administrators and creators”, “overlapping accounts posting to these Pages”, “shared usernames and email addresses”, “the appearance of the abbreviation

¹⁶⁵ *Ibid.*

¹⁶⁶ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), paras. 178-179, RG, Vol. II, Annex 5.

¹⁶⁷ “A Genocide Incited on Facebook, With Posts From Myanmar’s Military”, *New York Times* (15 October 2018). MG, Vol. IX, Annex 299.

¹⁶⁸ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), para. 89. RG, Vol. II, Annex 5.

DSITD (for the Defence Services Information Technology Department) in email addresses used to register the accounts” and “overlapping additional metadata” like digital cookies and IP addresses connected with the Myanmar military¹⁶⁹.

46. So how does Myanmar respond to this incontrovertible evidence? You can see on your screens now a passage from paragraph 11.37 of Myanmar’s Rejoinder.

47. Without providing any evidence or citations for its assertions, Myanmar admits that some “government employees, or members of the Tatmadaw or the Police Force” “created fake Facebook accounts”. Then it suggests that a few of them “may have used office internet connections to do so”. Then it speculates — again, without any evidence — that “they might have done so outside the scope of their employment, on their own initiative”. And, as usual, Myanmar concludes with another sweeping denial with no evidence whatsoever, and an equal amount of credibility.

48. Mr President, Members of the Court, how likely is it that Myanmar security personnel would post tens of thousands of messages on Facebook, through hundreds of accounts that they created, with their military email addresses, from military computers, in military facilities, consistently over many years, *on their own initiative without instruction or approval from the Myanmar military itself*? That is unimaginable, especially for the Tatmadaw, known for its rigid hierarchy and control.

49. Having established that Myanmar engaged in a several-year-long anti-Rohingya hate propaganda campaign on Facebook, we can move on to the content of this campaign. As detailed in its report, the IIMM searched 43 of the removed pages for content between 1 July 2017 to 31 December 2017 — before, during and after the 2017 “clearance operations”. They found over 10,000 items that fell within its definition of hate speech — over 4,000 of those items were unique; the rest were duplicates shared multiple times on different pages or on different dates. These messages reached millions of people.

50. Based on its extensive review of this content, the Mechanism identified the following six themes of Myanmar’s anti-Rohingya hate propaganda:

“(a) denial of the Rohingya identity as a distinct ethnicity and/or as natives of Myanmar;

¹⁶⁹ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), para. 177. RG, Vol. II, Annex 5.

- (b) portrayal of the Rohingya as an existential threat to Myanmar;
- (c) portrayal of the Rohingya as a threat to racial purity of the recognized Myanmar ethnic people;
- (d) portrayal of Islam as a threat to Buddhist religious sanctity;
- (e) justification of violence against the Rohingya; and/or
- (f) denigration of the suffering of the Rohingya and portrayal of crimes against them as fabrications.”¹⁷⁰

51. These are in large part the same themes — dehumanization, accusations in a mirror and threats to racial purity — that Myanmar and the Tatmadaw have been propagating for many years, as I have already shown. I will now highlight a few representative examples of Myanmar’s Facebook posts.

52. On 24 August 2017, the day before the 2017 “clearance operations”, the Tatmadaw posted a message called “Genocide of the Rakhine people” — which was then reposted three more times over the next several weeks. This post invokes the 1942 incident that General Min Aung Hlaing also referenced, and states that the situation will be worse this time unless the State acts:

“May 13, 1942, the day of the Rakhine genocide: . . . In 1942-riot, only Rakhine people were murdered. . . . If there were similar riots in the future, Rakhine might well disappear. . . . This is because the Kalar are strong financially, well connected to the media and international organizations. . . . Rakhine state will disappear if Myanmar and Rakhine are not united, or the state fails to adopt secure and strong policies.”¹⁷¹

53. The Tatmadaw posted a similar message entitled “Written with Rakhine blood” on 26 August 2017, the day after the 2017 “clearance operations” commenced. Once again invoking the 1942 massacres, this post emphasizes unity to confront the Rohingya threat to Buddhist Myanmar. I will not read from the post, but the key language is on the slide on your screens¹⁷².

54. The Tatmadaw posted a message on 29 July 2017 and then again on 19 December 2017 — that is, before and during the “clearance operations” — entitled “Why did Hitler kill the Jews?”. The post included pictures of Hitler and Nazis and read as follows:

¹⁷⁰ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), para. 25. RG, Vol. II, Annex 5.

¹⁷¹ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, para. 291.

¹⁷² United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), pp. 64-66, paras. 192-193. RG, Vol. II, Annex 5.

“... in April 1939, horrifying massacre called the ‘Danzig Massacres’ [*sic*] or ‘Bloody Sunday’ [*sic*] broke out. ... More than 58,000 Germans were killed. Because of the massacre, Hitler quickly invaded Poland. ... the subsequent revenge of the Nazi Germans, after their occupation of Poland, against ... Polish Jews who had brutally massacred the German ethnics was reminded to this day lest the world forget. ... In his extraordinary and amazing speech, [Hitler] said to the Polish government directly, ‘Danzig had been a German town ... we were taking this town back today’ ... The case of the brutal killing of 58,000 ethnic Germans in Poland just before the start of the war was swiftly and urgently dealt with ... the perpetrators of such atrocities were only avenged life for life by the shootings of German sharpshooters.”¹⁷³

55. Why would the Tatmadaw post this message before and during the “clearance operations”?

This message excused and justified the Nazi invasion of Poland and the genocide of Jews that followed as avenging the false claim that Polish Jews had killed 58,000 ethnic Germans. The Tatmadaw is drawing a parallel here to justify its genocidal violence against the Rohingya: its genocidal “clearance operations” are presented as revenge for the false claim that Rohingya had killed more than 20,000 ethnic Rakhine in 1942.

56. On 27 August 2017, right after the 2017 “clearance operations” began, the Tatmadaw posted a message inciting violence entitled, “Let’s eat dog meat”. It depicted a popular singer with a gun, used dehumanizing language and incited violence against Rohingya “dogs”: “Today I heard that our Myanmar’s West Gate suffered a break-in that destroyed it ... I’m ready to grab this thing called a gun ... If one tries to behave like a dog, plot like a dog, then [I] don’t hesitate to eat dog meat ...”¹⁷⁴.

57. On 28 August 2017, the Tatmadaw disseminated a video entitled “Soldier rallying ethnic Rakhine” on several Facebook pages. This video shows a Tatmadaw soldier, using dehumanizing language, inciting ethnic Rakhine to genocide against the Rohingya, who are described as an existential threat. The soldier explains that the “clearance operations” will remove the Rohingya “animals” from their villages:

“Our country, our state, our town, our village need our protection ... their population growth is large and increasing ... they want to take over our ethnic minority population ... *we will clear the villages where those animals live*. What we mean by clearing is that we know where the ethnic villages are located. We have marked the places ... there will be a group blocking [the Rohingya]. There will be another group doing the clearing. They [the soldiers] will be doing the clearing systematically ... We

¹⁷³ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), pp. 71-72, paras. 195-196 (brackets in original). RG, Vol. II, Annex 5.

¹⁷⁴ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), pp. 81-82, paras. 207-209 (brackets in original). RG, Vol. II, Annex 5.

will be moving around the area, *clearing the villages of these animals . . . We have guns. We have bullets. That's what we came with. With ammunitions and the spirit to attack these animals, we have come here . . .* From small children to old people, if you can carry a sword, then carry a sword, if you can carry a stick, then carry a stick. Carry whatever you can and bravely face these animals. We need courage”¹⁷⁵.

58. The Tatmadaw shared a post on two Facebook pages on 6 September 2017 entitled “9/11 Myanmar and Cartoons”, accompanied by four cartoons that depict Rohingya killing Rakhine, inciting Rakhine people to violence against Rohingya:

“During the Jihad attack of Muslims in Indonesia and Bangladesh . . . old people killed other old people, women killed other women, children killed children . . . Hundreds of thousands of Buddhist necks were slain by Muslims’ blades. Now, Myanmar, which is a Buddhist country, in order to prevent the same scenario that happened in Indonesia and Bangladesh, I want you to sharpen even the knives at home that you do not use . . . The ethnic Rakhine people who have faced the Jihad will know best”¹⁷⁶.

59. In September 2017 — during the “clearance operations” and while the military was burning down Rohingya villages — the Tatmadaw disseminated several posts spreading the false claim that the Rohingya burned their own homes and villages. One post, with a cartoon image of Nobel Peace Laureate Ms Malala Yousafzai, claims the Rohingya “will also burn the entire Myanmar” to “snatch away” more land¹⁷⁷. In other posts, the Tatmadaw shared images purporting to show Rohingya setting fire to their own huts¹⁷⁸ — this attempted fabrication was exposed by journalists like Jonathan Head, who testifies as an eyewitness that the Tatmadaw used members of the local Hindu community to pose as Muslim Rohingya in these propaganda images. His affidavit is at Annex 375 of the Memorial.

¹⁷⁵ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, paras. 320-322 (emphasis added, brackets in original).

¹⁷⁶ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, paras. 360-362.

¹⁷⁷ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), p. 83, para. 210. RG, Vol. II, Annex 5.

¹⁷⁸ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, p. 184, paras. 221, 365, 367, 369.

60. Several of the Tatmadaw posts in September 2017 — during the “clearance operations” — sought to dehumanize the Rohingya, calling them “maggots in the flesh”¹⁷⁹ and accusing them of “breeding like rabbits”¹⁸⁰.

61. On 2 October 2017, the Tatmadaw posted a message entitled, “You can get a six-foot pit”. The message was addressed to “Kalars” — a dehumanizing slur used against the Rohingya — threatening them with death:

“‘Kalar- soe’ [bad Kalar] like you, relatives of cows, we don’t hesitate to punch you till your teeth fall out! You won’t get a seat at the table, Marmouds [derogatory word, implying all Rohingya are named ‘Marmoud’]. If you say you love the Myanmar land so much, you can get a six-foot pit [meaning you can be buried in the land].”¹⁸¹

The bracketed text that you see is from the IIMM.

62. A Tatmadaw post from 19 December 2017 entitled “Myanmar will be a country of whores” was distributed on multiple pages. It praises past pogroms against Rohingya and calls for their exclusion:

“Had General Aung Gyi and Ne Win not launched King Dragon Operation, Garuda Operation in Rakhine State, Buthidaung, Maungdaw and Rathedaung would definitely not have been on the map of Myanmar but on the map of Bangladesh . . . If you continued to give them roles similarly, Myanmar would become a country of whores”¹⁸².

63. Mr President, all of these messages — which came directly from the Tatmadaw — demonstrate Myanmar’s genocidal intent and incitement to genocide against the Rohingya. All of them fit the themes of dehumanization, accusations in a mirror and threats to racial purity that are the hallmarks of past genocides. Indeed, the Tatmadaw openly invoked the Nazi genocide of Jews to justify its revenge for the false 1942 massacres of Rakhine — the “unfinished job” it was resolving.

64. We also know that the propaganda was effective. In addition to the utterances of soldiers, which I will address later, comments on these posts were filled with calls for genocide. For example, in response to one Tatmadaw post on 24 August 2017, the day before the “clearance operations”, in

¹⁷⁹ *Ibid.*, p. 197 (Post of 16 September 2017), paras. 383-385.

¹⁸⁰ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, p. 205 (Post of 17 September 2017), paras. 391-396.

¹⁸¹ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), paras. 228-229 (brackets in original). RG, Vol. II, Annex 5.

¹⁸² United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), available at https://iimm.un.org/sites/default/files/2024/11/Hate-Speech-Report_EN.pdf, p. 224, paras. 425-427. RG, Vol. II, Annex 5.

which the military reported encountering so-called “Bengali terrorists”, over 200 comments used language like: “Kill all Kalar”; “Shoot and kill all Kalar”; “Don’t leave any one of these ‘Muslim dogs’ alive”; “Kill all dogs. Make them extinct.”¹⁸³

65. Myanmar says that the IIMM report is limited in duration. That is exactly right — from July to December 2017, and even then, the Mechanism found over 10,000 items of hate speech. Imagine if the report covered a longer period of time.

66. Myanmar says that only 1 per cent or so of the posts are anti-Rohingya. Exactly right again. That is by design. The Tatmadaw was using fake accounts and inserting propaganda onto Facebook pages that normally would not post about such content in order to maximize impact.

67. Mr President, I conclude this section of my presentation with the Mechanism’s final assessment of its report:

“Overall, the Mechanism’s analysis demonstrates that the Myanmar military spread material designed to instil fear and hatred of the Rohingya minority. It accomplished this by creating a clandestine network of Pages on a social media site with the potential to reach an audience of millions. This campaign of hatred was ongoing at the very time that many Rohingya villages were burned and while thousands of Rohingya men, women and children were beaten, sexually assaulted and/or killed, and continued as hundreds of thousands of Rohingya were forced to flee from their homes. *The evidence from this analytical project conclusively shows that rather than taking all steps to prevent the violence and protect its people, the Myanmar military conducted a social media campaign that excused and promoted violence against the Rohingya minority.*”¹⁸⁴

5. Myanmar’s messaging by and through extremist Buddhist monks

68. Mr President, Members of the Court, Myanmar also spread anti-Rohingya hate propaganda by and through extremist Buddhist monks. They did this to leverage the respect that monks have in a country where almost 90 per cent of the population is Buddhist¹⁸⁵.

69. The military facilitated the rise of extremist monks who shared its intolerance for the Rohingya. According to a former monk, “[m]ilitary leaders approached our fellow monks with offers

¹⁸³ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), paras. 64-65. RG, Vol. II, Annex 5.

¹⁸⁴ *Ibid.*, para. 179 (emphasis added). RG, Vol. II, Annex 5.

¹⁸⁵ D.B. Subedi & Johanna Garnett, ‘De-mystifying Buddhist religious extremism in Myanmar: confrontation and contestation around religion, development and statebuilding’ (2020) 20(2) *Conflict, Security & Development* 223, p. 231. MG, Vol. VIII, Annex 235.

of financial support and gifts . . . This emboldened the monks to rise up and speak up in public to spread the pro-military propaganda, spreading hatred between religions.”¹⁸⁶

70. The main group of such monks was called Ma Ba Tha, or the Association for the Protection of Race and Religion. Ma Ba Tha published anti-Rohingya hate propaganda in official publications. In one article from June 2017, they used dehumanizing language, comparing the Rohingya to weeds that spread uncontrollably, and they warn that “[i]f the Myanmar Government and the citizens are not careful, in a few years, Myanmar ethnic people, like the precious flowers will be swallowed to extinction by the weed-like Bengali”¹⁸⁷. Another Ma Ba Tha article from November 2016 was entitled “The Myanmar race can go extinct due to the Bengali.”¹⁸⁸

71. The most prominent of the Ma Ba Tha monks is Ashin Wirathu. Senior General Min Aung Hlaing has donated directly to Wirathu, and photographs of the two together were widely circulated online in 2016¹⁸⁹. General Min Aung Hlaing awarded Wirathu in 2023 with the honorific “Thiri Pyanchi” title for his “outstanding work for the good of the Union of Myanmar”¹⁹⁰. Wirathu regularly uses dehumanizing language to refer to the Rohingya, calling them “African carp”, “snakes”, “mad dogs”, “wolves” and “jackals”¹⁹¹.

72. The Tatmadaw disseminated Wirathu’s anti-Rohingya propaganda on Facebook. For example, in a post by the Tatmadaw on 18 August 2017 entitled “Marry a dog instead of marrying a Kalar”, the post amplifies a dehumanizing message from Wirathu that Buddhist women would be

¹⁸⁶ Fatima Lianes, “An Unholy Alliance: Monks and the Military in Myanmar”, *Al Jazeera* (18 March 2019) (ellipsis in original). MG, Vol. IX, Annex 305.

¹⁸⁷ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1316. MG, Vol. II, Annex 40.

¹⁸⁸ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1315. MG, Vol. II, Annex 40.

¹⁸⁹ Htet Naing Zaw, “MaBaTha is a Necessity: Military”, *The Irrawaddy* (19 June 2019). MG, Vol. IX, Annex 311.

¹⁹⁰ “Myanmar’s military honours anti-Muslim monk, frees prisoners”, *Al Jazeera* (4 January 2023), available at <https://www.aljazeera.com/news/2023/1/4/myanmars-military-honours-anti-muslim-monk-frees-prisoners>; “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/>.

¹⁹¹ Tin Aung Kyaw, “Buddhist monk Wirathu leads violent national campaign against Myanmar’s Muslims”, *Global Post* (21 June 2013). MG, Vol. IX, Annex 246. Hannah Beech, “Across Myanmar, Denial of Ethnic Cleansing and Loathing of Rohingya”, *The New York Times* (24 October 2017). MG, Vol. IX, Annex 270. See also Burma Human Rights Network, *Monthly Situation Updates on Human Rights Abuses and Religious Intolerance in Burma* (August 2016), p. 16. MG, Vol. IV, Annex 95. Thomas Fuller, “Extremism Rises Among Myanmar Buddhists”, *New York Times* (21 June 2013). MG, Vol. IX, Annex 247. Tin Aung Kyaw, “Buddhist monk Wirathu leads violent national campaign against Myanmar’s Muslims”, *Global Post* (21 June 2013). MG, Vol. IX, Annex 246. Barbet Schroeder, Video “The Venerable W.” (2017). MG, Vol. V, Annex 135. See also Kjell Anderson, “The Enemy Next Door: Hate Speech in Burma”, *The Sentinel* (17 October 2014). MG, Vol. IX, Annex 251.

better off marrying a dog rather than a “Kalar”, due to the existential threat of Rohingya Muslims to Buddhism¹⁹².

73. The UN Fact-Finding Mission reported that after the first wave of “clearance operations” in late 2016, the military facilitated Wirathu’s travel throughout northern Rakhine State, where he visited villages that the Tatmadaw attacked and met with high-ranking military officers¹⁹³. According to the UN Fact-Finding Mission, he returned to Rakhine State in July 2017 and visited two villages in Rathedaung township that were later subjected to “clearance operations”: Chut Pyin and Zay Di Pyin. You will hear and see tomorrow the details of what happened in those villages.

74. The Tatmadaw also shared the messaging of another monk, Sitagu Sayadaw, the highest-ranking monk in Myanmar. Sitagu delivered a highly publicized sermon in October 2017 — during the “clearance operations”. He delivered his speech at a military training garrison, and in his speech he provided absolution for genocide. Sitagu recounted the following parable¹⁹⁴:

“There were about five hundred thousand non-religious and evil soldiers, who died in the war. Because of that, the King was not able to sleep at night, since, in Buddhism, killing humans is one of the worst sins. The eight monks who knew about this, told the King ‘Don’t worry, your Highness. Not a single one of those you killed was Buddhist. They didn’t follow the Buddhist teachings and therefore they did not know what was good or bad. Not knowing good or bad is the nature of animals. Out of over five hundred thousand you killed, only one and a half were worth to be humans. Therefore it is a small sin and does not deserve your worry.’”¹⁹⁵

75. Not only was this sermon delivered in front of military troops, during the “clearance operations”, but the Tatmadaw heavily disseminated it over Facebook, posting the sermon 11 times on its network of accounts¹⁹⁶. The message is clear — it is not a sin to kill Rohingya because they are not Buddhist, and because they are not Buddhist, they are like animals, not knowing what is good or bad.

¹⁹² United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), p. 61, paras. 189-190. RG, Vol. II, Annex 5.

¹⁹³ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), paras. 1160-1161. MG, Vol. II, Annex 40. See also Hannah Beech & Saw Nang, “He Incited Massacre, but Insulting Aung San Suu Kyi Was the Last Straw”, *New York Times* (29 May 2019). MG, Vol. IX, Annex 309. See also International State Crime Initiative, *Genocide Achieved, Genocide Continues: Myanmar’s Annihilation of the Rohingya* (2018), p. 32. MG, Vol. IV, Annex 109.

¹⁹⁴ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1328. MG, Vol. II, Annex 40.

¹⁹⁵ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1328. MG, Vol. II, Annex 40.

¹⁹⁶ United Nations Independent Investigative Mechanism for Myanmar, *Anti-Rohingya Hate Speech on Facebook: Content and Network Analysis* (2023), paras. 410-411. RG, Vol. II, Annex 5.

6. Utterances of Myanmar soldiers

76. Mr President, Members of the Court, I turn finally to the utterances of Myanmar's soldiers, which is both an indicator of genocidal intent and a means of confirming the impact on those soldiers of the propaganda campaign carried out at the highest levels of the Tatmadaw.

77. The Court has in its case file the sworn testimony of an IIMM legal officer who took the witness account of a Tatmadaw defector given the IIMM code P5513. That defector stated that the soldiers' "opinion that Rohingya/'Bengalis' were not nationals of Myanmar was formed by the Propaganda they were fed", and that "the accumulation of the open abuse by military officers towards Rohingya, together with the military's perception that Rohingya were illegal immigrants, led to soldiers believing they could do what they wanted with respect to the Rohingya"¹⁹⁷.

78. We can see from the following utterances of soldiers posted online during the "clearance operations" that they targeted the Rohingya as such for genocidal violence:

"If it's kalar, get rid of the whole race."¹⁹⁸

"Kill all the kalars that you see in Myanmar; none of them should be left alive."¹⁹⁹

"May the terrorist dog kalars fall fast and die horrible deaths."²⁰⁰

"These non-human kalar dogs, the Bengalis, are killing and destroying our land, our water and our ethnic people. . . . We need to destroy their race."²⁰¹

"Stuff pig's fat inside the damn kalar's mouth."²⁰²

"Pour fuel and set fire so that they can meet Allah faster."²⁰³

"Cut off those necks of the sons of the dog and kick them into the water."²⁰⁴

¹⁹⁷ United Nations Independent Investigative Mechanism for Myanmar, *Screening of Mechanism Person Code No. P5513* (September 2025), para. 37.

¹⁹⁸ Steve Stecklow, "Hatebook: Why Facebook is losing the war on hate speech in Myanmar", *Reuters* (15 August 2018). MG, Vol. IX, Annex 287.

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Ibid.*

79. Lieutenant Kyi Nyan Lynn of the 33rd Light Infantry Division, who participated in the “clearance operations”, posted on Facebook: “If they’re Bengali, they’ll be killed.”²⁰⁵

80. A police officer involved in the “clearance operations” posted on Facebook on 27 August 2017: “Have been wanting to kill these ‘Kalar’ for so long. Only got to kill them just now.”²⁰⁶

81. A member of the 33rd Division told the Rohingya: “The central government sent us specially to kill you Bengali people.”²⁰⁷

82. A member of the 99th Light Infantry Division posted on Facebook: “on the battlefield, whoever is quick will get to eat you, Muslim dogs”²⁰⁸.

83. According to the UN Fact-Finding Mission, Tatmadaw soldiers regularly told Rohingya that “you don’t belong here”, “you are Bengali”, “we will kill you all”²⁰⁹.

84. Victims of sexual violence reported similar utterances. A Rohingya woman survivor who was gang-raped recounted a member of the Tatmadaw saying: “We are going to kill you this way, by raping. We are going to kill Rohingya. We will rape you. This is not your country.”²¹⁰ Another rape survivor, from Maungdaw Township, recalled her perpetrator calling her “Kalar” and saying “We will rape you and kill you”²¹¹.

7. Conclusion

85. Mr President, Members of the Court, The Gambia submits that Myanmar’s anti-Rohingya hate propaganda, and the hateful utterances of Myanmar soldiers during the “clearance operations”, are conclusive indicators of genocidal intent — both of Myanmar’s senior leadership, and of its soldiers committing the acts of genocide.

²⁰⁵ Simon Lewis, Zeba Siddiqui, Clare Baldwin & Andrew R.C. Marshall, “Tip of the Spear”, *Reuters* (26 June 2018). MG, Vol. IX, Annex 284.

²⁰⁶ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1378. MG, Vol. II, Annex 40.

²⁰⁷ Simon Lewis, Zeba Siddiqui, Clare Baldwin & Andrew R.C. Marshall, “Tip of the Spear”, *Reuters* (26 June 2018) (emphasis added). MG, Vol. IX, Annex 284.

²⁰⁸ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1378. MG, Vol. II, Annex 40.

²⁰⁹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1422. MG, Vol. II, Annex 40.

²¹⁰ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 1422. MG, Vol. II, Annex 40.

²¹¹ UN Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2 (17 September 2018), para. 932. MG, Vol. II, Annex 40.

86. Thank you, Mr President, Members of the Court, for your kind attention. This concludes the presentations of The Gambia for today. Mr Loewenstein will begin our next session tomorrow with a presentation focusing on Myanmar's so-called "clearance operations".

The PRESIDENT: I thank Mr Suleman, whose statement brings this sitting to a close. The oral proceedings in the case will resume tomorrow, Tuesday 13 January 2026 at 3 p.m., when The Gambia will continue its first round of oral argument.

The sitting is closed.

The Court rose at 5.50 p.m.
