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*CR 2026/10*

**International Court  
of Justice**

**Cour internationale  
de Justice**

**THE HAGUE**

**LA HAYE**

**YEAR 2026**

*Public sitting*

*held on Monday 19 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)*

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**VERBATIM RECORD**

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**ANNÉE 2026**

*Audience publique*

*tenue le lundi 19 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)*

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**COMPTE RENDU**

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*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

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*Présents* : M. Iwasawa, président  
M<sup>me</sup> Sebutinde, vice-présidente  
MM. Tomka  
Abraham  
Nolte  
M<sup>me</sup> Charlesworth  
MM. Brant  
Gómez Robledo  
M<sup>me</sup> Cleveland  
MM. Aurescu  
Tladi  
Hmoud, juges  
M<sup>me</sup> 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 Myanmar.

I now give the floor back to Ms Leigh Lawrie to continue her presentation. You have the floor, Madam.

Ms LAWRIE:

### **Location-by-location analysis** (*continued*)

#### **15. Dar Gyi Zar**

102. Good afternoon, Mr President, Members of the Court. I resume in the middle of part two of my presentation, dealing with locations concerning crimes committed in 2016 only. We start again at location 15, which is Dar Gyi Zar.

103. Given this location's proximity to Nga Khu Ya, Ngar Sar Kyu, Pwint Hpyu Chaung, U Shey Kya and Yae Khat Chaung Gwa Son (locations 8, 9, 11, 12 and 14), The Gambia's allegations must fairly be considered in the context of the events of mid-November 2016 which I discussed this morning, when the military was involved in armed engagements with ARSA<sup>1</sup>.

104. Evidence which shows that the military was responding to terrorist attacks is that, in the immediate aftermath of the 12 to 13 November 2016 armed clashes, the FFM records that a local ethnic Rakhine village administrator negotiated the return of displaced Bengalis with the Tatmadaw<sup>2</sup>. In addition, the single witness from the International State Crime Initiative (ISCI) describes how, on their return to the village in November 2016, "villagers put up tents to rebuild their community" and, shortly after, the army called Bengali village administrators and elders to a meeting to encourage them to arrest "extremists"<sup>3</sup>. None of this fits with a purported pattern of genocidal violence.

105. But for one exception, all the allegations for this location stem from anonymous, hearsay, untested summaries<sup>4</sup>. For the reasons already discussed, no evidential weight can be given to these. The one exception is the evidence gathered by the International State Crime Initiative<sup>5</sup>. But no

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<sup>1</sup> 2018 FFM Detailed Findings, para. 1083, MG, Vol. II, Annex 40.

<sup>2</sup> *Ibid.*, para. 1089.

<sup>3</sup> International State Crime Initiative (ISCI), *Genocide Achieved*, p. 55, MG, Vol. IV, Annex 109.

<sup>4</sup> CMM, para. 9.166.

<sup>5</sup> ISCI, *Genocide Achieved*, pp. 52 and 55, MG, Vol. IV, Annex 109.

reliance can be placed on this source for this allegation either. This evidence stems from a single, uncorroborated witness who claims that 120 people were killed and many women raped in attacks on 10 October 2016<sup>6</sup>. There is no evidence that there was any form of attack on Dar Gyi Zar on this date. The witness is a conspicuous outlier.

106. As regards fatalities, the FFM suggests an unverified figure of 75 deaths<sup>7</sup>. No information is provided about whether any of these individuals were *unlawfully* killed. In any event, 75 fatalities in a population of around 3,179 does not fit with a narrative of genocide<sup>8</sup>. The Gambia's Reply contains no mention of this location at all<sup>9</sup>.

## 16. Wa Peik

107. Wa Peik is the sixteenth location.

108. The evidence shows this.

109. Wa Peik lies less than 4 km north of Kyee Kan Pyin. Kyee Kan Pyin was one of the three sites attacked by ARSA on 9 October 2016.

110. On 13 November 2016, ARSA destroyed some 80 houses in Wa Peik. Contemporaneous newspaper reports show military personnel and police helping locals to extinguish burning homes<sup>10</sup>.

111. Allegations of criminality in Wa Peik in 2016 must, therefore, be placed in the context of significant terrorist activity in the area which Myanmar responded to.

112. Only one allegation is made by The Gambia for Wa Peik — that the Myanmar defence services entered the village and killed Bengali villagers<sup>11</sup>. Scrutiny of the underlying source — a newspaper article written by the CEO of Fortify Rights — shows that The Gambia's summary is inaccurate<sup>12</sup>. An anonymous individual is reported as saying, "When the soldiers entered the village,

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<sup>6</sup> *Ibid.*, pp. 52, 55.

<sup>7</sup> 2018 FFM Detailed Findings, para. 1088, MG, Vol. II, Annex 40.

<sup>8</sup> ISCI, *Genocide Achieved*, p. 55, MG, Vol. IV, Annex 109; Ministry of Immigration and Population, List of population, p. A6, No. 41, CMM, Vol. IX, Annex 465.

<sup>9</sup> RM, para. 9.117.

<sup>10</sup> *Myawady Daily Newspaper*, "The Terrorist Raiders Set Fire to the Houses in Wa Peik Village", 14 November 2016, pp. 14 and 32, CMM, Vol. VIII, Annex 372.

<sup>11</sup> MG, para. 8.13.

<sup>12</sup> M. Smith, "Bringing Burma Back From the Brink", *Wall Street Journal*, 15 February 2017, MG, Vol. IX, Annex 263.

they started shooting” and “I saw them shoot at people as they fled”<sup>13</sup>. The date of this incident appears to be 9 October 2016, the date of the co-ordinated ARSA attacks<sup>14</sup>. The individual reports shooting but does not report any killings. Clearly, one reasonable interpretation is that what is being described are counter-terrorism operations where the military’s targets were terrorists.

113. Support for this interpretation is provided by the UN *Flash Report* in which testimonies gathered from villages, including Wa Peik, all suggest that the “area clearance operations” were in line with a counter-insurgency strategy<sup>15</sup>. Further, organizations including the United Nations, Fortify Rights and Amnesty International all refer to the burning of structures in Wa Peik, but not to any killings. There is evidence available that ARSA was responsible for the burning<sup>16</sup>.

114. In terms of sexual violence, it is Myanmar which identifies one solitary uncorroborated allegation of rape from an anonymous witness for this location in an NGO report<sup>17</sup>. Even if it was accepted that this incident could be proved, a single incident of rape does not support the existence of “pervasive” sexual violence.

115. Evidence which contradicts The Gambia’s narrative is also found in Amnesty International’s investigations into events at Wa Peik. This investigation documented no reports of killing or sexual violence. It also reports that Myanmar ensured the delivery of food supplies to villages including Wa Peik in early November 2016, providing for some 7,200 Bengalis, notwithstanding the serious security constraints arising from the ARSA attacks<sup>18</sup>.

## **17. Dar Paing Sa Yar**

116. Mr President, apologies for interrupting my presentation, but I understand that we do not have control over the slideshow. I am grateful, and apologies for that interruption. I am moving now to location Dar Paing Sa Yar.

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<sup>13</sup> *Ibid.*, p. 2.

<sup>14</sup> *Ibid.*, p. 1.

<sup>15</sup> OHCHR, *Flash Report*, p. 41, CMM, Vol. VI, Annex 230.

<sup>16</sup> *Myawady Daily Newspaper*, “The Terrorist Raiders Set Fire to the Houses in Wa Peik Village”, 14 November 2016, pp. 14 and 32, CMM, Vol. VIII, Annex 372.

<sup>17</sup> Fortify Rights, *Long Swords*, p. 151, MG, Vol. IV, Annex 114.

<sup>18</sup> Amnesty International, *Breaking Point*, p. 31 (not included in the extract at MG, Vol. IV, Annex 97), CMM, Vol. VI, Annex 265.

117. The sole allegation made for Dar Paing Sa Yar is of rape committed sometime between October and December 2016<sup>19</sup>. The Gambia fails to explain how this single allegation, even if proven, fits into any purported “consistent pattern of conduct”. This location does not fall within the area where counter-terrorism operations were conducted following the October 2016 ARSA attacks<sup>20</sup>. Instead, it appears to be — at its highest — an isolated incident. The difficulty which this location poses for The Gambia is evidenced by the fact that it is not mentioned at all in its Reply<sup>21</sup>.

118. Drawing my analysis of these 11 locations to a close, again none of them provide evidence of The Gambia’s pattern. There is no evidence of “pervasive” sexual violence or “massive” killings on the scale alleged by The Gambia. Events at these locations also take place almost a year before those in August 2017.

119. I move now to analyse the remaining 25 locations mentioned by The Gambia in its written pleadings and its oral hearings last week. These are locations 18 to 41.

## **18. Ngan Chaung**

120. Location 18 is Ngan Chaung. This location should possibly be included in my 2016 grouping but, given the difficulty in dating the underlying allegations, out of an abundance of caution I have not done so.

121. What can be said for this location is that it is a short distance from Nga Khu Ya and Ngar Sar Kyu, locations 8 and 9 respectively. As I have explained, both were the scene of ARSA activity in October 2016. Ngan Chaung was therefore within the area where responsive counter-terrorism operations were conducted.

122. Set against this background are The Gambia’s two fragmented allegations<sup>22</sup>. First, an anonymous, hearsay account of two boys being beaten by soldiers<sup>23</sup>. No more detail is given but the source means it pre-dates February 2017. Second, an anonymous hearsay account of injury when a

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<sup>19</sup> MG, para. 9.21 referring to UN, Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN doc. A/HRC/42/CRP.4, 22 August 2019, para. 89, MG, Vol. III, Annex 48.

<sup>20</sup> UN, Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN doc. A/HRC/42/CRP.4, 22 August 2019, para. 85, MG, Vol. III, Annex 48.

<sup>21</sup> RM, para. 9.166.

<sup>22</sup> MG, paras. 8.33, 8.65.

<sup>23</sup> UN OHCHR, *Flash Report* (2017), p. 27, MG, Vol. II, Annex 30.

house was set on fire by a “launcher”<sup>24</sup>. No more detail is given. Overlaying this is the highly generalized account of a claimed former soldier that he conducted operations in September 2017 in various villages including Ngan Chaung during which killings and rapes took place<sup>25</sup>. Again, no more detail is given.

123. There is no evidence that a single person was killed or that anyone was the subject of sexual violence at this location. No evidence that supports any genocidal pattern.

### **19. Hpar Wut Chaung**

124. Moving to location 19, Hpar Wut Chaung.

125. This location lies close to several villages I have already discussed. It also lies close to another village, Kyar Gaung, which I will come to shortly.

126. This village tract was, therefore, close to ARSA terrorist activity in both late 2016 *and* 2017 — a fact omitted by The Gambia.

127. I have already described ARSA activity in the area in 2016, so I will deal with 2017. The evidence shows this.

128. On 25 August 2017, troops were ambushed near Kyar Gaung by 250 terrorists<sup>26</sup>. On 6 September, Kyar Gaung police outpost and village were the scene of another attack, involving around 50 terrorists which resulted in many houses being burned<sup>27</sup>.

129. The Gambia’s three allegations for Hpar Wut Chaung are devoid of detail, including the date<sup>28</sup>. The first allegation is of an assault<sup>29</sup> by soldiers on a village elder said to be connected to the discovery of that elder’s decapitated body the next day. Any connection is clearly speculative. The circumstantial evidence points more persuasively to ARSA being responsible, particularly given the nature of the killing. For example, a few weeks later, a Bengali man from nearby Nga Khu Ya was killed, and his decapitated body found in a creek. Amnesty International obtained independent

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<sup>24</sup> UN Fact-Finding Mission, Report of the Detailed Findings (2018), para. 908, MG, Vol. II, Annex 40.

<sup>25</sup> MG, para. 8.10, referring to Interview with Zaw Naing Tun, 15 August 2020, p. 5, MG, Vol. V, Annex 141.

<sup>26</sup> Ministry of Defence, Table of the Clash, p. 5, Item No. 33, CMM, Vol. IV, Annex 149.

<sup>27</sup> Ministry of Home Affairs, Terrorists Attacks, para. 16, CMM, Vol. IV, Annex 148.

<sup>28</sup> MG, paras. 8.71, 10.39.

<sup>29</sup> Fortify Rights, *Long Swords*, p. 145, MG, Vol. IV, Annex 114.

corroboration to substantiate ARSA's involvement in the killing<sup>30</sup>. As I will come to, an informant was beheaded by ARSA in Kyein Chaung.

130. The second allegation concerns the alleged rape and murder of a 12-year-old girl by soldiers which may have occurred "between October and November 2016 and August and September 2017"<sup>31</sup>. It is difficult to respond to such an unspecific allegation, particularly when it emanates from an anonymous, hearsay, untested account.

131. The third allegation is that Hpar Wut Chaung was a village that was "completely destroyed"<sup>32</sup>. No further detail is provided, including when this destruction is said to have occurred or who was responsible.

132. Given The Gambia's reliance on the FFM, of note is that the FFM does not identify Hpar Wut Chaung as a location where any crimes were committed.

133. In relation to fatalities, The Gambia does not dispute that, at most, "some five (5) people out of a population of 6,000 may have been killed unlawfully" in this location<sup>33</sup>. Even if this figure could be proved, it is a small proportion of the population.

134. In short, taking this evidence at its highest, the claims for this location involving a single rape and five fatalities do not support the existence of a "consistent pattern of conduct" involving allegations of extreme brutality repeated throughout northern Rakhine State.

## **20. Zin Pai Nyar**

135. Location 20 is Zin Pai Nyar.

136. The evidence shows this.

137. On 26 August 2017, ARSA attacked the Zin Pai Nyar border guard police post. Improvised bombs were thrown by the terrorists who also planted mines and torched village houses before again attacking the police post<sup>34</sup>.

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<sup>30</sup> Amnesty International, *Destroy Everything*, p. 42, CMM, Vol. VI, Annex 269.

<sup>31</sup> Fortify Rights, *Long Swords*, p. 152, MG, Vol. IV, Annex 114.

<sup>32</sup> RG, para. 9.57 fn. 1109.

<sup>33</sup> CMM, para. 9.183. See also Ministry of Immigration and Population, List of population, p. A6, No. 44, CMM, Vol. IX, Annex 465; Fortify Rights, *Long Swords*, pp. 145-146, MG, Vol. IV, Annex 114.

<sup>34</sup> Ministry of Home Affairs, Terrorists Attacks, paras. 9 (vii) and 9 (ix), CMM, Vol. IV, Annex 148; Ministry of Defence, Table of the Clash, p. 2, Item No. 13, and p. 16, Item No. 4, CMM, Vol. IV, Annex 149; Amnesty International, *Destroy Everything*, p. 39-40, CMM, Vol. VI, Annex 269.

138. How this location fits into any purported pattern is completely unclear.

139. First, in its Reply, The Gambia does not deny that not a single Bengali villager, out of a population of 8,229, was harmed in this location during the counter-terrorism operations<sup>35</sup>.

140. Second, the only other mention of Zin Pai Nyar is in the Reply as a village that was “completely destroyed”<sup>36</sup>. No other details are provided, including when this destruction occurred or who was responsible. That said, it may be that this bare allegation is supposed to be linked back to material annexed to the Memorial in which Amnesty International claim that, in August 2017, the security services looted building materials and that “they” were responsible for burning houses<sup>37</sup>. However, this unspecific allegation has to be viewed against the background of the ARSA activity in the area which included the use of IEDs.

## **21. Kyein Chaung/Done Paik/Ree Dar**

141. Location 21 comprises the three settlements of Kyein Chaung, Done Paik and Ree Dar. These locations lie to the south of Min Gyi.

142. The evidence shows this.

143. ARSA was active in the area in the lead-up to 25 August 2017. Its activities included intimidating and killing Bengali<sup>38</sup>. For example, it is reported that an informant was beheaded by ARSA in Kyein Chaung<sup>39</sup>. As already mentioned, decapitation of informants appears to be a hallmark of ARSA. A similarly brutal killing of three men occurred close to Min Gyi around the same time<sup>40</sup>.

144. On 25 August 2017, the military were ambushed by 200 terrorists at Ree Dar<sup>41</sup>. On 26 August, the military was attacked by 100 ARSA terrorists near Kyein Chaung. A mine was also

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<sup>35</sup> MG, para. 8.10, citing to Interview of Zaw Naing Tun, 15 August 2020, MG, Vol. V, Annex 141; Interview of Myo Win Tun, 15 August 2020, MG, Vol. V, Annex 142; CMM, paras. 9.194-9.200; RM, para. 9.129.

<sup>36</sup> RG, para. 9.57, fn. 1109.

<sup>37</sup> Amnesty International, “Remaking Rakhine State”, March 2018, p. 6, MG, Vol. IV, Annex 98.

<sup>38</sup> Fortify Rights, *Long Swords*, pp. 73-80, CMM, Vol. VII, Annex 279.

<sup>39</sup> *Ibid.*, p. 75.

<sup>40</sup> *Ibid.*

<sup>41</sup> Ministry of Defence, Table of the Clash, p. 6, Item No. 37, CMM, Vol. IV, Annex 149.

detonated<sup>42</sup>. On 28 August, the military was ambushed by some 300 armed ARSA terrorists, again near Kyein Chaung<sup>43</sup>.

145. Four allegations of killing and sexual violence are advanced for these settlements<sup>44</sup>. Each allegation stems from anonymous, hearsay, untested, summarized accounts<sup>45</sup>. While all are undated, Myanmar deduces that the allegations also mix time frames, with those emanating from the FFM dating from August to September 2017<sup>46</sup> and those from the February 2017 report pre-dating that. The additional allegations of sexual violence identified by Myanmar also come from, and thus must pre-date, the February 2017 report<sup>47</sup>. As the counter-terrorism operations were not continuous but responsive, short, and interrupted by a period of nearly a year, this temporal mix undermines any argument of any pattern being followed.

146. For the 2017 allegations, the failure to mention any context is seriously misleading. If individual witnesses fail to mention that gun-battles involving hundreds of ARSA terrorists were raging in the village, their references to “shooting” only by the Myanmar security forces creates a wholly inaccurate picture of what was happening there at that time.

147. In terms of fatalities, Myanmar’s initial analysis of The Gambia’s evidence indicated that it may have been four, but on review at most five<sup>48</sup>. In The Gambia’s Reply, it did not dispute the four<sup>49</sup>. Whether the figure is four or five, it is a very small percentage of the total population of this village tract which was more than 15,000 in August 2017<sup>50</sup>.

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<sup>42</sup> *Ibid.*, p. 8, Item No. 5, CMM, Vol. IV, Annex 149.

<sup>43</sup> Myanmar Defence Services, No. (15) Mobile Operation Command Headquarters, Zwe Man Hone Operation, Daily Operation Report No. (241/2017), 28 August 2017, p. 4 (7), CMM, Vol. IV, Annex 121; Myanmar Defence Services, Western Command Headquarters, Aung Yan Naing Operation Report No. (241/2017), 29 August 2017, p. 4 (3), CMM, Vol. IV, Annex 123.

<sup>44</sup> MG, paras. 1.28, 8.17, 8.59 and 9.36.

<sup>45</sup> 2018 FFM Detailed Findings, paras. 888, 894, 921, MG, Vol. II, Annex 40; UN OHCHR, *Flash Report* (2017), p. 21. MG, Vol. II, Annex 30.

<sup>46</sup> 2018 FFM Detailed Findings, p. 177, MG, Vol. II, Annex 40.

<sup>47</sup> CMM, paras. 9.213, 9.215 referring to OHCHR, *Flash Report*, p. 23, MG, Vol. II, Annex 30.

<sup>48</sup> CMM, para. 9.126. But see 2018 FFM Detailed Findings, paras. 888, 894, MG, Vol. II, Annex 40.

<sup>49</sup> RM, para. 9.134.

<sup>50</sup> Ministry of Immigration and Population, List of population, p. A4, No. 19 and p. A5, No. 22, CMM, Vol. IX, Annex 465.

## 22. Laung Don

148. Moving to location 22, Laung Don.

149. Like neighbouring Kyein Chaung, this location was the subject of an ARSA attack on 25 August 2017. The police outpost was attacked by about 200 ARSA terrorists which prompted the security forces to respond<sup>51</sup>.

150. The Gambia refers to two discrete incidents in Laung Don, from apparently two different time periods<sup>52</sup>.

151. The first incident, while undated, must pre-date February 2017 and relates to an anonymous, hearsay account of a mass arrest and detention of villagers during which one died<sup>53</sup>.

152. The second is an anonymous, hearsay allegation which ostensibly relates to the rape of ten women by soldiers around 27 August 2017<sup>54</sup>. However, The Gambia misrepresents the evidence. An allegation of rape is only made by one individual.

153. Another incident is identified by Myanmar<sup>55</sup>. It boils down to the observation by two individuals that, on 25 or 26 August 2017, soldiers took two women away and brought them back crying. No criminal allegation can properly be founded on such material. Even if some regard is to be paid to it, then of greater significance in a genocide case is that the soldiers were asking where “bad people” were, the inference being that their purpose was to search for terrorists who had attacked the police outpost rather than executing a plan to destroy<sup>56</sup>. Indeed, one witness claims that the soldiers said that “this was not our land, and we should leave”<sup>57</sup>. Myanmar cannot know whether a particular soldier ever did make that comment. But, if correct, it would be evidence of an intent to induce people to leave the area, not of an intention to destroy a group.

154. In its Reply, The Gambia does not answer, or dispute, Myanmar’s submissions about this location. It simply includes a bare reference to Laung Don being a village that was “completely

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<sup>51</sup> Ministry of Defence, Table of the Clash, p. 1, Item No. 3, CMM, Vol. IV, Annex 149; Ministry of Home Affairs, Terrorists Attacks, para. 8 (ii), CMM, Vol. IV, Annex 148.

<sup>52</sup> MG, paras. 8.71, 9.16.

<sup>53</sup> OHCHR, *Flash Report*, p. 17, MG, Vol. II, Annex 30.

<sup>54</sup> MG, para. 9.16; Amnesty International, *Destroy Everything*, p. 93, MG, Vol. IV, Annex 112.

<sup>55</sup> *Ibid.*, p. 94, MG, Vol. IV, Annex 112.

<sup>56</sup> *Ibid.*, p. 94, MG, Vol. IV, Annex 112.

<sup>57</sup> *Ibid.*, pp. 94-95, MG, Vol. IV, Annex 112.

destroyed”<sup>58</sup>. Again, no evidence is provided about when this destruction is said to have occurred or who was responsible. Crucially, The Gambia does not dispute that, out of a population of 11,916, the number of Bengali villagers alleged to have been killed unlawfully *may be one person*<sup>59</sup>.

155. Taking this skeletal evidence at its highest — a single death during a mass arrest conducted prior to February 2017, and a single rape in August 2017 — does not support the existence of a “consistent pattern of conduct”.

### **23. Naung Dar Khar Li**

156. Location 23 is Naung Dar Khar Li.

157. ARSA was active in this area<sup>60</sup>. As can be seen on the map, Naung Dar Khar Li lies close to Zin Pai Nyar. As I have already described, Zin Pai Nyar was the scene of multiple ARSA attacks on 26 August 2017. A full and fair analysis of events at Naung Dar Khar Li must, therefore, take account of ARSA’s activity in the local environs.

158. The Gambia’s allegations for Naung Dar Khar Li are that one woman, identified only as “Y.A.” was repeatedly bitten when raped by four soldiers<sup>61</sup> and that the village was “more than 90% destroyed” at a time and by persons unknown<sup>62</sup>. Neither withstands scrutiny.

159. Y.A.’s claim comes from an Amnesty International report<sup>63</sup>. For the reasons already discussed, no evidential weight can be given to such anonymous, summary hearsay accounts. While The Gambia tries to broaden the allegation beyond Y.A. to cover three other women who were abducted from the same house<sup>64</sup>, no information is given about what, if anything, happened to these other three.

160. The Gambia also incorrectly attempts to argue that Y.A. gives evidence that “soldiers entered the village and shot at the Rohingya civilians who were trying to flee”<sup>65</sup>. What she is actually

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<sup>58</sup> RG, para. 9.57 fn. 1109.

<sup>59</sup> CMM, para. 9.219. See also Ministry of Immigration and Population, List of population, p. A5, No. 24, CMM, Vol. IX, Annex 465.

<sup>60</sup> RG, paras. 7.50-7.51.

<sup>61</sup> MG, para. 9.29 fn. 1016.

<sup>62</sup> RG, para. 7.50.

<sup>63</sup> Amnesty International, *Destroy Everything*, p. 93, MG, Vol. IV, Annex 112.

<sup>64</sup> RG, para. 7.51.

<sup>65</sup> *Ibid.*

recorded as saying is that, “[a]s villagers tried to run away, soldiers opened fire”<sup>66</sup>. She did *not* say that the soldiers shot *at* civilians who were trying to flee.

161. To support its claim that this village was more than 90 per cent destroyed by fire<sup>67</sup>, The Gambia relies on satellite imagery dated 24 October 2017, which is almost two months after residents are said to have left the village<sup>68</sup>. In the absence of any evidence about when or who burned the village, this image takes The Gambia nowhere.

162. In sum, there is no evidence of any killing at this location and the only evidence of sexual violence is a single incident of rape, to which no evidential weight can be attached.

#### **24. Hpaung Taw Pyin**

163. The twenty-fourth location is Hpaung Taw Pyin.

164. As with all the locations I have dealt with, Hpaung Taw Pyin and its surroundings were the scene of intense ARSA activity. When addressing the Court on events in Maung Nu, Mr Blom-Cooper described the ARSA attacks which took place in this location and I will not repeat this evidence.

165. Only one allegation is made for this location. It comes from a single anonymous source that soldiers killed 40 people in this village on 26 August 2017, the date coming from Myanmar’s own interrogation of the underlying evidence<sup>69</sup>. Clearly, if true, the killing of 40 people is a significant incident. But it is not mentioned by any other person or source. The absence of any corroboration for this allegation gives rise to serious credibility and reliability concerns, such that no reliance can properly be placed on it.

166. No other allegations arise for this location and it is not mentioned by The Gambia in its Reply at all.

#### **25. Chin Tha Mar**

167. Location 25 is Chin Tha Mar. This is south of Maung Nu.

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<sup>66</sup> Amnesty International, *Destroy Everything*, p. 93, MG, Vol. IV, Annex 112.

<sup>67</sup> RG, para. 7.50.

<sup>68</sup> RG, Figure 7.4.

<sup>69</sup> MG, para. 8.45 referring to International State Crime Initiative, *Genocide Achieved, Genocide Continues: Myanmar’s Annihilation of the Rohingya* (2018), p. 51, MG, Vol. IV, Annex 109.

168. Again, the ARSA attacks which took place in and around Maung Nu have already been described by Mr Blom-Cooper this morning and I will not repeat the evidence.

169. For this location, The Gambia cites to a UN report which refers to an alleged rape of a woman and an assault upon her husband by the Myanmar Defence Services<sup>70</sup>. Myanmar notes that the same UN report contains additional allegations<sup>71</sup> of killings by gunfire and the rape of “around ten or twenty” women in this village, albeit these attract no comment by The Gambia. For the reasons already discussed, little evidential weight can be given to accounts from this source. The Gambia’s Reply does not mention this location at all<sup>72</sup>.

## 26. Maung Gyi Taung

170. The twenty-sixth location is Maung Gyi Taung, which is another village south of Maung Nu.

171. Again, as Mr Blom-Cooper has explained, this was in an area of ARSA terrorist activity which attracted a counter-terrorism response.

172. The Gambia makes two allegations for this location — that children were thrown in the river and that 13 females were gang raped<sup>73</sup>. Myanmar identifies a further two — another allegation of gang rape of one individual and an allegation that 25 men were arrested and beaten, none are said to have been killed<sup>74</sup>.

173. All the allegations come from the FFM report<sup>75</sup>. For the reasons discussed, no evidential weight can be given to that source. In addition, when the claims are interrogated, the difficulties in placing any reliance on them or fitting them into a pattern become clear. Specifically, the allegations concerning the children and the group arrests are undated, while one allegation of rape *may* date from

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<sup>70</sup> MG, para. 9.23.

<sup>71</sup> UN Human Rights Council, Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN doc. A/HRC/42/CRP.4, 22 August 2019, para. 81. MG, Vol. III, Annex 48.

<sup>72</sup> RM, para. 9.147.

<sup>73</sup> MG, paras. 8.69, 9.16.

<sup>74</sup> CMM, paras. 9.243-9.244.

<sup>75</sup> UN Fact-Finding Mission, Report of the Detailed Findings (2018), paras. 923, 953, 996, 1094, MG, Vol. II, Annex 40.

2016<sup>76</sup> and the other from August 2017<sup>77</sup>. The alleged rape of 13 women is actually the account of a single individual, with no information provided about what happened to the other 12.

174. Overall, there is no evidence that any unlawful killings took place in this village. The Gambia does not mention this location in the Reply<sup>78</sup>.

## **27. Kun Taing/Myaung Nar**

175. Location 27 comprises two villages, Kun Taing and Myaung Nar.

176. Given their proximity to Maung Nu, events in these two villages must be considered against the backdrop of the ARSA activity in that area already described by Mr Blom-Cooper.

177. Kun Taing and Myaung Nar are each mentioned only once by The Gambia<sup>79</sup>. Each mention appears to be designed to shock, with the shock value obscuring the low evidential value of the allegations.

178. In Kun Taing, The Gambia alleges that the “Tatmadaw abducted girls, cut their breasts and vaginas and beheaded them”<sup>80</sup>. This allegation comes from an anonymous response to a questionnaire. Clearly, no evidential weight can be given to this uncorroborated snippet of purported evidence. Myanmar draws the Court’s attention to the only other mention of Kun Taing which relates to an anonymous, hearsay account of rapes on unspecified dates, and mistreatment in prison<sup>81</sup>. No killing at any stage is alleged in this account.

179. The single reference to Myaung Nar is taken from the FFM report and relates to babies’ bodies floating in the water<sup>82</sup>. The unknown man describing the scene is said to come from Myaung Nar but it is not known *where* and *when* he made the observation, nor how the babies came to be in the water. In any event, and for the reasons already discussed, no evidential weight can be given to any of these anonymous, hearsay, untested accounts.

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<sup>76</sup> 2018 FFM Detailed Findings, p. 255 and para. 1094, MG, Vol. II, Annex 40.

<sup>77</sup> *Ibid.*, paras. 920-923.

<sup>78</sup> RM, para. 9.149.

<sup>79</sup> MG, paras. 8.49, 8.52.

<sup>80</sup> MG, para. 8.49; Legal Action Worldwide, Collated Information, p. 21 (CK0147), MG, Vol. X, Annex 336.

<sup>81</sup> CMM, para. 9.248; Legal Action Worldwide, Collated Information, p. 117 (CK0142), MG, Vol. X, Annex 336.

<sup>82</sup> MG, para. 8.52; 2018 FFM Detailed Findings, para. 993, CMM, Vol. VI, Annex 239.

180. This is another location not mentioned in the Reply<sup>83</sup>.

## **28. Yin Ma Kyaung Taung**

181. Location 28 is Yin Ma Kyaung Taung.

182. Events in this location in 2017 can only be understood when considered alongside events in neighbouring villages including Thin Ga Net, Nga Yant Chaung, Kone Taung and Suu Taung, all of which Mr Blom-Cooper has already described. What events in these nearby locations show is that ARSA was highly active in this area<sup>84</sup>.

183. The single allegation advanced by The Gambia for this location concerns the killing of three women and a baby, including a mother in labour, which derives from the anonymous, untested, hearsay summary of Witness CK0243<sup>85</sup>. While the allegation is shocking, it also contains the plainly incorrect claim that “almost the entire village died. The military killed everybody”<sup>86</sup>. There is no evidence to support this claim.

184. LAW obtained five other accounts about events in this village<sup>87</sup>. While Witness CK0501<sup>88</sup> refers to the alleged killing of two women by soldiers, none of the other witnesses describe killings. Instead, they refer to male rapes in January 2017. The other accounts also refer to arrests and detention by the Myanmar Defence Services, a fact that runs counter to the contention of a genocidal intent<sup>89</sup>.

185. For the reasons already discussed, no evidential weight can be given to any of these anonymous, hearsay, untested accounts. This location is not mentioned in The Gambia’s Reply<sup>90</sup>.

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<sup>83</sup> RM, para. 9.151.

<sup>84</sup> Ministry of Defence, Table of the Clash, p. 12, Item No. 8, CMM, Vol. IV, Annex 149; Myanmar Defence Services, No. (15) Mobile Operation Command Headquarters, Zwe Mhann Hone Operation, Daily operation report No. (240/2017), 27 August 2017, p. 5 (16), CMM, Vol. IV, Annex 118.

<sup>85</sup> MG, para. 8.78; Legal Action Worldwide, Collated Information, p. 28 (CK0243), MG, Vol. X, Annex 336.

<sup>86</sup> Legal Action Worldwide, Collated Information, p. 29 (CK0243), MG, Vol. X, Annex 336.

<sup>87</sup> Legal Action Worldwide, Collated Information, p. 29 (CK0243), p. 32 (CK0501); p. 79 (CK2251); p. 81 (CK0200); p. 86 (CK0328); p. 118 (CK0728), MG, Vol. X, Annex 336.

<sup>88</sup> Legal Action Worldwide, Collated Information, p. 32 (CK0501), MG, Vol. X, Annex 336.

<sup>89</sup> See also Amnesty International, Destroy Everything, p. 29, CMM, Vol. VI, Annex 269.

<sup>90</sup> RM, para. 9.153.

## 29. Taung Bazar

186. Location 29 is Taung Bazar.

187. As with Yin Ma Kyaung Taung, events in this village in 2017 can only be understood when considered alongside events, including ARSA activity, in the neighbouring villages.

188. In its Memorial, The Gambia relies on two witnesses for this location — the claimed former soldier, Myo Win Tun, purportedly of the No. (565) Light Infantry Regiment, and Legal Action Worldwide Witness No. 14<sup>91</sup>. Given these sources, no evidential weight can be given to their evidence.

189. The serious problems with Myo Win Tun have already been discussed by Dr Staker. Not least that his claim that the No. (565) Light Infantry Regiment was deployed in Taung Bazar between 25 August and 29 October 2017 is clearly untrue, a fact corroborated by other sources<sup>92</sup>. It is against this background that his allegation that Battalion 565 shot people, burned “the whole village” and that the two senior commanders raped three to four women and afterwards ordered the troops to rape these women too have to be considered<sup>93</sup>.

190. Similarly, the serious problems affecting statements produced by Legal Action Worldwide, including Witness No. 14’s statement, have also been discussed by Dr Staker. Witness No. 14’s identification of Myo Win Tun as participating in the “clearance operations” is highly questionable as no one, including this Court, knows what video footage he was shown<sup>94</sup>.

191. The solitary reference to Taung Bazar in the Reply relates to an uncorroborated anonymous, hearsay allegation of sexual violence perpetrated against a male in January 2017. Even taking this allegation at its highest, it relates to events unconnected to the counter-terrorism operations. It, therefore, cannot form part of any alleged “consistent pattern of conduct” during those operations.

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<sup>91</sup> MG, paras. 8.11, 8.12, 9.15.

<sup>92</sup> CMM, paras. 7.114-7.117; 2018 FFM Detailed Findings, para. 1249, CMM, Vol. VI, Annex 239; Myanmar Defence Services, No. (15) Mobile Operation Command Headquarters, Zwe Mhann Hone Operation, Daily operation report No. (240/2017), 27 August 2017, p. 5 (16)-p. 6 (17), CMM, Vol. IV, Annex 118; Ministry of Defence, Table of the Clash, p. 2, Item No. 9, and p. 5, Item No. 31, CMM, Vol. IV, Annex 149.

<sup>93</sup> Interview of Myo Win Tun, 15 August 2020, pp. 4-7, MG, Vol. V, Annex 142.

<sup>94</sup> MG, para. 8.12, citing Legal Action Worldwide, Witness statement No. 014, 24 September 2020, pp. 6-7, MG, Vol. XI, Annex 351.

### 30. Thin Baw Kway

192. Location 30 is Thin Baw Kway. This location lies between Kyauk Pan Du (location 4) and Inn Din (location 6).

193. The evidence shows this.

194. In 2017, there were accounts of an ARSA group staying in the jungle to the east of the village. Members of the group were armed and wore uniforms<sup>95</sup>.

195. On 25 August 2017, ARSA attacked both border guard police posts in Thin Baw Kway and in the nearby village of Tha Win Chaung<sup>96</sup>. The outpost in Thin Baw Kway was attacked by about 250 armed ARSA terrorists<sup>97</sup>.

196. The Gambia's evidence for this location is confused. The one allegation made in the Memorial of the rape of a woman and the killing of her husband appears to have occurred in Chut Pyin<sup>98</sup>. Regardless of location, no reliance can be placed on it, because it is at core, an anonymous, hearsay summarized account written in the third person about an undated incident.

197. In the Reply, The Gambia mistakenly attributes two allegations of rape to Inn Din<sup>99</sup>. The allegations actually relate to Thin Baw Kway, this location<sup>100</sup>.

198. Both rape allegations come from two Legal Action Worldwide witnesses. For the reasons already discussed by Dr Staker, no evidential weight can be placed on these sources of evidence.

199. The only other allegation, this made in the Reply, for this location is that it was "completely destroyed"<sup>101</sup>. No evidence is provided about when this destruction is said to have occurred or who was responsible.

200. In summary, there is no evidence of any killings at this location and no evidence to support a conclusion of pervasive sexual violence in this locality during the counter-terrorism operations.

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<sup>95</sup> Legal Action Worldwide, Witness Statement No. 38, para. 24, RG, Vol. IV, Annex 61.

<sup>96</sup> 2018 FFM Detailed Findings, para. 871, MG, Vol. II, Annex 40. *See also* Amnesty International, *Destroy Everything*, p. 81 (fn. 544), MG, Vol. IV, Annex 112.

<sup>97</sup> Ministry of Home Affairs, Terrorists Attacks, para. 8 (xviii), CMM, Vol. IV, Annex 148.

<sup>98</sup> MG, para 9.21; Legal Action Worldwide, Collated Information, pp. 5-6 (CK0013), MG, Vol. X, Annex 336.

<sup>99</sup> RG, para. 7.139.

<sup>100</sup> Legal Action Worldwide, Witness Statement No. 38, p. 1 and paras. 9, 12, RG, Vol. IV Annex 61; and Legal Action Worldwide, Witness Statement No. 39, p. 1 and para. 7, RG, Vol. IV, Annex 62.

<sup>101</sup> RG, para. 9.57 (fn. 1109).

### **31. Hpet Leik**

201. Location 31 is Hpet Leik.

202. This village is located near Chut Pyin. Mr Blom-Cooper has already dealt with ARSA activity in and around Chut Pyin. I will not repeat it, particularly because it may not be relevant for the reasons I am about to explain.

203. The Gambia's presentation of the evidence for this location is misleading as it leaves the impression that an incident took place in this village<sup>102</sup>. However, the source of the allegation that women were mistreated and killed at a school comes from a "male" *from* Hpet Leik<sup>103</sup>. The anonymous, hearsay account does not identify the date, time or even the location of the alleged criminality. Without this information it is meaningless. The reality is that The Gambia does not show *any* criminal act of any type that it occurred at any time in Hpet Leik. This location, therefore, does not form part of any alleged pattern. Unsurprisingly, it is not mentioned in the Reply.

### **32. Gaw Du Thar Ra**

204. Location 32 is Gaw Du Thar Ra.

205. The evidence shows this.

206. On 26 August 2017, at about 6 p.m., some 200 ARSA terrorists and collaborators fired upon

The PRESIDENT: Wait, wait a minute, there is a confusion of a translation. We are rechecking your channel. Thank you. Continue.

Ms LAWRIE: On 26 August 2017, at about 6 p.m., some 200 ARSA terrorists and collaborators fired upon 16 police officers near to the Gaw Du Thar Ra police outpost and set off

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<sup>102</sup> MG, para. 9.27.

<sup>103</sup> Médecins Sans Frontières, "MSF, *No one was left*", March 2018, p. 19, MG, Vol. IV, Annex 110.

three mines<sup>104</sup>. Some 20 minutes later, there was another ARSA attack on the police outpost<sup>105</sup>. In September, November and December 2017, there were around 26 arrests in Gaw Du Thar Ra<sup>106</sup>.

207. Two allegations derived from the FFM are made by The Gambia for this location<sup>107</sup>. For the reasons already discussed, no evidential weight can be given to this source. Even setting aside those deficiencies, no reliance can be placed on the allegations.

208. The first allegation is an anonymous hearsay account of a 12-year-old boy who claims to have found on a date unknown the burned bodies of family members, and to have seen the bodies of other people who had been “shot, stabbed and burned”<sup>108</sup>. The excerpt proceeds without any context. Taken at face value, even if true, the account simply shows that the witness found bodies. No evidence is provided by either this witness or any other source about what happened in the village.

209. The second allegation is that Myanmar conducted “massive terrain clearance” including in Gaw Du Thar Ra<sup>109</sup>. However, the “satellite imagery analysis” referred to by the FFM is not made available to Myanmar or the Court. The satellite imagery from January and February 2018 published by the FFM is meaningless when provided in a vacuum<sup>110</sup>. No evidence is provided about when the structures were destroyed, when they were rebuilt, what the newly rebuilt structures are, who rebuilt them, and for what purpose. These questions are important. Burning was perpetrated by Bengalis on the orders of ARSA’s leader<sup>111</sup>, a fact which The Gambia does not dispute.

210. No allegations of sexual violence are made for this location.

### **33. La Ba Daung**

211. The thirty-third location is La Ba Daung. This location is not included on any map as, while the allegation made by The Gambia refers to this location being in Buthidaung, the only location presently known by this name is in Maungdaw.

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<sup>104</sup> Ministry of Home Affairs, Terrorists Attacks, paras. 9 (xv) and 9 (xvi), CMM, Vol. IV, Annex 148.

<sup>105</sup> *Ibid.*

<sup>106</sup> Ministry of Defence, Table of the Clash, p. 26, Item No. 1, p. 34, Item No. 1, and p. 37, Item No. 1, CMM, Vol. IV, Annex 149.

<sup>107</sup> MG, paras. 8.37, 11.45.

<sup>108</sup> 2018 FFM Detailed Findings, para. 949, MG, Vol. II, Annex 40.

<sup>109</sup> MG, para. 11.45; 2018 FFM Detailed Findings, para. 1222, MG, Vol. II, Annex 40.

<sup>110</sup> 2018 FFM Detailed Findings, pp. 290-291, MG, Vol. II, Annex 40.

<sup>111</sup> Amnesty International, *Destroy Everything*, p. 47, CMM, Vol. VI, Annex 269.

212. The one allegation made for this location by The Gambia emanates from a health survey. In the Memorial, The Gambia states that “a witness from La Ba Daung, in Buthidaung Township, saw the military ‘[take] the men aside and kill[] them all’”<sup>112</sup>. Scrutiny of the underlying evidence provides no further assistance. Not even when this is said to have happened. What it does make clear though is that the identification of the perpetrators as “the military” comes from The Gambia. In the extract of the witness’s evidence included in the report, the witness simply refers to the perpetrators as “they”.

213. No allegations of sexual violence are made for this location. No mention is made of this location by The Gambia in its Reply<sup>113</sup>.

### **34. Hang Cha Ma Gulang**

214. Location 34 is Hang Cha Ma Gulang. According to the witness relied on by The Gambia, this location is in Buthidaung Township. No map has been produced for this location because no location is presently known by this name in that township.

215. The Gambia’s allegation of the mass killing of males in this village is based on untested, anonymous, summarized reports, written in the third person, apparently emanating from two individuals<sup>114</sup>. No date is given for one account save “2017”.

216. While the allegations are clearly appalling, their shock value alone does not render them credible and reliable. For the reasons already explained, no evidential weight can be given to these anonymous, hearsay, untested summaries.

217. Of note is that both accounts allude to a wider context. CK0156’s account begins with what appears to be an oblique acceptance that an armed battle had at least been taking place before the Myanmar Defence Services entered the village. She describes the day when “the fighting began”<sup>115</sup>. Similarly, TS0804 explains that “it was about 3 a.m. when she awoke to the sound of gunfire. The shooting was coming from the direction of the military camp.”<sup>116</sup> Both accounts,

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<sup>112</sup> MG, para. 8.42; MSF, *No one was left*, p. 10, MG, Vol. IV, Annex 110.

<sup>113</sup> RM, para. 9.179.

<sup>114</sup> MG, paras. 8.42 (citing to CK0156), 8.43 (citing to TS0804) and 8.46 (citing to TS0804).

<sup>115</sup> MG, Vol. X, Annex 336, p. 27.

<sup>116</sup> *Ibid.*, p. 50.

therefore, indicate that events in the village cannot simply be considered as the unilateral use of force by the Myanmar Defence Services.

### 35. Khun Thi Pyin

218. The thirty-fifth location is Khun Thi Pyin.

219. The evidence shows this.

220. According to a mullah from this location, “on the night of the 25th the violence started”. He explains that the Myanmar defence services’ *response* was to detain 50 women and children at a local camp. They were all later released unharmed<sup>117</sup>. The attack on the military by the locals is corroborated by another self-identified “Rohingya” witness from near Khun Thi Pyin<sup>118</sup>. Arrests were made in the village on 25 August and a few days later<sup>119</sup>.

221. Notwithstanding that this location was the scene of terrorism and counter-terrorism operations, it merits only one mention in the Memorial and is the subject of a broad, unspecific catch-all allegation in the Reply<sup>120</sup>.

222. The one mention in the Memorial concerns the account of an anonymous individual that soldiers allegedly mutilated and killed one man with knives, after shooting her son<sup>121</sup>. For the reasons already explained, no evidential weight can be given to these anonymous, hearsay, untested accounts taken from NGO reports. The only mention in the Reply is that, during “verified additional ‘clearance operations’, various locations, including Khun Thi Pyin, saw serious human rights violations against Rohingya”<sup>122</sup>. This allegation emanates from the FFM report and, thus, suffers from the evidential difficulties and deficiencies already described by Dr Staker. In addition, no information is provided about what “human rights violations” are alleged to have occurred, or who perpetrated them. Without more information, this statement could simply encompass allegations already stated elsewhere.

223. No allegations of sexual violence are made for this location.

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<sup>117</sup> Fortify Rights Document, No. 38, pp. 70, CMM, Vol. VII, Annex 278.

<sup>118</sup> Fortify Rights Document, No. 12, pp. 14-15, CMM, Vol. VII, Annex 278.

<sup>119</sup> Ministry of Defence, Table of the Clash, p. 6, Item No. 36, and p. 22, Item No. 2, CMM, Vol. IV, Annex 149.

<sup>120</sup> MG, para. 8.49; RG, para. 9.55.

<sup>121</sup> MG, fn. 751, referring to Fortify Rights, *Long Swords*, p. 60, MG, Vol. IV, Annex 114.

<sup>122</sup> RG, para. 9.55, citing 2018 FFM Detailed Findings, para. 881, MG, Vol. II, Annex 40.

### 36. Ta Man Thar

224. The thirty-sixth location is Ta Man Thar.

225. The evidence shows this.

226. Ta Man Thar was “an area with a strong ARSA presence”<sup>123</sup>. Uniformed men with petrol bombs identified as Al Yaqin were seen in the area on 25 August<sup>124</sup> and “tried to kill” those who sought to dissuade their members<sup>125</sup>. Al Yaqin engaged in forcible recruitment, threatening to decapitate those who refused to join, decapitation being an apparent hallmark of ARSA retribution, as I have already mentioned<sup>126</sup>.

227. Violent confrontations between ARSA and the security forces took place in this area and its surroundings in August 2017. The Court has already heard about the violence in Khun Thi Pyin, Kha Maung Seik and Min Gyi. In Ta Man Thar, on 25 August, the local police outpost was attacked by terrorists, leaving one person dead. The following day, 100 ARSA terrorists attacked officers affiliated to the Ta Man Thar police post with improvised bombs<sup>127</sup>.

228. A similar picture emerges in neighbouring Thit Tona village. Al Yaqin was present in this village and instigated violence by bombing and killing local villagers<sup>128</sup>.

229. Against this background is a single allegation that three charred bodies were found in this village<sup>129</sup>. The allegation emanates from the FFM report<sup>130</sup>. For the reasons already discussed, no evidential weight can be given to this source. In addition, the account reveals nothing about the circumstances in which the three people died, including the date or the identities of the perpetrators. The evidence certainly does not establish that the deaths were caused by the Myanmar defence services<sup>131</sup>. The Gambia does not explain how this allegation, even if proven, could possibly constitute evidence of a “consistent pattern of conduct”.

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<sup>123</sup> IIMM, Witness Statement No. IIMM0001557475 (Andrew Riley), para. 46, RG, Vol. IV, Annex 48.

<sup>124</sup> Fortify Rights Document, No. 18, pp. 24-25, CMM, Vol. VII, Annex 278.

<sup>125</sup> Fortify Rights Document, No. 19, pp. 26-27, CMM, Vol. VII, Annex 278.

<sup>126</sup> Fortify Rights Document, No. 24, p. 38, CMM, Vol. VII, Annex 278.

<sup>127</sup> Ministry of Home Affairs, Terrorists Attacks, para. 9 (i), CMM, Vol. IV, Annex 148; Ministry of Defence, Table of the Clash, p. 3, Item No. 15, CMM, Vol. IV, Annex 149.

<sup>128</sup> Fortify Rights Document, No. 26, pp. 43-45, CMM, Vol. VII, Annex 278; Fortify Rights Document, No. 44, pp. 84-86, CMM, Vol. VII, Annex 278.

<sup>129</sup> MG, para. 8.75.

<sup>130</sup> 2018 FFM Detailed Findings, para. 906, MG, Vol. II, Annex 40.

<sup>131</sup> CMM, paras. 9.290–9.292.

230. As with the previous location of Khun Thi Pyin, Ta Man Thar is mentioned in the Reply as being the scene of serious human rights violations against Bengali during so-called “verified additional ‘clearance operations’”<sup>132</sup>. This sweeping allegation completely lacks specificity and, thus, cannot be relied on for the problems I have already mentioned.

231. This location also does not feature any allegations of sexual violence.

### **37. Du Oh The Ma**

232. The thirty-seventh location is Du Oh The Ma in Buthidaung Township.

233. Events in this location in 2017 require to be considered in the context of ARSA’s activities in the surrounding area including in Chut Pyin, mentioned by Mr Blom-Cooper already.

234. The Gambia alleges that soldiers “kicked to death” the “very elderly and frail” mother of a witness in this village<sup>133</sup>. Clearly, the allegation is reprehensible. But when the underlying summary from which it originates is checked, it is shown to be a misrepresentation.

235. Setting aside the fundamental problems with relying on this type of evidence for a moment, the assault appears to have been a single kick causing the victim to fall backwards. The victim was then observed to be “sore from being kicked” but otherwise “still alive”. About two hours later, the woman died, with the witness noting that she “didn’t know how she died but can only assume that it was as a result of being kicked”<sup>134</sup>. While an inference may be drawn about causation, in the absence of further evidence, it cannot be said that the alleged assault caused the old woman’s death. It certainly cannot be said the elderly lady was “kicked to death”. It also cannot be fairly and reasonably said that a single kick — if proven — forms part of a pattern of genocidal violence.

236. No allegation of sexual violence is made for this location. No mention of this location is made in The Gambia’s Reply<sup>135</sup>.

237. The next three locations (locations 38, 39 and 40) are linked by The Gambia’s claim that they were the scene of “extreme brutality, sexual violence and destruction” despite the fact that there

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<sup>132</sup> RG, para. 9.55, citing 2018 FFM Detailed Findings, para. 881, MG, Vol. II, Annex 40.

<sup>133</sup> MG, para. 8.72, citing Legal Action Worldwide, Collated Information (CK0352), MG, Vol. X, Annex 336.

<sup>134</sup> *Ibid.*, p. 77, MG, Vol. X, Annex 336.

<sup>135</sup> RM, para. 9.191.

were no ARSA operations there<sup>136</sup>. As I am going to show, both aspects of The Gambia's claims are wrong. First, ARSA *was* active in and around all three locations. Second, there is no credible and reliable evidence that any of these locations were the scene of such violence.

### **38. Kar Lar Day Hpet**

238. Turning to the first of the three, location 38, which is Kar Lar Day Hpet.

239. Claim one by The Gambia is wrong. ARSA killed five Daingnet villagers in Kar Lar Day Hpet in late 2017<sup>137</sup>.

240. Claim two is also wrong. The Gambia's only allegation for this village is that it was destroyed by fire<sup>138</sup>. To prove this, The Gambia provides two satellite images dated 26 December 2016 and 24 October 2017<sup>139</sup>. No further evidence is provided including who may have been responsible for this fire damage or when it occurred, save for the long stop date of October 2017. No evidence is provided that any damage occurred before the village ceased to be inhabited. This is clearly insufficient to discharge The Gambia's high burden of proof.

### **39. Tha Pyay Taw**

241. Moving to location 39, Tha Pyay Taw. The Gambia confuses two different villages with the same name<sup>140</sup>. I will therefore deal with both locations. So Tha Pyay Taw is being counted as two locations. Regardless of whichever village The Gambia wishes to refer to, none of its claims are correct.

242. Dealing with the village in Maungdaw Township first. As can be seen on the map, this Tha Pyay Taw lies between the villages of Ah Lel Than Kyaw (location 2) and Myin Hlut (location 3). As I have already described, ARSA was engaged in serious terrorist activity in both these villages.

243. The single allegation for Tha Pyay Taw in Maungdaw comes, not from The Gambia, but the FFM. The allegation is that military personnel set fire to houses in the village, and that an 80-year-

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<sup>136</sup> RG, para. 7.50.

<sup>137</sup> CMM, para. 3.54; 2018 FFM Detailed Findings, paras. 1057-1058 CMM, Vol. VI, Annex 239.

<sup>138</sup> RG, para. 7.50.

<sup>139</sup> RG, Figures 7.5 and 7.6.

<sup>140</sup> RM, para. 8.51.

old woman who was unable to run died in the fire<sup>141</sup>. For the reasons already discussed, no evidential weight can be given to this second-hand account of what an anonymous person is reported to have said to the FFM. In any event, even if true, this evidence does not support the conclusion that this single tragic death was the result of an intentional killing by soldiers. It does not fit The Gambia's claimed pattern.

244. Turning to the other village with the same name but in Rathedaung Township. This Tha Pyay Taw lies close to Chut Pyin. Mr Blom-Cooper has already dealt with ARSA in Chut Pyin. The short point being that ARSA was active in this area.

245. Based on two satellite images, the sole allegation relates to fire damage in this village<sup>142</sup>. But no evidence is provided that such damage was caused by the Myanmar Defence Services. No evidence is provided about when, before 26 December 2017, the damage was caused. No evidence is provided that it was caused at a time when the village was inhabited.

246. Again, in respect of both villages with the name Tha Pyay Taw, The Gambia fails to discharge its high burden of proof.

#### **40. Pan Be Chaung**

247. Location 40 is Pan Be Chaung.

248. Claim one by The Gambia is wrong. ARSA was engaged in serious terrorist activity near this village. Pan Be Chaung lies close to Thin Ga Net, Nga Yant Chaung, Kone Taung, Suu Taung and Maung Nu. Mr Blom-Cooper has already discussed ARSA's activities in and around these locations.

249. Claim two is also wrong. The Gambia presents no evidence of any violence by the Myanmar defence services against any person in Pan Be Chaung. Based on the inclusion of two satellite images in the Reply, The Gambia's sole allegation relates to fire damage in this village<sup>143</sup>. All that can reasonably be taken from these images is that this village appears to have been damaged by fire at some point between 16 January 2017 and 20 December 2017. There is no evidence the

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<sup>141</sup> RG, para. 7.52, citing 2018 FFM Detailed Findings, para. 907, MG, Vol. II, Annex 40.

<sup>142</sup> RG, Figures 7.1 and 7.2.

<sup>143</sup> RG, Figures 7.7 and 7.8.

damage was caused by the Myanmar defence services, or that such damage was caused at a time when the village was inhabited. Again, The Gambia fails to discharge its high burden of proof.

#### **41. Nga Yant Chaung**

250. The final location is Nga Yant Chaung in Buthidaung.

251. As Mr Blom-Cooper has already mentioned, on 25 August 2017, the BGP post in Nga Yant Chaung village tract was attacked by ARSA<sup>144</sup>.

252. In oral submissions, The Gambia alleges that this location was the scene of rapes combined with the killing of children and where sexual violence was perpetrated in public<sup>145</sup>. These allegations emanate from the FFM and so lack evidential weight for the reasons already given<sup>146</sup>.

#### **Conclusion**

253. Mr President, Members of the Court, I conclude with the following three points.

254. *First*, while the crux of The Gambia's case is that the Myanmar defence services conducted operations in "hundreds" of Bengali villages across Rakhine State pursuant to the same "consistent pattern of conduct", The Gambia, at most, mentions a total of 46 locations in support of its claim.

255. *Secondly*, Myanmar's careful analysis of all these locations shows that there is no "consistent pattern of conduct". Specifically, the analysis of the 42 locations just undertaken demonstrates:

- (1) No allegations of *any* form of sexual violence in 17 locations — that is almost half.
- (2) No killings in 12 locations. A quarter.
- (3) Eleven locations only concern events in 2016.
- (4) A single allegation involving a single victim is made for three locations.
- (5) No allegation of any criminality is made for one location.

256. *The third point*, in conclusion, is that the arrival of Myanmar's Defence Forces at the locations just described in 2016 and 2017 was not "an amazing coincidence", as The Gambia put it

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<sup>144</sup> 2018 FFM Detailed Findings, para. 802, MG, Vol. II, Annex 40.

<sup>145</sup> CR 2026/4, p. 21, paras. 6 and 9 (Pasipanodya).

<sup>146</sup> 2018 FFM Detailed Findings, paras. 923 and 928, MG, Vol. II, Annex 40.

last week<sup>147</sup>. Nor is it Myanmar's position that it "accidentally attack[ed] 76 different sites at the same time"<sup>148</sup>. Such statements by The Gambia are not serious. Rather, Myanmar's location-by-location analysis shows that, if there was any pattern of conduct, it was of responsive, targeted and time-limited action by security forces against violence by ARSA.

257. Mr President, Members of the Court, that concludes my presentation. I thank you for your kind attention and for your patience. May I now invite you to call on Dr Staker, who will address the subject-matter of Chapter 10 of Myanmar's written pleadings, namely alleged discriminatory laws and policies, unless, Mr President, you might think it was an opportune moment for the afternoon coffee break.

The PRESIDENT: I thank Ms Lawrie for her presentation. Indeed, 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 4.10 p.m. to 4.30 p.m.*

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

Mr STAKER:

#### **IV. ALLEGED DISCRIMINATORY LAWS AND POLICIES**

##### **1. Introduction**

1. Mr President, Madam Vice-President, Members of the Court, The Gambia claims that Myanmar has adopted various laws and policies that discriminate against Bengalis in Rakhine State. Myanmar's response to these claims is set out in Chapter 10 of each of its written pleadings, and I address this subject-matter now.

2. According to The Gambia, these discriminatory laws and policies establish the existence of a genocidal intent, or at least contribute to establishing this. In the Application instituting proceedings

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<sup>147</sup> CR 2026/5, p. 26, para. 16 (Sands).

<sup>148</sup> *Ibid.*

and Memorial of The Gambia this allegation was described as “backdrop”<sup>149</sup> or “broader context”<sup>150</sup> to the events of 2016 and 2017.

3. In its Reply, The Gambia then went further, claiming that some of the alleged discriminatory policies are themselves acts of genocide<sup>151</sup>. Technically, this may be a new claim that does not arise directly out of the question that is the subject-matter of the Application<sup>152</sup>, namely whether events in 2016 and 2017 are genocide. However, that is perhaps an academic point because it is in any event quite impossible to see how the alleged discriminatory policies could have been acts of genocide.

4. The Gambia’s allegations in this respect are another example of its failure to take due care. It makes no attempt to ascertain the actual facts and to present them objectively and fairly. It does the opposite. It makes allegations in extreme terms that have no basis in the evidence.

5. For instance, Myanmar has accepted that birth registration of Bengali babies in northern Rakhine State came almost to a halt in 2012, due to the communal violence of that year. Myanmar has explained that, since 2017, steps have been taken to issue birth certificates to children without proper documentation, although that process was slowed or suspended for periods during the COVID-19 pandemic<sup>153</sup>. Myanmar has further explained that there is a lack of awareness in rural areas of the process and the need for registering births and that the Ministry of Health has been conducting awareness-raising programmes<sup>154</sup>. All this was explained in Myanmar’s Counter-Memorial.

6. Yet, in oral argument, The Gambia persists in making the extreme claim that “[d]enying the issuance of birth certificates to Rohingya newborns is a deliberate tool to erase the Rohingya”<sup>155</sup>. No clear basis is given for not accepting Myanmar’s explanation of the situation. However, even if The Gambia had some reason for not accepting it, no clear rationale is articulated for the extremely

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<sup>149</sup> AG, para. 6; MG, paras. 6.1, 12.16, 12.20.

<sup>150</sup> MG, para. 5.6.

<sup>151</sup> RG, paras. 9.17, 9.21. See CMM, para. 1.12.

<sup>152</sup> *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 16, para. 36.

<sup>153</sup> CMM, paras. 10.162-10.168.

<sup>154</sup> CMM, paras. 10.169-10.170.

<sup>155</sup> CR 2026/2, p. 38, para. 24 (Pasipanodya).

serious claim that birth certificates have been deliberately withheld, for the express purpose of “erasing the Rohingya”.

7. The Gambia also claims that the alleged discriminatory laws and policies “sought to stigmatize, exclude and dehumanize the Rohingya population”<sup>156</sup>, and “paved the way” for genocide in 2016 and 2017<sup>157</sup>. This too is just asserted. The words “paved the way” apparently allege that there is a causal effect between the alleged discriminatory laws and policies and the alleged events of 2016 and 2017. However, The Gambia does not set out clearly what evidence there is of such a causal effect. It merely asserts that it must exist. Any evidence that it relies on in support also just asserts that it exists.

8. The Gambia appears to suggest that, because discriminatory laws in Nazi Germany led on to genocide, then any discriminatory laws that seek to stigmatize, exclude and dehumanize a population must be a precursor to genocide<sup>158</sup>. That of course is not correct. Even if it could be proved that laws are discriminatory, not all discrimination, no matter how dehumanizing, necessarily leads on to genocide. In any event, The Gambia also fails to present evidence of weight in support of its claim that the laws and policies to which it refers *were* stigmatizing, exclusionary and dehumanizing.

9. In a court of law, an applicant is normally expected to present the details of the evidence, and then to present arguments on the evidential weight to be given to the evidence, on the facts that should be found on the basis of that evidence and on the conclusions to be drawn from those facts. This is all the more to be expected of a party purporting to bring proceedings in the common interest of all States parties to the Genocide Convention, having the duty of care to which I have referred. However, in this case, The Gambia avoids discussion of details and, instead, seeks to persuade by emotive rhetoric rather than analysis.

10. The Gambia alleges essentially that six categories of laws and policies were somehow precursors to genocide or were themselves acts of genocide. These are, first, the citizenship law that Myanmar adopted in 1982; second, certain events in 1991 and 1992; third, the policy of national verification cards — or “NVCs” — and the citizenship verification process; fourth, alleged

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<sup>156</sup> RG, para. 5.1.

<sup>157</sup> MG, para. 12.31.

<sup>158</sup> MG, para. 12.30-12.31; CR 2026/2, p. 43, para. 36 (Pasipanodya).

restrictions on procreation; fifth, an alleged policy of segregating and confining the Bengali population and denying it sustenance; and sixth and finally, Myanmar's failure to use the name "Rohingya".

11. In the absence of any precise explanations from The Gambia as to how precisely it claims that the alleged laws and policies were genocidal, or as to how they provide a basis for an inference of genocidal intent, it is very difficult to respond to them. All that Myanmar can do is give an explanation of the laws and policies in question. I will try to not take up too much of your time dealing with matters that, as far as Myanmar is concerned, have no demonstrable materiality to the subject-matter of the case, which is allegations of *genocide*.

12. On that basis I will address in turn each of the alleged discriminatory laws and policies. Once again, I point out that considerably more detail is to be found in Myanmar's written pleadings.

## **2. The 1982 Citizenship Law**

13. Mr President, Members of the Court, the first matter is the adoption by Myanmar in 1982 of a new citizenship law<sup>159</sup>.

14. In Chapters 2 and 10 of its written pleadings, Myanmar has provided a considerable amount of historical and other background detail of the citizenship law of Myanmar, supported by evidence. The Gambia has not provided any detailed response. In the circumstances, the historical and legal background should be taken as undisputed.

15. Burma achieved independence in 1948. India and Pakistan achieved independence the year before. Bengal, which had been part of British India, was divided, with the western part becoming part of India, and the eastern part becoming the part of Pakistan called East Pakistan. In 1971, East Pakistan became Bangladesh. Thus, from the time of Burma's independence until 1971, the territory adjoining northern Rakhine State was Pakistan, and from 1971 it was Bangladesh. As I explained on Friday, the majority of the present Bengali population in northern Rakhine State results from immigration from Bengal during the British colonial period and, after Burma's independence, from illegal immigration from neighbouring Pakistan and later Bangladesh<sup>160</sup>.

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<sup>159</sup> MG, paras. 6.13-6.21; CMM, paras. 10.10-10.55; RG, paras. 5.10-5.15; RM, paras. 10.14-10.28.

<sup>160</sup> CMM, paras. 2.52-2.58, 10.42, 10.69, 10.88; RM, para. 2.2 (1).

16. During the colonial period, the generality of the population in Burma and British India had the nationality status of “British subject”<sup>161</sup>.

17. At the time of Burma’s independence, legislation in both Britain<sup>162</sup> and Burma<sup>163</sup> dealt with the question of who would or could acquire Burmese citizenship on independence.

18. The Burmese legislation provided that Burmese citizenship was acquired automatically by persons descended from what was described as “any of the indigenous races of Burma”, which meant in practice the Arakanese, Burmese, Chin, Kachin, Karen, Karenni, Mon and Shan races<sup>164</sup>.

19. Others were subject to other provisions. These provisions did not apply specifically to Bengalis. They applied equally to Chinese, Gurkha (or Nepalese), Indian and other minorities. The way that they worked in practice — this is a simplified explanation — is as follows.

20. First, those born in Burma — whose parents were born in Burma and whose parents and grandparents had their permanent homes in Burma — automatically became citizens of Burma<sup>165</sup>. In short, those who were the third generation living in Burma at the time of independence acquired Burmese citizenship automatically.

21. Second, anyone born in the British Empire who had lived in Burma for eight of the ten years preceding independence could elect to become a Burmese citizen<sup>166</sup>. Thus, for instance, a Bengali born in the territory of present-day Bangladesh or India who had lived in Burma for eight years by the time of Burmese independence had the option of taking Burmese citizenship.

22. Third, anyone who had come to Burma more recently than this could be naturalized as a Burmese citizen after five years’ lawful residence<sup>167</sup>.

23. Those who became citizens of Burma could pass that citizenship down to succeeding generations<sup>168</sup>.

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<sup>161</sup> RM, para. 10.21 (5).

<sup>162</sup> RM, para. 10.21 (5).

<sup>163</sup> CMM, paras. 10.13-10.23; RM, para. 10.21 (5).

<sup>164</sup> CMM, para. 10.17.

<sup>165</sup> CMM, para. 10.19 (1); Burma, The Union Citizenship Act, 1948, Section 4 (2), MG, Vol. VI, Annex 172.

<sup>166</sup> CMM, para. 10.19 (2); Burma, The Constitution of the Union of Burma, 1947, Article 11 (iv), MG, Vol. VI, Annex 171.

<sup>167</sup> CMM, para. 10.20; Burma, The Union Citizenship Act, 1948, Section 7, MG, Vol. VI, Annex 172.

<sup>168</sup> CMM, para. 10.23; Burma, The Union Citizenship Act, 1948, Sections 5 and 9, MG, Vol. VI, Annex 172.

24. On the other hand, those who immigrated to Burma illegally did not acquire the right to become citizens and their children born in Burma did not become Burmese citizens, unless the other parent was a citizen<sup>169</sup>.

25. Those who did not acquire Burmese citizenship at the time of Burma's independence generally remained British subjects<sup>170</sup>.

26. Then, on 1 January 1949, the British Nationality Act 1948 came into force. An extract is in tab 4.2 of your folder. If you look at Section 1, subsections 1 and 3, of that Act, you see that this legislation envisaged that certain independent countries within the Commonwealth would each have their own separate citizenship laws, but that citizens of all these countries would also have the status of "British subject" or "Commonwealth citizen". And if we look at subsection 3, we see that those countries include India and Pakistan.

27. When this British legislation entered into force, neither Pakistan nor India had yet enacted its own citizenship law. At that time, Bengalis in Burma who had remained British subjects now became "British subjects without citizenship", who were regarded as "potential Pakistanis" or "would-be Indians"<sup>171</sup>. The intention was that they would either become citizens of Pakistan or India when those countries enacted their own citizenship laws — we see that in Section 13, subsection 1 — or if they did not become citizens under those countries' laws once they were enacted, they would become citizens of the United Kingdom and colonies. We see that in subsection 2. In this way, statelessness would be avoided<sup>172</sup>. It is possible that some Bengalis in Rakhine State might well have chosen not to become Burmese citizens because they hoped that by remaining British subjects to later become citizens of Pakistan, India or even the United Kingdom.

28. It is not for Myanmar to say whether those who remained British subjects ever became citizens of Pakistan, India or the United Kingdom, or whether any who became citizens of Pakistan later became citizens of Bangladesh. Nor is it for Myanmar to say whether those who remained

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<sup>169</sup> CMM, para. 10.23.

<sup>170</sup> CMM, para. 10.47; RM, para. 10.21 (5); UNHCR, Memorandum of Jacques Cuénod and Angelo Rasanayagam to UNHCR Headquarters, "Mission to Dacca: 11 May-14 May 1978", 17 May 1978, para. 24, CMM, Vol. V, Annex 186; United Kingdom, Burma Independence Act 1947, Section 2 (1), first sentence, and First Schedule, paragraphs 1 and 2, RM, Vol. V, Annex 178.

<sup>171</sup> CMM, para. 10.47; S. Ansari, "Subjects or Citizens?: India, Pakistan and the 1948 British Nationality Act", *Journal of Imperial and Commonwealth History*, Vol. 41 (2013), pp. 285-312, at pp. 287, 300, CMM, Vol. II, Annex 26.

<sup>172</sup> *Ibid.*

British subjects or who became citizens of Pakistan, India, the United Kingdom or Bangladesh continue to pass that status to succeeding generations today<sup>173</sup>. These are matters that are not determined by the law of Myanmar. If it is the case that those who remained British subjects and their descendants are stateless today, this would be due as much to the effect of the laws of those other States.

29. Similarly, those migrating to Burma illegally after independence will have had the nationality of the State from which they came. If their succeeding generations born in Myanmar did not acquire the nationality of their parents, that can be said to be the result of the laws of the State of the parents' nationality. The Gambia has not denied the evidence that illegal immigration into northern Rakhine State from Pakistan — later Bangladesh — was a significant problem in the decades following Burma's independence<sup>174</sup>.

30. The Gambia does not suggest that there was anything objectionable about these British and Burmese citizenship laws that applied from 1948.

31. This was the situation in 1982, when, pursuant to its 1974 Constitution, Myanmar adopted a new citizenship law which repealed the earlier law<sup>175</sup>. The new law now created three types of citizenship, called, "citizen", "associate citizen" and "naturalized citizen". For clarity, I refer to the first type as "full citizen", but that is not an official term. The way that the 1982 law works can be seen from its text, which you will find in tab 4.3 of your folder.

32. First, at Section 6, we see that anyone who was a citizen under the old law became a full citizen under the new law<sup>176</sup>. The new statuses of associate citizen and naturalized citizen were thus intended for those who were not already citizens under the old law. Pending citizenship applications under the old law were considered under the new law as applications for associate citizenship<sup>177</sup>. Others meeting certain criteria can apply to become naturalized citizens<sup>178</sup>.

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<sup>173</sup> RM, para. 10.21 (5).

<sup>174</sup> CMM, paras. 2.52-2.58.

<sup>175</sup> CMM, para. 10.24.

<sup>176</sup> CMM, para. 10.25; Myanmar, Citizenship Law, 1982, Section 6, first sentence, CMM, Vol. III, Annex 86.

<sup>177</sup> CMM, para. 10.32; Myanmar, Citizenship Law, 1982, Section 23, CMM, Vol. III, Annex 86.

<sup>178</sup> CMM, paras. 10.34-10.35; Myanmar, Citizenship Law, 1982, Sections 42-45, CMM, Vol. III, Annex 86.

33. If we then look at Section 42, we see that the main way to qualify for naturalized citizenship is to be born in Myanmar and descended from someone who lived in Burma prior to independence in 1948. It should be remembered of course, that when this law was enacted, it was only 34 years since independence. The burden of establishing ancestry dating back 34 years was not impossibly onerous.

34. If we then look at Section 43, we see that the offspring of naturalized citizens can also become naturalized citizens, subject to the language and character requirements in Section 44. We see from paragraph (e) of that section that, even if only one parent is a naturalized citizen and the other is a foreigner, a person can become a naturalized citizen, regardless of whether that person is even born in Myanmar.

35. I come then to the ways in which full citizenship is acquired. First, we see from Sections 3 and 5 that members of the Kachin, Kayah, Karen, Chin, Burman, Mon, Rakhine and Shan ethnic groups are citizens by birth. The 1982 law is not materially different from the previous law in this respect.

36. If we look at Section 7, we see how full citizenship is acquired and passed down to succeeding generations. Again, none of the provisions are specific to Bengalis in Rakhine State. These provisions apply also to other minorities.

37. We see from paragraphs (a), (b) and (c) of Section 7 that a child, whether born inside Myanmar or not, will be a full citizen if one parent is a full citizen, and the other parent has any one of the three kinds of citizenship status. We then see from paragraphs (d) to (f) that in other cases, a child will be a full citizen if one parent has any of the three kinds of citizenship status and the other parent's parents were both either naturalized citizens or associate citizens.

38. Bearing in mind that the offspring of a person with no citizenship can become a naturalized citizen if the other parent is a naturalized citizen, the effect of the law is that the offspring of those having no citizenship status can become full citizens in three generations.

39. The Gambia refers to associate and naturalized citizenship as "inferior" forms of citizenship<sup>179</sup>, but does not specify the ways in which they are said to be materially inferior. The

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<sup>179</sup> MG, para. 6.17.

differences between a full citizen on the one hand, and an associate citizen or a naturalized citizen on the other, are set out in paragraph (c) of Section 30, and paragraph (c) of Section 53, which are in the same tab of your folder. An associate citizen or naturalized citizen is entitled to enjoy “the rights of a [full] citizen . . . with the exception of the rights stipulated from time to time”. For instance, an associate citizen or naturalized citizen is entitled to vote in elections but cannot stand as a candidate<sup>180</sup>. However, an associate citizen or naturalized citizen can live and work anywhere in Myanmar, like any full citizen, and is entitled to a Myanmar passport.

40. Again, nothing in this law applies specifically to Bengalis in northern Rakhine State. It was adopted as much, or more, out of concern for the consequences of illegal immigration from China and Thailand as it was with that from Bangladesh<sup>181</sup>. Burma’s leader General Ne Win said, in a speech at the time that the law was adopted, that associate citizens or naturalized citizens should not be treated arrogantly or as “from abroad or . . . guests” because “one day they will become one with us”<sup>182</sup>.

41. The Gambia does not appear seriously to challenge any of these facts. Many of its arguments focus not on the 1982 law itself, but on its practical application. I will come to the practical application in due course. For now, I am dealing just with the law itself. The question is, how can this law conceivably be characterized as a law, to use The Gambia’s words, “to stigmatize, exclude and dehumanize the Rohingya population”? How can it conceivably be argued that this law manifests an intent physically or biologically to destroy the Bengali population as such?

42. In fact, The Gambia’s arguments in respect of this law are difficult to discern. They are not stated clearly. The Gambia makes polemical statements such as that the 1982 law “stripped” Bengalis of their citizenship<sup>183</sup> and “formally denationalized”<sup>184</sup> and “denaturalized” them<sup>185</sup>, and

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<sup>180</sup> CMM, para. 10.28.

<sup>181</sup> CMM, paras. 10.42, 10.45; Dispatch No. 4/82 from R. K. Gate, Ambassador of Australia to Burma, to the Australian Foreign Minister, 4 June 1982, pp. 4-5, copy shared by the Australian Ambassador with the British Embassy in Rangoon, National Archives, FCO 15/3162, CMM, Vol. VIII, Annex 326, at pp. 3, 6; United Kingdom, report from British Embassy, Rangoon, to British Foreign and Commonwealth Office, 25 November 1982, National Archives, FCO15/3177, p. 2, CMM, Vol. X, replacement Annex 343*bis*.

<sup>182</sup> CMM, para. 10.43; RM, para. 10.17; General Ne Win, “Speech at Meeting Held in the Central Meeting Hall”, 8 October 1982, MG, Vol. VI, Annex 144.

<sup>183</sup> MG, para. 12.32. Also MG, paras. 1.45, 6.7, 6.13, 6.17, 6.33, 6.34.

<sup>184</sup> MG, para. 6.11. See also MG, heading above para. 6.7; paras. 6.11, 12.32, 12.34.

<sup>185</sup> MG, paras. 6.18, 7.1, 12.31, 12.46.

manifests an intent to “rid Myanmar of the Rohingya”<sup>186</sup>. It compares the 1982 law to Nazi laws that stripped Jews of their German citizenship<sup>187</sup>. It provides no factual basis for such extreme statements. It is also impossible to see how the 1982 law can be said to target Bengalis<sup>188</sup> when it applies also to other minorities. The Gambia also provides no justification for its claim that the 1982 law “sought to change the demographic and ethnic composition of Rakhine State by drastically reducing the Rohingya population”<sup>189</sup>, or that it sought to confine citizenship to the ethnic national races only<sup>190</sup>.

43. The Gambia seems to complain that there are three different types of citizenship and that not everyone is a full citizen. However, Myanmar is not the only State having more than one form of citizenship or nationality. The United Kingdom has six, only one of which brings with it the unconditional right to live and work in the United Kingdom. Latvia has two<sup>191</sup>. The existence of multiple forms of citizenship is hardly an expression of genocidal intent.

44. The Gambia also seems to complain that the 1982 law automatically confers full citizenship on members of certain ethnic groups, while others must satisfy certain criteria to be entitled to citizenship. That is not disputed, but that was already the position under the pre-1982 law, and there is no suggestion that there was anything objectionable about the previous law. Furthermore, other States also have, or have had, citizenship laws that limit citizenship by birth to those of certain ethnicities, or that give preferential treatment in their citizenship laws to certain ethnicities<sup>192</sup>. This is hardly an expression of genocidal intent towards those given less preferential treatment.

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<sup>186</sup> MG, para. 6.12.

<sup>187</sup> MG, para. 12.30 (fn. 1633).

<sup>188</sup> MG, para. 6.15.

<sup>189</sup> MG, para. 6.12.

<sup>190</sup> MG, paras. 6.15-6.16.

<sup>191</sup> CMM, para. 10.51.

<sup>192</sup> CMM, paras. 10.52-10.53; RM, para. 10.21(6).

45. The Gambia appears to seek to convey the impression that Bengalis are “denied” citizenship<sup>193</sup>. That is not so. Some are full citizens, some are associate or naturalized citizens, and some would be entitled to a form of citizenship if they were to apply for it<sup>194</sup>.

46. The Gambia in fact advances no coherent argument at all as to how this law is said to manifest an intent physically or biologically to destroy the Bengali population.

### 3. Events of 1991-1992

47. Mr President, Members of the Court, I turn now to the second of the alleged discriminatory laws and policies, which relates to certain events in 1991 and 1992<sup>195</sup>.

48. The Agent for Myanmar has already explained in his opening speech that, prior to the events of 2016 and 2017, there were two previous occasions on which large numbers of Bengalis went across the border into Bangladesh and were subsequently repatriated to Myanmar through agreements between Myanmar and Bangladesh and the United Nations High Commissioner for Refugees (UNHCR).

49. The first occasion was in 1978<sup>196</sup>. The Gambia does not allege that the events of 1978 were evidence of any genocidal intent in 2016 and 2017. The second occasion was in 1991-1992<sup>197</sup>, and The Gambia claims that the events on this second occasion *are* evidence of such an intent. However, both occasions need to be considered together.

50. On the first occasion, in 1978, as contemporaneous reports of the British and Australian Ambassadors confirm, there was “a programme covering the whole of Burma”<sup>198</sup>, “to check the

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<sup>193</sup> MG, para. 6.3.

<sup>194</sup> CMM, para. 10.85; First Provisional Measures Report, paras. 154-157; Second Provisional Measures Report, paras. 96-97; Third Provisional Measures Report, paras. 60-61; Fourth Provisional Measures Report, paras. 91-93; Fifth Provisional Measures Report, paras. 82-87; Sixth Provisional Measures Report, paras. 69-78; Seventh Provisional Measures Report, paras. 64-66; Eighth Provisional Measures Report, paras. 114-119; Ninth Provisional Measures Report, paras. 72-78; Tenth Provisional Measures Report, paras. 70-72; Eleventh Provisional Measures Report, paras. 51-55; Twelfth Provisional Measures Report, paras. 51-55.

<sup>195</sup> MG, paras. 6.22-6.24; CMM, paras. 10.56-10.73; RG, paras. 5.20-5.24; RM, paras. 10.29-10.35.

<sup>196</sup> CMM, paras. 1.46 (9), 2.59-2.65, 10.58, 10.66; 16.27; RM, paras. 2.2 (7), 16.13.

<sup>197</sup> CMM, paras. 1.46 (9), 1.58, 2.18, 2.68-2.69, 10.56-10.73, 16.27; RM, paras. 2.2 (7), 10.29-10.34, 16.13.

<sup>198</sup> CMM, para. 2.60; United Kingdom, note from the British Ambassador in Rangoon to the British Foreign Secretary, 3 July 1979, National Archives, FCO15/2468, para. 4, CMM, Vol. VIII, Annex 342.

registration papers of local inhabitants”<sup>199</sup>. In northern Rakhine State, hundreds of illegal immigrants were arrested<sup>200</sup> and over 150,000 Bengalis crossed the border into Bangladesh<sup>201</sup>. The British, Australian, West German, Malaysian and United States Ambassadors were at the time all sceptical of claims of deliberate expulsion and atrocities and noted that there were normally functioning villages that were not being harassed<sup>202</sup>. The British Ambassador spoke of “alarmist rumours”<sup>203</sup>.

51. The following year, 1979, those who went to Bangladesh were repatriated to Myanmar, pursuant to agreements between Bangladesh, Myanmar and UNHCR<sup>204</sup>. The British Ambassador reported that they returned “freely and willingly”<sup>205</sup> and said: “All concerned thereby averted a potentially explosive situation which, mishandled, could have been exploited by troublemakers.”<sup>206</sup>

52. On the second occasion, in 1991-1992, Myanmar says that there was similarly an operation throughout the whole country for scrutiny of illegal immigrants<sup>207</sup>. This time, some 190,000 people crossed the border into Bangladesh<sup>208</sup>, and were again ultimately repatriated to Myanmar through agreements between Bangladesh, Myanmar and UNHCR<sup>209</sup>. As in the case of 1978-1979, there were on this occasion again allegations that the exodus was caused by abuses by the military. However, The Gambia provides no evidence of weight that these allegations are substantiated.

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<sup>199</sup> CMM, para. 2.65; Australia, Dispatch No. 4/82 from the Ambassador of Australia in Rangoon to the Australian Foreign Minister, 4 June 1982, pp. 4-5, copy shared by the Australian Ambassador with the British Embassy in Rangoon, United Kingdom National Archives, FCO15/3162, CMM, Vol. X, Replacement Annex 326 (replacing CMM, Vol. VIII, Annex 326).

<sup>200</sup> CMM, para. 10.58; United Kingdom, note from the British Ambassador in Rangoon to the British Foreign Secretary, 3 July 1979, National Archives, FCO15/2468, para. 4, CMM, Vol. VIII, Annex 342.

<sup>201</sup> CMM, para. 2.59.

<sup>202</sup> CMM, para. 2.61; United States of America, cable from the American Ambassador in Rangoon to the US Department of State, 14 June 1978, p. 3, CMM, Vol. VIII, Annex 348.

<sup>203</sup> CMM, para. 2.60; United Kingdom, note from the British Ambassador in Rangoon to the British Foreign Secretary, 3 July 1979, National Archives, FCO15/2468, para. 4, CMM, Vol. VIII, Annex 342.

<sup>204</sup> CMM, para. 10.59; Ministry of Immigration and Population, Letter No. 3/LaPaNa/1 (8-3) (0384), 25 October 2022, CMM, Vol. IV, Annex 147*bis*.

<sup>205</sup> CMM, para. 2.63; United Kingdom, note from the British Ambassador in Rangoon to the British Foreign Secretary, 3 July 1979, National Archives, FCO15/2468, para. 1, CMM, Vol. VIII, Annex 342.

<sup>206</sup> *Ibid.*

<sup>207</sup> CMM, para. 2.68.

<sup>208</sup> CMM, paras. 10.60-10.61.

<sup>209</sup> CMM, paras. 2.69; 10.62-10.63; 10.68.

53. The Gambia says that 1991-1992 involved “violent military operations” called operation “Clean and Beautiful Nation”<sup>210</sup>. Myanmar denies that there was ever a military operation called operation “Clean and Beautiful Nation” and The Gambia presents no evidence of weight that there was<sup>211</sup>.

54. The evidence presented by The Gambia of the claimed atrocities consists of reports of United Nations special rapporteurs on human rights and NGOs, which state allegations<sup>212</sup>. One contains 11 pages of allegations, followed by a single paragraph conclusion that further investigation is warranted<sup>213</sup>; another deals with the allegation in four paragraphs<sup>214</sup>.

55. Evidential weight cannot be given to reports such as these, particularly when they contain brief and general statements unsupported by details or evidence. Furthermore, and in any event, the allegations are of human rights abuses by the military, not of an attack by the military against the Bengali population. The evidence does not even mention any intent to reduce the size of that population or to drive it into Bangladesh, neither of which by itself would be genocide in any event. Claims of a violent military operation against the civilian population in 1991-1992 are simply unsubstantiated.

56. Furthermore, the fact that Myanmar jointly arranged repatriations following the events of 1978 and 1991-92 is inconsistent with an intent physically or biologically to destroy the Bengali population in northern Rakhine State as such. The Gambia does not establish that the events of 1991-1992 are evidence of the existence of a genocidal intent in 2016 and 2017.

#### **4. National verification cards (NVCs)**

57. Mr President, Members of the Court, the third of the alleged discriminatory laws or policies concerns the citizenship verification process and national verification cards<sup>215</sup>.

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<sup>210</sup> MG, para. 6.22, particularly fn. 378.

<sup>211</sup> Fortify Rights, *“Tools of Genocide”: National Verification Cards and the Denial of Citizenship of Rohingya Muslims in Myanmar* (September 2019), p. 39, MG, Vol. V, Annex 126; UN Human Rights Council, Oral Update of the High Commissioner for Human Rights on Situation of Human Rights of Rohingya People, UN doc. A/HRC/38/CRP.2, 3 July 2018, para. 6, p. 2, MG, Vol. II, Annex 35.

<sup>212</sup> MG, para. 6.22, footnotes 377-384.

<sup>213</sup> CMM, para. 10.64; RM, para. 10.33 (1).

<sup>214</sup> RM, para. 10.33 (2).

<sup>215</sup> MG, paras. 6.25-6.35; CMM, paras. 10.74-10.108; RG, paras. 5.16-5.19, 5.25-5.30; RM, paras. 10.35-10.44.

58. The Gambia has not sought seriously to dispute the following facts.

59. In the decades following Burma's independence, the general population had identity cards called national registration cards, or "NRCs", but foreigners instead generally had a foreigner registration certificate, or "FRC". Bengalis in Rakhine State, like members of certain other minorities, were issued with the former, regardless of whether or not they were citizens, but the cards said clearly that they were not proof of citizenship<sup>216</sup>.

60. From 1985, national registration cards were replaced with new "citizenship cards", which are proof of one of the three types of citizenship under the 1982 law<sup>217</sup>. The old cards ceased to be valid. This meant that applications for new cards had to be submitted with proof that the criteria for a category of citizenship were satisfied<sup>218</sup>. That was not a measure that applied specifically to Bengalis in Rakhine State.

61. Since 2015, the process requires an initial application for a document called a national verification card, or "NVC". Once a person has an NVC their eligibility for the relevant citizenship status is scrutinized, and if they are eligible, they are issued with a citizenship scrutiny card, an associate citizenship scrutiny card or a naturalized citizenship scrutiny card<sup>219</sup>. Those who are not eligible for a form of citizenship are not issued with a citizenship card but can continue to live in Myanmar and hold an NVC. The Gambia presents no evidence of weight that anyone who could prove their entitlement to a form of citizenship under the 1982 law was found not to be so entitled.

62. Myanmar says that anyone wanting to apply for an NVC, including any Bengali in northern Rakhine State, would not have any difficulty in obtaining one. The Gambia has not sought to argue or prove otherwise.

63. The holder of an NVC can move freely within their township. Since 2018, NVC holders in Maungdaw and Buthidaung Townships have been able to move freely within both of those two

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<sup>216</sup> CMM, paras. 10.76-10.77; RM, para. 10.38.

<sup>217</sup> CMM, para. 10.78.

<sup>218</sup> CMM, para. 10.80.

<sup>219</sup> CMM, para. 10.83.

townships<sup>220</sup>. NVC holders can access employment and higher education. For some activities, like attending school or receiving health care, not even an NVC is necessary<sup>221</sup>.

64. NVC holders require permission to travel outside their township or, in the case of Maungdaw and Buthidaung Townships, to move outside those two townships. However, Myanmar says that permission to travel is easily obtained and is inexpensive<sup>222</sup>. The Gambia refers to a bare claim in an NGO report that “unofficial” fees are typically added, suggesting that in some cases, local officials might expect some bribe or backsheesh when issuing permits<sup>223</sup>. Such “unofficial” fees are not the policy of the Government, which is taking steps to stamp out corruption. The Gambia presents no evidence of weight that the generality of Bengalis face difficulties in obtaining travel permissions.

65. Since April 2022, all people aged 16 and above are not allowed to travel without a relevant identification card. This applies to every person in Myanmar, including citizens. An NVC is a relevant identification card for this purpose<sup>224</sup>.

66. It is virtually impossible to see how any of this could be characterized as a manifestation of a genocidal intent. The NVC process was supported in principle by former United Nations Secretary-General Kofi Annan, and the Special Envoy of the United Nations Secretary-General on Myanmar<sup>225</sup>.

67. A particular objection of The Gambia appears to be that a Bengali applying for an NVC is not permitted to state on their application that their ethnicity is “Rohingya” and that they must state that they are “Bengali”.

68. That is accepted. I have already explained why the name “Rohingya” is not officially recognized in Myanmar. The Gambia states in a vague way and with a strained logic that failure to enable the name “Rohingya” to be used on NVC applications forces members of this population to renounce their identity, and somehow amounts to a denial of the right of the group to exist<sup>226</sup>. That

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<sup>220</sup> CMM, para. 10.95.

<sup>221</sup> CMM, paras. 10.96-10.97.

<sup>222</sup> CMM, para. 10.227.

<sup>223</sup> MG, para. 6.78, fn. 497.

<sup>224</sup> CMM, para. 10.94.

<sup>225</sup> CMM, paras. 10.89-10.90; RM, para. 10.41.

<sup>226</sup> MG, paras. 6.27-6.33; RG, paras. 5.28-5.30.

is not accepted as a matter of fact; and as a matter of law, even if a formal renunciation of identity could be proved, this would not of itself amount to the physical or biological destruction of a group.

69. The next objection of The Gambia appears to be that a person who does not have an NVC will have difficulty travelling. That is indeed the case; hence the importance of obtaining an NVC. The Gambia appears to argue that a person who refuses to apply for an NVC on the ground that it requires renunciation of “Rohingya” identity will therefore be deprived of their ability to travel for their livelihoods, thereby preventing them from sustaining themselves<sup>227</sup>. That is a speculative argument because The Gambia presents no evidence of weight that the physical or biological existence of any Bengalis has actually been threatened as a result of their own decision not to apply for an NVC. Furthermore, there is no evidence that Myanmar intended that large numbers would fail to apply for NVCs, or that those who do not will face physical or biological destruction.

70. It may well be that, for political reasons, large numbers of Bengalis have declined to apply for an NVC or have come under pressure from activists not to do so<sup>228</sup>. However, the refusal of large numbers of people to engage with administrative requirements is hardly evidence of a genocidal intent on the part of Myanmar. Myanmar’s refusal to accede to such political demands — which go to the State’s discretion in matters of citizenship — is irrelevant for establishing an intent physically or biologically to destroy the population in question.

71. Finally, The Gambia appears to argue that, even if an NVC is easy to obtain, it is virtually impossible for a Bengali to prove their entitlement to citizenship. Even if that were in any way relevant for the case — *quod non* — this is mere assertion. There is no evidence that any significant number of those eligible for a form of citizenship decline to apply because of practical difficulties in obtaining the necessary evidence of eligibility. Proof of an ancestor living in Myanmar prior to independence may be one way of proving eligibility for naturalized citizenship<sup>229</sup>, but not the only way. For instance, proof that a parent was a naturalized citizen would be enough for naturalized citizenship. Entitlement can be established through appropriate documentation, such as birth certificates, household lists and information about parents, grandparents and great-grandparents.

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<sup>227</sup> MG, para. 6.33.

<sup>228</sup> CMM, paras. 10.86-10.88; CR 2006/7, p. 15, para. 15 (Hlaing).

<sup>229</sup> MG, para. 6.17.

72. The Gambia contends that authorities in Myanmar have been seeking to compel people to apply for and accept an NVC<sup>230</sup>. Myanmar does not accept this, but even if it were true, it is also difficult to see how this is a manifestation of an intent physically or biologically to destroy the Bengali population.<sup>231</sup>

### **5. Alleged restrictions on procreation**

73. Mr President, Members of the Court, I now move on to the fourth category of alleged discriminatory laws or policies, which The Gambia labels “[r]estrictions on procreation”<sup>232</sup>.

74. Three distinct matters are said by The Gambia to be restrictions on procreation.

75. One is said to be the adoption of four laws in 2015, referred to as the “Race and Religion Protection Laws”<sup>233</sup>. These four laws are dealt with in the Counter-Memorial of Myanmar<sup>234</sup>, on which Myanmar relies if any response is still required. The Gambia says virtually nothing more about this in its Reply<sup>235</sup>, or in oral argument.

76. A second matter said to amount to restrictions on procreation is the alleged failure of the authorities to issue birth certificates for Bengali children born in Rakhine State. I have already addressed this. By law, birth certificates must be issued for all births occurring anywhere in the country<sup>236</sup>. However, in Bengali communities in northern Rakhine State, most babies are delivered at home by neighbours or traditional birth attendants, with the parents not applying for a birth certificate. The Ministry of Health has been conducting awareness-raising programmes.

77. The third of the matters said to be restrictions on procreation is a regional order adopted by the local government in Maungdaw Township in 2005 that was repealed in 2018<sup>237</sup>. That regional

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<sup>230</sup> CMM, paras. 10.105-10.106; RM, para. 10.42.

<sup>231</sup> CMM, paras. 10.107.

<sup>232</sup> MG, title above para. 6.39. See MG, paras. 6.36-6.64; CMM, paras. 10.109-10.175; RG, paras. 5.34-5.52; RM, paras. 10.45-10.84.

<sup>233</sup> MG, paras. 6.54-6.61, 7.43, fn. 589, 7.59, 12.20.

<sup>234</sup> CMM, paras. 10.146-10.158, 13.63; RM, paras. 10.74-10.76; 11.31.

<sup>235</sup> RG, para. 6.9, fn. 489.

<sup>236</sup> CMM, para. 10.163; Myanmar, Child Rights Law, 2019, CMM, Vol. III, Annex 85.

<sup>237</sup> CMM, para. 10.120; Township Peace and Development Council, Maung Daw, Regional Order No. 1/2005, MG, Vol. VI, Annex 177.

order was adopted pursuant to an order of a body known as the Na Sa Ka<sup>238</sup>, which was itself abolished in 2013.

78. The order of the Na Sa Ka is in your folder at tab 4.4<sup>239</sup>. You will see that it is stated to be a temporary order: this is stated in the subject heading, in subparagraph *(e)* of paragraph 1 and in paragraph 2. Paragraph 1 explains the problems that this order is intended to address. First, that the population growth was outpacing available land and food supply. Second, that children were not being properly looked after. The cause of that second problem is explained in subsequent subparagraphs. Subparagraph *(c)* speaks of the problem of “unofficial marriages”, and subparagraph *(f)* speaks of people entering new marriages without being officially divorced. The order requires marriages to be officially registered and prohibits second marriages unless the first has been officially dissolved. That is subparagraphs *(d)*, *(e)* and *(f)*. Subparagraph *(e)* makes clear that the measure applies to the entire population, not just Muslims. However, as subparagraph *(a)* recognizes, the majority of the population in Maungdaw Township were Muslim, and therefore particular provision was made for Muslim marriages. We see in subparagraphs *(d)* and *(e)* that Muslim marriages are registered at Muslim places of worship, while marriages of others are registered at Government offices. Subparagraph *(b)* notes that some Muslims were not following the Muslim religious procedure for marriages and divorce, so subparagraphs *(b)* and *(d)* require Nika agreements according to Muslim law.

79. If I can now take you to tab 4.5 of your folder, this is the regional order made by the local government in Maungdaw Township pursuant to that Na Sa Ka order<sup>240</sup>. You will see that it addresses the same problems, and that with the exception of subparagraph *(c)*, all of the subparagraphs of paragraph 1 applied to the entire population of Maungdaw Township, not just Muslims. It required the whole population, not just the Muslim population, to practice monogamy, not to have unofficial marriages and divorces, not to marry under 18 years of age and to wait for a period after a divorce or death of a spouse before remarrying.

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<sup>238</sup> CMM, para. 10.120. See also RM, paras. 3.25, 10.49, 10.52, 10.66.

<sup>239</sup> Border Region Immigration Control Headquarters, Maung Daw, Letter ref. Na-Sa-Ka/ 56/ U, 31 January 1993, para. 1 *(e)*, MG, Vol. VI, Annex 177.

<sup>240</sup> Township Peace and Development Council, Maung Daw, Regional Order No. 1/2005, MG, Vol. VI, Annex 177.

80. The only provision applying specifically to Muslims is subparagraph (c), which stated that Muslim marriages needed the permission of the Maungdaw local government. Myanmar says that permission was never refused, and The Gambia provides no evidence of weight to contradict that.

81. You will see also that its subparagraph (f) provides for the number of children to be limited. It does not state any specific limit. However, The Gambia has provided evidence that the local authorities, when approving marriages, required couples to agree to have no more than two children.

82. There is, however, no evidence that a two-child limit was ever strictly enforced. Many of the witness statements provided by The Gambia indicate that the witnesses had more than two children<sup>241</sup>. One states, in an apparently ironic tone, that “the government wrote that we could not have more than [two] babies. Even though I had [eight] children”<sup>242</sup>. The Gambia cites one witness who states that those having more than two children faced fines between US\$2.5 and US\$5, but even this evidence is only hearsay<sup>243</sup>. The Gambia provides no evidence of any weight for its assertion that “[f]ear of repercussions from authorities for unauthorized childbirth leaves Rohingya women terrified to give birth to third children or children out of wedlock”<sup>244</sup>.

83. Nor is there any evidence of weight that supports The Gambia’s assertion that this regional order was the reason for the number of abortions in northern Rakhine State<sup>245</sup>. The NGO reports relied on by The Gambia do not carry sufficient evidential weight even to establish the numbers of abortions, let alone the reasons for them.

84. Nor is there any evidence of weight that supports The Gambia’s assertion that this regional order put marriage out of reach for many Muslims<sup>246</sup>. The witness statements and interview records relied on by The Gambia show just how many people were married<sup>247</sup>. The minimum age of 18 years for those wishing to marry is consistent with a recommendation of the United Nations Human Rights

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<sup>241</sup> CMM, paras. 10.137-10.140; RM, para. 10.72.

<sup>242</sup> CMM, para. 10.138; Legal Action Worldwide, Witness statement No. 027, para. 54, MG, Vol. XI, Annex 365.

<sup>243</sup> CMM, para. 10.145; Legal Action Worldwide, Witness statement No. 21, para. 27, MG, Vol. XI, Annex 358.

<sup>244</sup> CMM, para. 10.138; Fortify Rights, *Policies of Persecution* (2014), p. 28, MG, Vol. IV, Annex 91.

<sup>245</sup> CMM, paras. 10.143-10.144.

<sup>246</sup> MG, para. 6.45.

<sup>247</sup> CMM, para. 10.123.

Committee<sup>248</sup>. The Gambia presents no evidence of any weight that significant numbers of people were imprisoned for marrying without permission<sup>249</sup>.

85. There is no evidence that this regional order led to any reduction in the size of the Muslim population in Maungdaw Township or that it was intended to. There is no evidence that this regional order was capable of leading to the destruction of the Bengali population in northern Rakhine State, or that it was intended to do so<sup>250</sup>. The Gambia simply asserts, without any evidential basis, that these measures were intended to “reverse” the rate of population growth in Maungdaw District<sup>251</sup>.

### **6. Alleged segregation, confinement and denial of access to sustenance**

86. Mr President, Members of the Court, I proceed next to the fifth category of alleged discriminatory laws or policies. This is labelled in The Gambia’s Memorial as “segregation, confinement and denial of access to sustenance”<sup>252</sup>. The general allegation is that many Bengali Muslims in northern Rakhine State are required to live in separate areas removed from the general population and are denied freedom of movement and access to food, healthcare and other basic necessities.

87. In making these allegations, The Gambia presents an incorrect picture of the facts. However, even if the facts as presented by The Gambia were correct, it still fails to establish that the facts either constitute the *actus reus* of genocide or are circumstances from which the existence of a genocidal intent can be inferred.

88. The Gambia effectively divides the population of northern Rakhine State into three separate categories, namely those living in camps for internally displaced persons (“IDP camps”); those living in towns and villages in northern Rakhine State; and those living in Aung Mingalar, which is a part of Sittwe, the capital of Rakhine State.

89. As I have already said, those who have one of the three forms of citizenship have freedom of movement throughout Myanmar. Those who do not have such a form of citizenship can obtain a

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<sup>248</sup> CMM, paras. 10.124-10.127.

<sup>249</sup> CMM, para. 10.130.

<sup>250</sup> CMM, paras. 10.112-10.118.

<sup>251</sup> MG, para. 6.38.

<sup>252</sup> MG, paras. 6.65-6.89; CMM, paras. 10.176-10.245; RG, paras. 5.53-5.69; RM, paras. 10.85-10.126.

national verification card, an NVC. And those with an NVC can travel freely within their township, or in the case of Maungdaw and Buthidaung Townships, can travel freely within those two townships. Those with an NVC can also travel elsewhere in Myanmar after applying for and obtaining travel permission. They can carry out fishing, trading and agricultural activities for their livelihoods. As I have explained earlier, an NVC is easy for anyone to obtain, and The Gambia does not claim otherwise.

90. Those who refuse to have an NVC, for political or other reasons, may face some practical difficulties, as I have explained. In particular, they will have no identification card to produce if asked for one by the police while travelling. However, even then, The Gambia presents no evidence that anyone's physical or biological existence has been imperilled through lack of an NVC.

91. The greatest number of Bengalis in northern Rakhine State are living in towns and villages. There are hundreds of thousands who did not leave for Bangladesh at the time of the events of 2016 and 2017. They largely continue to live in their homes, as they did before<sup>253</sup>.

92. A smaller number, approximately 100,000, live in camps for internally displaced persons following the communal violence of 2012<sup>254</sup>. The Gambia persists in referring to IDP camps as "internment" camps<sup>255</sup> and claims that those living there are "forcibly confined"<sup>256</sup>.

93. That is not the case. Those living in IDP camps are not compelled to stay there and are free to leave, temporarily or permanently. Those living in IDP camps can come and go and interact with the outside world and receive visitors and take up employment<sup>257</sup>. Confirmation of this is seen in a 2017 report by the Danish Refugee Council and UNHCR, based on data collected between November 2016 and April 2017, that is to say, at times material to the present proceedings. This report confirms that those in the IDP camps were able to interact with others outside the camps, and could choose to leave the camps, or to go from one camp to another camp<sup>258</sup>. The expression "internment camp" is

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<sup>253</sup> CMM, para 13.107.

<sup>254</sup> CMM, paras. 10.183-10.186.

<sup>255</sup> MG, heading above para. 6.66; paras. 1.14, 1.45, 6.6, 6.38, 6.65, 6.66, 6.67, 6.72, 6.74, 6.76, 12.35, 13.36; RG, headings above paras. 5.53 and 5.55; paras. 1.15, 4.52, 5.4, 5.55-5.56, 9.20, 9.66-9.68; also MG, p. 515, list of figures and maps referring to MG, fig. 6.1 following p. 154.

<sup>256</sup> MG, paras. 1.14, 1.45, 6.6, 6.38, 6.65, 6.66, 6.72, 6.74, 6.76, 12.35 and 13.36.

<sup>257</sup> CMM, paras. 10.198-10.208.

<sup>258</sup> Danish Refugee Council and UNHCR, *Sittwe Camp Profiling Report*, June 2017, pp. 8, 55 and 93, CMM, Vol. VI, Annex 235; CMM, paras. 10.198-10.201.

The Gambia's own invention in this context. It points to no official document that uses this term to describe the IDP camps in Rakhine State.

94. To put the matter in further perspective, in other parts of Myanmar there are also many people of other ethnicities who also live or have lived in IDP camps as a result of displacement through conflicts or communal violence<sup>259</sup>. This is not something specific to Bengalis in northern Rakhine State. Furthermore, in many other countries around the world, there are also millions of people living in IDP camps<sup>260</sup>. Myanmar has presented evidence that the conditions in IDP camps in Rakhine State are generally acceptable by international standards<sup>261</sup>. Myanmar has also presented evidence of the humanitarian assistance, including food and non-food items, medical services and basic education, that have been continuously provided to those still residing in these IDP camps<sup>262</sup>. There is no evidence that the population of the camps is declining due to lack of such provision<sup>263</sup>. It remains a long-term intention of the Government to close the IDP camps and to resettle their inhabitants, and steps are being taken to achieve this. The fact that it has not been achieved to date does not mean that the population living in the IDP camps in the meantime is being physically or biologically destroyed.

95. The Gambia also claims that those living in Aung Mingalar are "trapped" or "confined" in a "ghetto"<sup>264</sup>. This is emotive rhetoric. Aung Mingalar is simply a ward of Sittwe Town, the capital of Rakhine State, and has a population of only some 4,000 people. Myanmar denies that those living in Aung Mingalar are forcibly confined there, and The Gambia has not produced any evidence of

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<sup>259</sup> CMM, para. 10.189.

<sup>260</sup> CMM, para. 10.190, 10.192-10.195.

<sup>261</sup> CMM, paras. 10.191, 10.197-10.199.

<sup>262</sup> CMM, paras. 10.184-10.185, 10.202-10.206; also CMM, para. 2.71; RM, paras. 3.88, 10.98, 10.119-10.124; First Provisional Measures Report, paras. 169, 177,186-189, 199, 204, 209-211, 213, 215-218, 221-222, 227; Second Provisional Measures Report, paras. 106, 111-112, 120-121, 135-136, 146; Third Provisional Measures Report, paras. 72, 74, 81-84, 91; Fourth Provisional Measures Report, paras. 95-96, 100, 107, 110-111, 119, 124-127, 133-134; Fifth Provisional Measures Report, paras. 88, 92, 100, 103, 108-109, 111-112; Sixth Provisional Measures Report, paras. 82, 89-90, 94, 99, 103, 105; Seventh Provisional Measures Report, paras. 72, 74, 77, 82, 86; Eighth Provisional Measures Report, paras. 120, 125, 128, 130, 132, 135, 138, 147, 149, 152, 155, 160; Ninth Provisional Measures Report, paras. 79-81, 87-88, 90, 93, 96, 101, 103; Tenth Provisional Measures Report, paras. 73, 78-79, 81-82, 86; Eleventh Provisional Measures Report, paras. 56, 63-64, 66, 68, 75, 77; Twelfth Provisional Measures Report, paras. 56, 65, 67-68, 73-76, 78-80, 86-88, 90.

<sup>263</sup> CMM, para. 10.186-10.187.

<sup>264</sup> MG, paras. 6.73-6.75; RG, para. 5.62.

weight that they are<sup>265</sup>. Myanmar says that healthcare services, education, livelihoods, and social and religious activities are freely accessible to them like others in the city, and The Gambia has produced no evidence of weight to the contrary. Videos depicting Aung Mingalar are annexed to the Rejoinder of Myanmar<sup>266</sup>.

96. The Gambia alleges, without any evidential foundation, that Myanmar has imposed restrictions on movement and access to sustenance in furtherance of a policy “to prevent [Bengali Muslims] from renewing and sustaining themselves as a group over the long term”<sup>267</sup>. However, The Gambia provides no clear explanation of how the matters of which it complains could lead to the destruction of Bengali Muslims as a group, as such, or of how they manifest an intention to bring about that result<sup>268</sup>. Much less does The Gambia provide any evidence in support of such an explanation.

97. Myanmar has acknowledged that food insecurity is an issue in northern Rakhine State, but it is also an issue in many other parts of Myanmar. In 2022, the World Food Programme estimated that some 13 million of Myanmar’s population of 54 million were food insecure, that is, roughly a quarter of the entire population of the country<sup>269</sup>. International humanitarian assistance is provided in various different parts of Myanmar and, in northern Rakhine State, it is provided not just to Muslims. The Gambia provides no evidence of weight to suggest that Myanmar has reduced the amount of food aid reaching Muslims in northern Rakhine State. There is no evidential basis for The Gambia’s claim that Myanmar is conducting a policy of forced starvation<sup>270</sup>.

### **7. Alleged policy of denying the existence of the “Rohingya”**

98. Mr President, Members of the Court, the sixth and final category of alleged discriminatory policies is what The Gambia calls “Myanmar’s policy of denying the existence of the Rohingya and referring to them as ‘Bengali’”<sup>271</sup>.

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<sup>265</sup> CMM, paras. 10.209-10.221; RM, paras. 10.99-10.102.

<sup>266</sup> RM, Annexes 81 and 82.

<sup>267</sup> MG, para. 6.65.

<sup>268</sup> CMM, paras. 10.177-10.178.

<sup>269</sup> CMM, paras. 10.233-10.234.

<sup>270</sup> CMM, paras. 10.232-10.245.

<sup>271</sup> RG, heading above para. 5.5. See CR 2026/2, pp. 32-33, paras. 4-11 (Pasipanodya).

99. I have already explained why Myanmar does not use the name “Rohingya”, and why it uses the name “Bengali”. The Gambia has not challenged the historical background facts set out in Chapter 2 of both of Myanmar’s written pleadings. The Rejoinder of Myanmar explains why the name “Rohingya” was officially used in some cases for a period in the 1960s and what that meant<sup>272</sup>. Failure to use a particular name to refer to a population is hardly evidence of an intent physically or biologically to destroy that population.

### **8. Conclusion**

100. Mr President, Members of the Court, for these reasons, and the further reasons in Myanmar’s written pleadings, The Gambia has not established that any of what it alleges to be discriminatory laws and policies are acts of genocide or evidence of a genocidal intent.

101. Members of the Court, I thank you for your careful attention. Mr President, that concludes Myanmar’s presentations for today.

The PRESIDENT: I thank Mr Staker. Your statement brings to an end this afternoon’s session. The Court will meet again tomorrow, Tuesday 20 January 2026 at 10 a.m., to resume hearing the first round of oral argument of Myanmar.

The sitting is closed.

*The Court rose at 5.40 p.m.*

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<sup>272</sup> RM, paras. 10.12 (fn. 1564) and 13.46.