19 NOVEMBER 2026

JUDGMENT

APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(THE GAMBIA *v.* MYANMAR: 11 STATES INTERVENING)

APPLICATION DE LA CONVENTION POUR LA PRÉVENTION ET LA RÉPRESSION DU CRIME DE GÉNOCIDE

(GAMBIE c. MYANMAR ; 11 ÉTATS INTERVENANTS)

19 NOVEMBRE 2026

ARRÊT

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INTERNATIONAL COURT OF JUSTICE

YEAR 2026

2026
19 November
General List
No. 178

19 November 2026

APPLICATION OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

(THE GAMBIA *v.* MYANMAR: 11 STATES INTERVENING)

JUDGMENT

Present: *President* IWASAWA; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, XUE, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDO, CLEVELAND, AURESCU, TLADI, HMOUD; *Judges* ad hoc PILLAY, KRESS; *Registrar* VILLALPANDO.

In the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide,

between

the Republic of The Gambia,

represented by

HE Mr Dawda Jallow, Attorney General and Minister of Justice of the Republic of The Gambia,

as Agent;

Ms Yasmin Al Ameen, Attorney at Law, Foley Hoag LLP, member of the Bar of the State of New York,

Mr Pierre d'Argent, *professeur ordinaire*, Université catholique de Louvain, member of the Institut de droit international, Foley Hoag LLP, member of the Bar of Brussels,

Ms Diem Huong Ho, Attorney at Law, Foley Hoag LLP, member of the Bars of England and Wales and the State of New York,

Ms Jessica Jones, Barrister at Law, Matrix Chambers, London, member of the Bar of England and Wales,

Mr Andrew Loewenstein, Attorney at Law, Foley Hoag LLP, member of the Bar of the Commonwealth of Massachusetts,

Mr Chalis Combeh Njai, Principal State Counsel, Attorney General's Chambers, Ministry of Justice, Republic of The Gambia,

Ms Mariama Ngum, State Counsel, Attorney General's Chambers, Ministry of Justice, Republic of The Gambia,

Ms Tafadzwa Pasipanodya, Attorney at Law, Foley Hoag LLP, member of the Bars of New York and the District of Columbia,

Mr Paul S. Reichler, Attorney at Law, 11 King's Bench Walk, member of the Bars of the United States Supreme Court and the District of Columbia,

Mr Philippe Sands, KC, Professor of International Law at University College London, Barrister at Law, 11 King's Bench Walk, London,

Mr Arsalan Suleman, Attorney at Law, Foley Hoag LLP, member of the Bars of the District of Columbia and the State of New York,

as Counsel and Advocates;

Ms Alejandra Torres Camprubí, Partner at Torres Iuris, member of the Madrid and Paris Bars, Adjunct Professor of International Environmental Law at IE University,

Ms Sun Young Hwang, Attorney at Law, Foley Hoag LLP,

as Counsel;

HE Mr Pa Musa Jobarteh, Ambassador of the Republic of The Gambia to the Kingdom of Belgium and Permanent Representative to the European Union,

Mr Habib T. Jarra, Chargé d'affaires, Embassy of the Republic of The Gambia in the Kingdom of Saudi Arabia and Acting Permanent Representative of the Republic of The Gambia to the Organisation of Islamic Cooperation,

Mr Kalifa Singhateh, First Secretary, Embassy of the Republic of The Gambia in the Kingdom of Belgium,

Mr Yousuf Ali,

Ms Noor Begum,

Mr Mohammed Eliyas,

Ms Fatema Fatema,

Mr Nay San Lwin, Free Rohingya Coalition,

Mr Sayedul Karim, Rohingya Justice Initiative,

Mr Maung Tun Khin, Burmese Rohingya Organisation UK,

Mr Matthew Smith, Fortify Rights,

as Members of the Delegation;

Mr Khairul Amin, Interpreter,

Ms Amina Chaudary,

Ms Maisha Farzana, Interpreter,

Ms Rahima Khatun, Interpreter,

Ms Nancy Lopez, Foley Hoag LLP,

Mr Himel Biswas Manna, Interpreter,

Mr Jonathan Mercer,

Ms Jennifer Schoppmann, Foley Hoag LLP,

as Assistants,

and

the Republic of the Union of Myanmar,

represented by

HE Mr Ko Ko Hlaing, Union Minister for the Ministry (2) of the President's Office of the Republic of the Union of Myanmar,

as Agent;

HE Ms Thi Da Oo, Union Minister for the Ministry of Legal Affairs and Attorney General of the Republic of the Union of Myanmar,

as Alternate Agent;

Mr Christopher Staker, KC, 39 Essex Chambers, member of the Bar of England and Wales,

as Lead Counsel and Advocate;

Mr Sam Blom-Cooper, 25 Bedford Row Chambers, member of the Bar of England and Wales,

Ms Leigh Lawrie, KC, Advocate, Faculty of Advocates, Edinburgh,

Mr Stefan Talmon, Professor of International Law, University of Bonn, Twenty Essex Chambers, member of the Bar of England and Wales,

Ms Alina Miron, Professor of International Law, member of the Paris Bar, Founding Partner of FAR Avocats,

Mr David Hooper, KC, 25 Bedford Row Chambers, member of the Bar of England and Wales,

Ms Chiara Cordone, 39 Essex Chambers, member of the Bar of England and Wales,

as Counsel and Advocates;

Ms Khin Thidar Aye, Chargé d'affaires a.i., Embassy of the Republic of the Union of Myanmar in Brussels,

Ms Khin Oo Hlaing, Legal Co-ordinator, member of the Advisory Board to the Acting President, Chairman of the State Security and Peace Commission of the Republic of the Union of Myanmar,

Mr Myo Win Aung, Deputy Judge Advocate General, Ministry of Defence, Republic of the Union of Myanmar,

Mr Tun Tun Win, Head of the Law and Regulation Department, Ministry of Defence, Republic of the Union of Myanmar,

Mr Than Htwe, Director-General, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Mr Zaw Zaw Htwe, Deputy Director-General, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Mr Kyaw Thu Hein, Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms Saw Yu Nwe, Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Mr Ngwe Zaw Aung, Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Mr Thant Sin Oo, Minister Counsellor, Embassy of the Republic of the Union of Myanmar in Brussels,

Mr Myat Nyi Nyi Win, Deputy Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Ms Cho Nge Nge Thein, Deputy Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms May Myat Noe Naing, Deputy Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Mr Yan Naing Khant, Counsellor, Embassy of the Republic of the Union of Myanmar in Brussels,

Mr Nyein Chan Maung, Staff Officer, Office of the Adjutant General, Ministry of Defence, Republic of the Union of Myanmar,

Mr Biak Chan, Assistant Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms M Ja Dim, Assistant Director, Ministry of Legal Affairs, Republic of the Union of Myanmar,

Ms Hsu Ma Ma Hein, First Secretary, Embassy of the Republic of the Union of Myanmar in Brussels,

Ms May Oo Kyinnar Naing, First Secretary, Embassy of the Republic of the Union of Myanmar in Brussels,

Ms Yu Za Na Khin Zaw, First Secretary, Embassy of the Republic of the Union of Myanmar in Brussels,

Mr Wai Yan Min Myint, Assistant Director, Ministry of Foreign Affairs, Republic of the Union of Myanmar,

Mr Myo Myint Aung, Staff Officer, General Administration Department, Ministry of Home Affairs, Republic of the Union of Myanmar,

Ms Mary Lobo, Legal Assistant,

Ms Capucine Hamon, *avocate à la Cour*, member of the Paris Bar, Associate, FAR Avocats,

as Members of the Delegation,

with the following States, whose Declarations of intervention have been admitted by the Court:

the Federal Republic of Germany,

represented by

Ms Julia Monar, Legal Adviser and Director-General of the Legal Department of the Federal Foreign Office of the Federal Republic of Germany,

as Agent (from 8 July 2026);

HE Ms Tania von Uslar-Gleichen, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands (as Agent until 8 July 2026),

Ms Wiebke Rückert, Director for Public International Law, Foreign Office of the Federal Republic of Germany,

HE Mr Nikolaus Meyer-Landrut, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands (until 8 July 2026),

as Co-Agents,

the Kingdom of Belgium,

represented by

Mr Antoine Misonne, Director-General of Legal Affairs, Ministry of Foreign Affairs, Foreign Trade and Development Co-operation,

as Agent;

HE Mr Olivier Belle, Ambassador, Permanent Representative of the Kingdom of Belgium to the International Organizations in The Hague,

as Co-Agent (until 31 July 2026);

HE Mr Wouter Detavernier, Ambassador, Permanent Representative of the Kingdom of Belgium to the International Organizations in The Hague,

as Co-Agent (from 11 September 2026),

Canada,

represented by

Mr Louis-Martin Aumais, Legal Adviser and Director General, International Law Bureau, Global Affairs Canada,

as Agent (until 2 June 2026);

Ms Rebecca Netley, Legal Adviser and Director General, International Law Bureau, Global Affairs Canada,

as Agent (as Co-Agent until 2 June 2026);

Ms Catherine Boucher, Legal Adviser, Executive Director, Accountability, Human Rights and United Nations Law Division, Global Affairs Canada,

as Co-Agent (from 2 June 2026);

Ms Teresa Crockett, Deputy Director, Accountability, Human Rights and United Nations Law Division, Global Affairs Canada,

as Deputy Agent,

the Democratic Republic of the Congo,

represented by

Mr Ivon Mingashang, Professor, University of Kinshasa, member of the International Law Commission, honorary member of the Brussels Bar and member of the Kinshasa/Gombe Bar,

as Agent,

the Kingdom of Denmark,

represented by

HE Ms Vibeke Pasternak Jørgensen, Ambassador, Under-Secretary for Legal Affairs, Ministry of Foreign Affairs of the Kingdom of Denmark,

as Agent;

HE Mr Jarl Frijs Madsen, Ambassador of the Kingdom of Denmark to the Kingdom of the Netherlands,

as Co-Agent,

the French Republic,

represented by

Mr Diégo Colas, Legal Adviser, Director of Legal Affairs, Ministry of Europe and Foreign Affairs,

as Agent;

Ms Sandrine Barbier, Deputy Director of Legal Affairs, Ministry of Europe and Foreign Affairs,

as Co-Agent,

Ireland,

represented by

Mr Declan Smyth, Legal Adviser, Department of Foreign Affairs, Ireland,

as Agent;

HE Ms Ann Derwin, Ambassador of Ireland to the Kingdom of the Netherlands,

as Co-Agent,

the Republic of Maldives,

represented by

Mr Ahmed Usham, Attorney General of the Republic of Maldives,

as Agent,

the Kingdom of the Netherlands,

represented by

Mr René Lefeber, Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Agent;

Ms Mireille Hector, Deputy Legal Adviser, Ministry of Foreign Affairs of the Kingdom of the Netherlands,

as Co-Agent,

the Republic of Slovenia,

represented by

Mr Marko Rakovec, Director-General for International Law and Protection of Interests, Ministry of Foreign and European Affairs of the Republic of Slovenia,

as Agent;

Mr Helmut Hartman, Legal Adviser, Embassy of the Republic of Slovenia in the Kingdom of the Netherlands,

Ms Barbara Granda, Legal Adviser, International Law Department, Ministry of Foreign Affairs of the Republic of Slovenia,

as Co-Agents,

the United Kingdom of Great Britain and Northern Ireland,

represented by

Ms Sally Langrish, Legal Adviser and Director General Legal, Foreign, Commonwealth and Development Office, United Kingdom of Great Britain and Northern Ireland,

as Agent;

Mr Paul Berman, Legal Director, Foreign, Commonwealth and Development Office, United Kingdom of Great Britain and Northern Ireland,

as Co-Agent,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

Institution of proceedings and written pleadings

1. On 11 November 2019, the Republic of The Gambia (hereinafter "The Gambia") filed in the Registry of the Court an Application instituting proceedings against the Republic of the Union of Myanmar (hereinafter "Myanmar") concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948 (hereinafter the "Genocide Convention" or the "Convention").

2. In its Application, The Gambia sought to base the Court's jurisdiction on Article IX of the Genocide Convention, in conjunction with Article 36, paragraph 1, of the Statute of the Court.

3. The Application contained a Request for the indication of provisional measures, submitted with reference to Article 41 of the Statute of the Court and to Articles 73, 74 and 75 of the Rules of Court.

4. The Registrar immediately communicated to the Government of Myanmar the Application containing the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute and Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by The Gambia of the Application and the Request for the indication of provisional measures.

5. In addition, by a letter dated 11 November 2019, the Registrar informed all States entitled to appear before the Court of the filing of the above-mentioned Application and Request.

6. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations through the Secretary-General, and any other State entitled to appear before the Court, of the filing of the Application, by transmission of the printed bilingual text.

7. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31, paragraph 3, of the Statute of the Court to choose a judge *ad hoc* to sit in the case. The Gambia chose Ms Navanethem Pillay, and Myanmar chose Mr Claus Kress.

8. By an Order dated 23 January 2020, the Court, having heard the Parties, indicated the following provisional measures:

> "(1) The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:
>
> *(a)* killing members of the group;
>
> *(b)* causing serious bodily or mental harm to the members of the group;
>
> *(c)* deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
>
> *(d)* imposing measures intended to prevent births within the group;
>
> (2) The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which

may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;

(3) The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;

(4) The Republic of the Union of Myanmar shall submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court."

9. By another Order of 23 January 2020, the Court fixed 23 July 2020 and 25 January 2021 as the respective time-limits for the filing of a Memorial by The Gambia and a Counter-Memorial by Myanmar.

10. Pursuant to subparagraph 4 of the operative clause of the Order of 23 January 2020 indicating provisional measures, Myanmar submitted reports on the measures taken to give effect to that Order on 22 May 2020 (First report), 23 November 2020 (Second report), 20 May 2021 (Third report), 23 November 2021 (Fourth report), 23 May 2022 (Fifth report), 23 November 2022 (Sixth report), 23 May 2023 (Seventh report), 23 November 2023 (Eighth report) and 23 May 2024 (Ninth report). The Gambia submitted comments on each of these reports respectively, on 5 June 2020, 7 December 2020, 16 August 2021, 7 December 2021, 7 June 2022, 7 December 2022, 6 June 2023, 7 December 2023 and 6 June 2024, within the time-limits fixed by the Court.

11. By letters dated 14 October 2024, the Registrar informed the Parties that in the report due in November 2024, Myanmar should, in particular, respond to the following questions posed by the Court:

"Recalling the Presidential Directive No. 1/2020 on the Compliance with the Convention on the Prevention and Punishment of the Crime of Genocide, promulgated by the President of the Republic of the Union of Myanmar on 8 April 2020:

(a) Paragraph 4 of the Presidential Directive refers to the possible establishment of 'appropriate mechanisms' to transmit credible information to the Office of the President about the commission of acts referred to in Articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide. Have any such mechanisms been established and, if so, what form do they take?

(b) What action, if any, may the President take on receipt of any credible information referred to in paragraph 4?

(c) Are there any other mechanisms in place to enforce the Presidential Directive?"

12. On 22 November 2024, Myanmar submitted its tenth report on the measures taken to give effect to the Order of 23 January 2020 indicating provisional measures, which included the responses

to the questions put to it by the Court. Myanmar subsequently submitted reports on 23 May 2025 (Eleventh report), 21 November 2025 (Twelfth report) and 22 May 2026 (Thirteenth report). The Gambia submitted comments on each of these reports respectively, on 6 December 2024, 6 June 2025, 5 December 2025 and 5 June 2026, within the time-limits fixed by the Court.

13. In accordance with Article 43, paragraph 1, of the Rules of Court, the Registrar addressed to States parties to the Genocide Convention the notification provided for in Article 63, paragraph 1, of the Statute of the Court. In addition, in accordance with Article 69, paragraph 3, of the Rules of Court, the Registrar addressed to the United Nations, through its Secretary-General, the notification provided for in Article 34, paragraph 3, of the Statute of the Court.

14. By an Order of 18 May 2020, the Court, at the request of the Applicant, extended the time-limit for the filing of the Memorial to 23 October 2020. By the same Order, the Court also extended the time-limit for the filing of the Counter-Memorial of the Respondent to 23 July 2021. The Gambia filed its Memorial within the time-limit as extended.

15. By a joint letter dated 11 November 2020, the Governments of Canada and the Kingdom of the Netherlands, referring to Article 53, paragraph 1, of the Rules of Court, requested to be furnished with copies of the written pleadings and documents annexed thereto filed in the case. Having ascertained the views of the Parties in accordance with the above-mentioned provision, the Court decided, taking into account the objection raised by one Party, that it would not be appropriate to grant that request. By letters dated 27 November 2020, the Registrar communicated this decision to the Governments of Canada and the Kingdom of the Netherlands, and to the Parties.

16. On 20 January 2021, within the time-limit prescribed by Article 79*bis*, paragraph 1, of the Rules of Court, Myanmar raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application.

17. Public hearings on the preliminary objections raised by Myanmar were held on 21, 23, 25 and 28 February 2022. By a Judgment of 22 July 2022, the Court found that it had jurisdiction on the basis of Article IX of the Genocide Convention to entertain the Application filed by The Gambia on 11 November 2019, and that the said Application was admissible.

18. By an Order of 22 July 2022, the Court fixed 24 April 2023 as the new time-limit for the filing of the Counter-Memorial of Myanmar. By Orders of 6 April 2023 and 12 May 2023 respectively, the Court, at the request of the Respondent, extended that time-limit first to 24 May 2023 and then to 24 August 2023. The Counter-Memorial of Myanmar was filed within the time-limit thus extended.

19. By an Order of 16 October 2023, the Court authorized the submission of a Reply by The Gambia and a Rejoinder by Myanmar, and fixed 16 May 2024 and 16 December 2024 as the respective time-limits for the filing of those written pleadings. Following a request by The Gambia to extend the time-limit for the filing of the Reply, the Registrar informed the Parties, by letters dated 14 May 2024, that it had been decided not to extend the time-limit for the filing of the Reply, but that the Reply would not be considered out of time if it was submitted by 23 May 2024. The Gambia filed its Reply on 23 May 2024, as authorized by the Court. By an Order of 21 November 2024, the Court, at the request of the Respondent, extended the time-limit for the filing of the Rejoinder of Myanmar to 30 December 2024. The Rejoinder of Myanmar was filed within the time-limit thus extended.

20. By a letter dated 21 January 2025, the Registrar, acting pursuant to Article 69, paragraph 3, of the Rules of Court, transmitted to the Secretary-General of the United Nations copies of the written proceedings filed in the merits stage of the case, and asked whether the Organization intended to present observations in writing under that provision. By a letter dated 29 January 2025, the Acting Under-Secretary-General for Legal Affairs and United Nations Legal Counsel stated that the Organization did not intend to submit any such observations.

21. By letters to the Parties dated 16 September 2025, the Registrar recalled that The Gambia had provided, as annexes to its Memorial filed on 23 October 2020 as well as to its Reply filed on 23 May 2024, witness statements which had been redacted to protect the safety and security of the witnesses and related persons. Unredacted versions of these annexes had been filed under seal in the Registry "for the Court's *in camera* review only" and were not transmitted to Myanmar; nor were they distributed by the Registry to the judges sitting in the case. The Registrar further stated that the Court, having examined the views of the Parties in this respect, and having regard to Articles 43, paragraph 4, and 46 of its Statute and Articles 49, 50 and 57 of its Rules, as well as to the principles of due process, equality of the parties and the need to ensure the proper administration of justice, wished to emphasize that it would not take into account *ex parte* evidence. Accordingly, the two sealed envelopes provided by The Gambia with its Memorial and its Reply were returned to The Gambia.

Documents submitted after the closure of the written proceedings

22. By a letter dated 8 September 2025, the Agent of Myanmar, referring to Article 56, paragraph 1, of the Rules of Court, requested authorization to produce three new documents. By a letter dated 22 September 2025, the Agent of The Gambia informed the Court that his Government had no objection to the production by Myanmar of these three documents. By letters of the same date, the Registrar informed the Parties that, taking into account the absence of objection by The Gambia, the documents had been added to the case file.

23. By a letter dated 17 November 2025, the Agent of The Gambia, referring to Article 56, paragraph 1, of the Rules of Court, requested authorization to produce four new documents, namely a public summary of investigations dated 29 September 2025, prepared by the Independent Investigative Mechanism for Myanmar (hereinafter the "IIMM" or the "Mechanism"); a chronology of major events in Myanmar from 1982 to 2017, prepared by the IIMM; a less redacted version of a witness statement originally produced by The Gambia as an annex to its Reply, in which the identity of the witness had been unredacted; and a letter dated 11 November 2025 from the Head of the IIMM to the Agent of The Gambia.

24. By another letter, dated 19 November 2025, the Agent of The Gambia, referring to the same provision, further requested that the Court authorize The Gambia to produce new versions of 14 witness statements which had previously been annexed to its Memorial and Reply "with personally identifiable information redacted". In these new versions, the witnesses' identities had been unredacted. The Agent of The Gambia also requested that the identities of these witnesses remain confidential between the Parties and the Court, and that any mention of their statements during the oral proceedings refer either to the witness number provided or to the relevant annex number of The Gambia's Memorial or Reply.

25. By a letter dated 28 November 2025, Myanmar objected to The Gambia's two above-mentioned requests.

26. By letters dated 10 December 2025, the Registrar informed the Parties that the Court had decided, in accordance with Article 56, paragraph 2, of the Rules of Court, to authorize the production of (i) the less redacted version of a witness statement, in which the identity of the witness had been unredacted, and the letter from the Head of the IIMM to the Agent of The Gambia, attached to The Gambia's letter dated 17 November 2025 (see paragraph 23 above); and (ii) the less redacted versions of 14 witness statements attached to The Gambia's letter dated 19 November 2025 (see paragraph 24 above). These documents were thus added to the case file.

By the same letters, the Parties were further advised that the identity of these witnesses should be kept confidential and that any mention of their statements during the oral proceedings should be made by reference either to the witness statement number or to the annex number in the written pleadings. Finally, it was indicated to the Parties that, should Myanmar wish to comment in writing on the new documents of The Gambia and submit documents in support of its comments, pursuant to Article 56, paragraph 3, of the Rules of Court, it was invited to do so no later than 5 January 2026.

27. By a letter dated 6 December 2025 and received in the Registry on 8 December 2025, the Agent of The Gambia, referring to Article 56, paragraph 1, of the Rules of Court, requested authorization to produce new confidential documents related to a witness statement provided on 5 December 2025 to both Parties by the IIMM. Myanmar objected to The Gambia's request by a letter dated 15 December 2025, stating that, if the Court were to authorize the production of the new documents, then Myanmar should be entitled to respond to the new material.

28. By letters dated 17 December 2025, the Registrar informed the Parties that the Court, pursuant to Article 56, paragraph 2, of its Rules, had decided to authorize the production of the confidential documents attached to The Gambia's letter dated 6 December 2025 (see paragraph 27 above) and that those documents had been added to the case file. The Registrar further stated that, should the Government of Myanmar wish to comment in writing on the new documents of The Gambia and to submit documents in support of its comments, pursuant to Article 56, paragraph 3, of the Rules of Court, it was invited to do so no later than 5 January 2026.

29. By a letter dated 5 January 2026, the Agent of Myanmar referred to Myanmar's previous comments on the new documents produced by The Gambia (see paragraph 27 above), and communicated new documents, namely two witness statements, in support of those comments, pursuant to Article 56, paragraph 3, of the Rules of Court.

30. By a letter dated 9 January 2026, the Agent of Myanmar, referring to Article 56, paragraph 1, of the Rules of Court, requested the Court to authorize Myanmar to produce seven new documents. By a letter dated 11 January 2026, the Agent of The Gambia indicated that his Government considered that the documents submitted by Myanmar were part of publications readily available and, accordingly, might be referred to during the oral proceedings under Article 56, paragraph 4, of the Rules of Court.

31. By letters dated 13 January 2026, the Registrar informed the Parties, *inter alia*, that, having considered the request of Myanmar and the views of The Gambia thereon (see paragraph 30 above), the Court had decided that, in accordance with Article 56, paragraph 4, of the Rules of Court, Myanmar might refer to the seven documents during the oral proceedings.

Proceedings related to the declarations of intervention

32. On 15 November 2023, the Republic of Maldives (hereinafter "the Maldives") filed a Declaration of intervention in the case, with reference to Article 63 of the Statute of the Court. On the same date, a joint Declaration of intervention was filed, pursuant to the same provision, by Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland (hereinafter the "Joint Declaration"). In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of the Declaration of the Maldives and of the Joint Declaration to The Gambia and Myanmar, which were informed that 15 January 2024 had been fixed as the time-limit for the submission of written observations on those two Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations of intervention to the Secretary-General of the United Nations and to the States entitled to appear before the Court.

33. By letters dated 15 January 2024, Myanmar and The Gambia each filed written observations on the Declaration of the Maldives and on the Joint Declaration. While Myanmar objected to the admissibility of both Declarations, The Gambia contended that they were admissible.

34. By an Order of 3 July 2024, the Court decided that the Declaration of intervention of the Maldives and the Joint Declaration were admissible in so far as they concerned the construction of provisions of the Genocide Convention.

35. Further to the Order of 3 July 2024 and in accordance with Article 86, paragraph 1, of the Rules of Court, the intervening States were furnished with copies of the written pleadings of the Parties. On 30 December 2024, copies of the Rejoinder of Myanmar were transmitted to the intervening States, which were informed that the President of the Court had fixed 3 March 2025 as the time-limit within which they could file written observations on the subject-matter of their intervention under Article 86, paragraph 1, of the Rules of Court.

36. On 28 February and 3 March 2025, the Maldives and the joint intervening States (Canada, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland), respectively, filed written observations on the subject-matter of their interventions. Copies of these written observations were transmitted to the Parties and to the intervening States.

37. Declarations of intervention under Article 63 of the Statute of the Court were also filed by the Republic of Slovenia (hereinafter "Slovenia") on 29 November 2024, by the Democratic Republic of the Congo (hereinafter the "DRC") on 10 December 2024, by the Kingdom of Belgium (hereinafter "Belgium") on 12 December 2024 and by Ireland on 20 December 2024. In accordance with Article 83, paragraph 1, of the Rules of Court, the Registrar immediately transmitted certified copies of each Declaration of intervention to The Gambia and Myanmar, which were informed that 29 January 2025, 10 February 2025, 12 February 2025 and 20 February 2025, respectively, had been fixed as the time-limits for the submission of their written observations on those Declarations. In accordance with paragraph 2 of the same Article, the Registrar also transmitted copies of the Declarations to the Secretary-General of the United Nations and to the States entitled to appear before the Court.

38. Within the time-limits fixed by the Court, The Gambia and Myanmar each filed written observations on the Declarations of intervention submitted by Slovenia, the DRC, Belgium and Ireland. While Myanmar objected to the admissibility of all these Declarations, The Gambia contended that they were admissible.

39. By an Order of 25 July 2025, the Court decided that the Declarations of intervention submitted by Slovenia, the DRC, Belgium and Ireland were admissible in so far as they concerned the construction of provisions of the Genocide Convention. By the same Order, the Court fixed 25 September 2025 as the time-limit for the filing, by these intervening States, of the written observations referred to in Article 86, paragraph 1, of the Rules of Court.

40. Further to the Order of 25 July 2025 and in accordance with Article 86, paragraph 1, of the Rules of Court, Slovenia, the DRC, Belgium and Ireland were furnished with copies of the written pleadings of the Parties.

41. The DRC, Slovenia, Belgium and Ireland filed written observations on the subject-matter of their interventions on 22, 23, 24 and 25 September 2025, respectively. Copies of these written observations were transmitted to the Parties and to all intervening States.

42. By letters dated 17 and 21 October 2025 respectively, the Parties and the intervening States were informed that the Court considered that it had been sufficiently informed of the positions of the intervening States on the subject-matter of their intervention by way of written observations, and that it did not deem it necessary for them to submit observations in the course of the oral proceedings, in accordance with Article 86, paragraph 2, of the Rules of Court.

Organization of the oral proceedings

43. By letters dated 17 June 2025, the Parties were invited to provide in writing, by 2 July 2025, their views regarding the organization of the oral proceedings on the merits of the case, including with respect to the presentation of evidence. Within the time-limit thus fixed, the Parties communicated to the Court their views on the length and structure of the oral proceedings and on the organization of the testimonies of any witnesses or experts they might call.

44. By letters dated 17 July 2025, the Registrar requested the Parties to provide, by 8 September 2025, the names of any witnesses and experts they intended to call during the oral proceedings, as well as the other information required by Article 57 of the Rules of Court. In response, The Gambia indicated that it wished to call four witnesses and one expert, while Myanmar stated that it intended to call six witnesses. The Parties were furnished with copies of each other's response and given the opportunity to comment on the other's communication by 23 September 2025. In addition, by letters dated 16 September 2025, the Parties were invited to provide, also by 23 September 2025, their views on various points concerning the procedure for the examination of the witnesses and the expert during the hearings, including whether they considered protective measures to be necessary for any of the individuals they proposed to call to testify and, if so, which measures and on what grounds.

45. By a letter dated 23 September 2025, Myanmar clarified that it intended to call five witnesses and indicated that some protective measures would be necessary for the witnesses that it proposed to call.

46. By a letter dated 23 September 2025, The Gambia stated that, at that time, it did not consider protective measures to be necessary for any of the witnesses or the expert that it intended to call to testify, but that it would notify the Court as soon as possible if it considered that any such measures would be required owing to new information or developments.

47. By letters dated 17 October 2025, the Registrar informed the Parties of decisions taken by the Court relating to the hearing of the witnesses and the expert during the oral proceedings. The Parties were informed in particular that the Court had decided that the Parties' witnesses and the expert to be called by The Gambia would be heard in the order requested by each Party. The Parties were required to submit, by 18 November 2025, a written affidavit for each of the individuals they intended to call as a witness at the hearings. The Gambia was also required to submit a written statement by the expert it intended to call. The affidavits and statement (i) had to be dated and signed by the witness or expert and by any interpreter or counsel involved in their preparation; (ii) could not include any redactions or other forms of anonymization; and (iii) had to be in one of the two official languages of the Court or accompanied by a certified translation in one of these languages. The written statement of the expert of The Gambia had to be limited to a summary of the expert's findings in his two reports previously submitted as annexes to the Memorial and Reply of The Gambia.

Pursuant to the same letters, the Parties were also required to provide, by 18 November 2025, unredacted copies of any previous statements or accounts given by the witnesses or expert called to testify during the oral proceedings that had been annexed to their pleadings in redacted form.

48. By letters dated 13 November 2025, the Deputy-Registrar informed the Parties of, *inter alia*, further decisions taken by the Court concerning the procedure for the examination of the witnesses and the expert called by them.

The Parties were thus advised that, after making the solemn declaration provided for in Article 64 *(a)* of the Rules of Court, each witness would be asked to confirm his or her written affidavit and, if applicable, any prior written statements or accounts annexed to the written pleadings, subject to any correction the witness might wish to make. The calling Party would then proceed to the examination-in-chief, which would take the form of replies by the relevant witness to questions put to him or her by counsel. This would be followed by a cross-examination of the witness by the other Party, which would be confined in scope to written and oral statements already made as part of the witness's evidence-in-chief. Re-examination by the calling Party would then be possible, limited to matters having arisen as part of the cross-examination.

The expert called by The Gambia would be asked, after making the appropriate declaration in accordance with Article 64 *(b)* of the Rules of Court, to endorse his written statement, as well as his earlier reports annexed to The Gambia's written pleadings, subject to any correction he might wish to make. The written statement and reports would constitute the expert's evidence-in-chief and serve in lieu of his examination-in-chief at the hearings. This would be followed by a cross-examination of the expert by Myanmar, which would be confined in scope to statements already made by the expert as part of his written statement or reports. A re-examination would then be conducted by The Gambia, which would in turn be confined to matters having arisen as part of the cross-examination.

Following re-examination, questions could be put to the witnesses and expert by the President on behalf of the Court or by individual judges. The witnesses and expert would respond orally to any

such questions, except in particular circumstances, for example when specific information was requested that needed to be verified.

The Parties were also informed that the Court had authorized three of the witnesses called by The Gambia to testify in the Rohingya language, and the witnesses called by Myanmar to testify in the Myanmar language (also referred to as the Burmese language). The Parties were informed that if a witness was to give evidence in a language other than French or English, the necessary arrangements for interpretation into one of the two official languages of the Court had to be made by the Party calling the witness, while the Court would make arrangements for the verification of that interpretation.

49. By a letter dated 18 November 2025, The Gambia confirmed that it intended to call four witnesses and one expert (see paragraph 44 above) and communicated the order in which it intended to call them. Together with the written statement of the expert, it also provided the written affidavits of the four witnesses, in which they expressed concerns regarding their security and the security of their families and stated that they understood that their identity would remain confidential. By a letter dated the same day, Myanmar informed the Court that it intended to call only one witness and reserved the right to call a different witness "if for any reason the former should be unavailable to testify". Myanmar also provided confidential written affidavits for both witnesses in the Myanmar language, accompanied by certified translations into English.

50. With regard to protective measures (see paragraphs 45, 46 and 49 above), the Parties were informed of the following decisions taken by the Court: (i) the witnesses called by the Parties would be heard in closed sessions, with only judges, Registry staff, interpreters, technical personnel and members of the Parties' delegations allowed in the courtroom; (ii) pseudonyms would be used when addressing the witnesses or referring to them at the hearings; (iii) a verbatim record of each closed session scheduled for the examination of the witnesses would be prepared for the use of the Court and the Parties, but anything which could lead to the identification of the protected witnesses would be kept confidential; and (iv) the Parties would be permitted to refer to the testimony given in closed session during their second round of oral argument, but would have to do so in a manner that would ensure the protection of the identity of the relevant witness.

51. With regard to measures to ensure the integrity of the testimony of the witnesses, the Parties were informed that the Court had prescribed the following: (i) each witness was to remain outside the Great Hall of Justice both before and after his or her testimony; (ii) the Parties' respective witnesses were not to be informed of each other's testimonies (or of those of witnesses whose statements had been annexed to the written pleadings but who had not been called to testify at the hearings) and they were not to have any contact which could compromise their independence or breach the terms of their solemn declaration; (iii) in the event that the Court decided that the written pleadings and documents annexed thereto, which contained certain written statements and accounts given by the witnesses called by the Parties, were to be made available to the public, either in full or in a redacted form provided by the Parties, these would be posted on the website of the Court only after the end of the oral proceedings; (iv) in the event that the Court decided that the affidavits of the witnesses were to be made available to the public, either in full or in a redacted form provided by the Parties, these would be posted on the website of the Court only after the end of the oral proceedings; (v) verbatim records of the sittings during which the witnesses were heard would be prepared by the Registry and circulated to the Parties as soon as available after each sitting, but the Parties had to ensure that their witnesses did not have access to the records concerning the testimonies of the other witnesses. If the Court were to decide that the verbatim records should be made available to the public, either in full or in redacted form, these would be posted on the website of the Court only after the end of the oral proceedings.

52. By a letter dated 10 December 2025, the Agent of The Gambia informed the Court that the Office of Legal Affairs of the United Nations had determined that Mr Nicholas Koumjian, Head of the IIMM, one of the four witnesses whom The Gambia intended to call, should not appear "on behalf of a party" to provide oral testimony in the case. For this reason, the Agent requested that the Court, in exercise of its authority under Article 62, paragraph 2, of the Rules of Court, invite Mr Koumjian to appear as a witness at the oral proceedings.

53. By a letter dated 11 December 2025, the Agent of Myanmar informed the Court that Myanmar objected to the request of The Gambia that the Court invite the Head of the IIMM to appear as a witness at the oral proceedings. The Agent of Myanmar further stated that, if The Gambia's request were not granted, the affidavit of Mr Koumjian should be removed from the case file.

54. By letters dated 15 December 2025, the Registrar informed the Parties that, having considered the request of The Gambia and the views of Myanmar thereon (see paragraphs 49 and 52-53 above), the Court had decided not to arrange for the attendance of Mr Koumjian as a witness. The Registrar further informed the Parties that the Court had decided that the written affidavit of Mr Koumjian, submitted by The Gambia on 18 November 2025, would remain part of the case file.

55. By a letter dated 5 January 2026, the Agent of Myanmar sought the Court's authorization, pursuant to Practice Direction IX*quater*, to present at the hearing, including during the examination of witnesses, audiovisual material consisting of 14 maps and 2 videos that were not previously included in the case file. By a letter dated 8 January 2026, the Agent of The Gambia informed the Court that The Gambia opposed Myanmar's request. Additional information on the videos was communicated by Myanmar by a letter dated 12 January 2026.

56. By letters dated 13 January 2026, the Registrar informed the Parties that the Court had decided, *inter alia*, to authorize Myanmar to present the maps and videos at the hearings, including during the examination of witnesses.

Accessibility to the public of the pleadings and documents annexed

57. After ascertaining the views of the Parties, the Court decided, pursuant to Article 53, paragraph 2, of its Rules, that copies of the pleadings and documents annexed thereto (in their redacted versions, as appropriate) would be made accessible to the public on the opening of the oral proceedings, except for certain annexes containing internal government documents or witness testimony which, at the request of a Party, would remain confidential with respect to the public. Where the present Judgment refers to information contained in those annexes, their confidential character is indicated in the same manner as in the written pleadings. In addition, with regard to the written pleadings and documents annexed thereto which contained certain written statements and accounts given by the witnesses called by the Parties, as well as the redacted versions of the affidavits of witnesses and the verbatim records of their testimonies, it was decided that these materials would be posted on the Court's website only after the end of the oral proceedings. The Court also decided to make accessible to the public on the opening of the oral proceedings the reports submitted by Myanmar on the measures taken pursuant to subparagraph 4 of the operative clause of the Order on provisional measures of 23 January 2020 and The Gambia's comments thereon (see paragraphs 10 and 12 above). In this respect, the Court noted that the Parties had been consulted on this matter and

did not object to such publication. Further, after ascertaining the views of the Parties and the intervening States, the Court decided to make accessible to the public on the opening of the oral proceedings the written observations filed by the Parties on the Declarations of intervention, pursuant to Article 83, paragraph 1, of the Rules of Court; the written observations of the States seeking to intervene and those of the Parties on the admissibility of the Declarations of intervention in accordance with Article 84, paragraph 2, of the Rules of Court; and the written observations of the intervening States, referred to in Article 86, paragraph 1, of the Rules of Court, on the subject-matter of their intervention.

*

58. Public hearings were held from 12 to 16 January 2026, from 19 to 23 January 2026 and from 26 to 29 January 2026, during which the Court heard the oral arguments and replies of:

For The Gambia: HE Mr Dawda Jallow,
Mr Philippe Sands,
Mr Paul S. Reichler,
Mr Arsalan Suleman,
Ms Tafadzwa Pasipanodya,
Mr Andrew Loewenstein,
Ms Diem Huong Ho,
Ms Mariama Ngum,
Mr Chalis Combeh Njai,
Ms Yasmin Al Ameen,
Mr Pierre d'Argent,
Ms Jessica Jones.

For Myanmar: HE Mr Ko Ko Hlaing,
Mr Christopher Staker,
Ms Alina Miron,
Mr Stefan Talmon,
Ms Chiara Cordone,
Ms Leigh Lawrie,
Mr Sam Blom-Cooper,
Mr David Hooper.

59. At the end of the first round of oral argument, several judges put questions to one or both Parties, to which replies were given orally and in writing, pursuant to Article 61, paragraph 4, of the Rules of Court.

60. Witness MN, Witness NJ and Witness MS were called by The Gambia and heard in three closed sessions held on 21 and 22 January 2026. The three witnesses were examined by counsel for The Gambia, and witnesses MN and NJ were also cross-examined by counsel for Myanmar. Professor Michael Newton was called by The Gambia as an expert. He was heard in a public session, held on 22 January 2026, during which he was cross-examined by counsel for Myanmar and re-examined by counsel for The Gambia. Witness M1 was called by Myanmar and heard in a closed session held on 23 January 2026. This witness was examined by counsel for Myanmar, cross-examined by counsel for The Gambia and re-examined by counsel for Myanmar. The

President, on behalf of the Court, put questions to counsel for Myanmar with respect to Witness M1, and several judges put questions to the witnesses and the expert, each of whom replied orally.

Requests made in the Application and submissions presented by the Parties

61. In the Application, the following requests were made by The Gambia:

> "While reserving the right to revise, supplement or amend this Application, and subject to the presentation to the Court of the relevant evidence and legal arguments, The Gambia respectfully requests the Court to adjudge and declare that Myanmar:
>
> — has breached and continues to breach its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III *(a)*, III *(b)*, III *(c)*, III *(d)*, III *(e)*, IV, V and VI;
>
> — must cease forthwith any such ongoing internationally wrongful act and fully respect its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III *(a)*, III *(b)*, III *(c)*, III *(d)*, III *(e)*, IV, V and VI;
>
> — must ensure that persons committing genocide are punished by a competent tribunal, including before an international penal tribunal, as required by Articles I and VI;
>
> — must perform the obligations of reparation in the interest of the victims of genocidal acts who are members of the Rohingya group, including but not limited to allowing the safe and dignified return of forcibly displaced Rohingya and respect for their full citizenship and human rights and protection against discrimination, persecution, and other related acts, consistent with the obligation to prevent genocide under Article I; and
>
> — must offer assurances and guarantees of non-repetition of violations of the Genocide Convention, in particular the obligations provided under Articles I, III *(a)*, III *(b)*, III *(c)*, III *(d)*, III *(e)*, IV, V and VI."

62. In the written proceedings on the merits, the following submissions were presented by the Parties:

On behalf of the Government of The Gambia,

in the Memorial:

> "For the reasons given in this Memorial, and reserving the right to supplement, amplify or amend the present Submissions, the Republic of The Gambia respectfully requests the International Court of Justice to adjudge and declare:
>
> (1) That the Republic of the Union of Myanmar is responsible for violations of the Convention on the Prevention and Punishment of the Crime of Genocide:

(a) in that members of its armed forces, police and other security forces, and also persons for whose conduct it is responsible, committed genocide against members of the Rohingya group on its territory by:

(i) killing members of the group;

(ii) causing deliberate bodily or mental harm to members of the group;

(iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and

(iv) imposing measures intended to prevent births within the group;

with the intent to destroy that group in whole or in part, contrary to Article II of the Convention;

(b) in that persons for whose conduct it is responsible conspired to commit the acts of genocide referred to in paragraph *(a)*, were complicit in respect of those acts, attempted to commit further such acts of genocide and incited others to commit such acts, contrary to Article III of the Convention;

(c) in that, aware that the acts of genocide referred to in paragraph *(a)* were being or would be committed, it failed to take any steps to prevent those acts, contrary to Article I of the Convention;

(d) in that it has failed to bring to trial persons within its jurisdiction who are suspected on probable grounds of involvement in the acts of genocide referred to in paragraph *(a)*, or in the other acts referred to in paragraph *(b)*, and is thus in continuing breach of Articles I and IV of the Convention;

(e) in that it has failed to enact the necessary legislation to give effect to the provisions of the Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III, and is thus in continuing breach of Article V of the Convention.

(2) That, as a consequence of its responsibility for these breaches of the Convention, the Republic of the Union of Myanmar:

(a) must cease forthwith any ongoing internationally wrongful act referred to in paragraph (1), in particular:

(i) take immediate and effective steps to enact the specific genocide criminal legislation referred to in paragraph (1) *(e)*;

(ii) take immediate and effective steps to submit to trial before an independent and effective tribunal, including before an international penal tribunal, those members of its armed forces, police and other security forces or any other persons within its jurisdiction who are suspected on probable grounds of having committed acts of genocide as referred to in paragraph (1) *(a)*, or any of the other acts referred to in paragraph (1) *(b)*, notably Senior-General Aung Min Hlaing, Vice Senior-General Soe Win, Lieutenant-General Aung Kyaw Zaw,

Major-General Maung Maung Soe, Brigadier-General Aung Aung and Brigadier-General Than Oo, and to ensure that those persons, if convicted, are duly punished for their crimes;

(iii) take immediate and effective steps to suppress and prevent any direct and public incitement to commit genocide;

(b) must perform the obligation of reparation in the interest of the victims of genocidal acts who are members of the Rohingya group, and must:

(i) by way of restitution:

(1) allow the safe and dignified return to their place of residence of displaced members of the Rohingya group, whether they are displaced within Myanmar or abroad;

(2) return to the Rohingya their individual and collective property, including their land, houses, places of worship and communal life, fields, livestock and crops, or replace them in kind;

(3) allow and facilitate the safe and dignified reunification of families;

(4) provide for the rehabilitation of the physically or mentally injured members of the Rohingya group; such rehabilitation must include adequate medical and psychological care as well as legal and social services;

(5) facilitate the search for the disappeared and assist in the recovery, identification and reburial of the bodies of those killed in accordance with the expressed or presumed wishes of the victims and in accordance with the cultural and religious practices of the Rohingya;

(6) ensure the protection of the Rohingya against discrimination and persecution;

(7) ensure the right of the Rohingya to identify as such;

(8) ensure the liberty and freedom of movement of the Rohingya within Myanmar and remove any restriction on their place of residence;

(9) remove any restriction or discrimination on the employment or access to livelihoods of the Rohingya.

(ii) compensate, and provide any additional forms of reparation, for any harm, loss or injury suffered by the Rohingya victims that is not capable of full reparation by restitution.

(c) must offer assurances and guarantees of non-repetition by notably providing full and equal citizenship to all members of the Rohingya group who are present in Myanmar or have been displaced due to the events for which Myanmar bears responsibility under the Convention.

(3) That the Republic of the Union of Myanmar has failed to fully and adequately implement the Provisional Measures Order and must:

(a) by way of restitution as referred to in paragraph (2) *(b)* (i) above, make good any bodily or mental injury, including death, suffered by members of the Rohingya group, or any material injury caused to their property, as a result of Myanmar's violations of paragraph 86 (1), (2) or (3) of the Order;

(b) compensate, and provide any additional forms of reparation, for any harm, loss or injury referred to in paragraph (3) *(a)* above that is not capable of full reparation by restitution.

(4) That, failing agreement between the Parties on the amount of compensation and any additional forms of reparation referred to in paragraph (2) *(b)* (ii) and paragraph (3) *(b)* above, the question will be decided by the Court in a subsequent phase of the proceedings in this case."

in the Reply:

"For the reasons given in the Memorial and this Reply, and reserving the right to supplement, amplify or amend the present Submissions, the Republic of The Gambia respectfully requests the International Court of Justice to adjudge and declare:

(1) That the Republic of the Union of Myanmar is responsible for violations of the Convention on the Prevention and Punishment of the Crime of Genocide:

(a) in that members of its armed forces, police and other security forces, and also persons for whose conduct it is responsible, committed genocide against members of the Rohingya group on its territory by:

(i) killing members of the group;

(ii) causing deliberate bodily or mental harm to members of the group;

(iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and

(iv) imposing measures intended to prevent births within the group;

with the intent to destroy that group in whole or in part, contrary to Article II of the Convention;

(b) in that persons for whose conduct it is responsible conspired to commit the acts of genocide referred to in paragraph *(a)*, were complicit in respect of those acts, attempted to commit further such acts of genocide and incited others to commit such acts, contrary to Article III of the Convention;

(c) in that, aware that the acts of genocide referred to in paragraph *(a)* were being or would be committed, it failed to take any steps to prevent those acts, contrary to Article I of the Convention;

(d) in that it has failed to bring to trial persons within its jurisdiction who are suspected on probable grounds of involvement in the acts of genocide referred to in paragraph *(a)*, or in the other acts referred to in paragraph *(b)*, and is thus in continuing breach of Articles I and IV of the Convention;

(e) in that it has failed to enact the necessary legislation to give effect to the provisions of the Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III, and is thus in continuing breach of Article V of the Convention.

(2) That, as a consequence of its responsibility for these breaches of the Convention, the Republic of the Union of Myanmar:

(a) must cease forthwith any ongoing internationally wrongful act referred to in paragraph (1), in particular:

(i) take immediate and effective steps to enact the specific genocide criminal legislation referred to in paragraph (1) *(e)*;

(ii) take immediate and effective steps to submit to trial before an independent and effective tribunal, including before an international penal tribunal, those members of its armed forces, police and other security forces or any other persons within its jurisdiction who are suspected on probable grounds of having committed acts of genocide as referred to in paragraph (1) *(a)*, or any of the other acts referred to in paragraph (1) *(b)*, notably Senior-General Aung Min Hlaing, Vice Senior-General Soe Win, Lieutenant-General Aung Kyaw Zaw, Major-General Maung Maung Soe, Brigadier-General Aung Aung and Brigadier-General Than Oo, and to ensure that those persons, if convicted, are duly punished for their crimes;

(iii) take immediate and effective steps to suppress and prevent any direct and public incitement to commit genocide;

(b) must perform the obligation of reparation in the interest of the victims of genocidal acts who are members of the Rohingya group, and must:

(i) by way of restitution:

(1) allow the safe and dignified return to their place of residence of displaced members of the Rohingya group, whether they are displaced within Myanmar or abroad;

(2) return to the Rohingya their individual and collective property, including their land, houses, places of worship and communal life, fields, livestock and crops, or replace them in kind;

(3) allow and facilitate the safe and dignified reunification of families;

(4) provide for the rehabilitation of the physically or mentally injured members of the Rohingya group; such rehabilitation must include adequate medical and psychological care as well as legal and social services;

(5) facilitate the search for the disappeared and assist in the recovery, identification and reburial of the bodies of those killed in accordance with the expressed or presumed wishes of the victims and in accordance with the cultural and religious practices of the Rohingya;

(6) ensure the protection of the Rohingya against discrimination and persecution;

(7) ensure the right of the Rohingya to identify as such;

(8) ensure the liberty and freedom of movement of the Rohingya within Myanmar and remove any restriction on their place of residence;

(9) remove any restriction or discrimination on the employment or access to livelihoods of the Rohingya.

(ii) compensate, and provide any additional forms of reparation, for any harm, loss or injury suffered by the Rohingya victims that is not capable of full reparation by restitution.

(c) must offer assurances and guarantees of non-repetition by notably providing full and equal citizenship to all members of the Rohingya group who are present in Myanmar or have been displaced due to the events for which Myanmar bears responsibility under the Convention.

(3) That the Republic of the Union of Myanmar has failed to fully and adequately implement the Provisional Measures Order and must:

(a) by way of restitution as referred to in paragraph (2) *(b)* (i) above, make good any bodily or mental injury, including death, suffered by members of the Rohingya group, or any material injury caused to their property, as a result of Myanmar's violations of paragraph 86 (1), (2) or (3) of the Order;

(b) compensate, and provide any additional forms of reparation, for any harm, loss or injury referred to in paragraph (3) *(a)* above that is not capable of full reparation by restitution.

(4) That, failing agreement between the Parties on the amount of compensation and any additional forms of reparation referred to in paragraph (2) *(b)* (ii) and paragraph (3) *(b)* above, the question will be decided by the Court in a subsequent phase of the proceedings in this case.

The Gambia reserves the right to supplement or amend these submissions in light of further pleadings and as necessary."

On behalf of the Government of Myanmar,

in the Counter-Memorial:

"1. The Republic of the Union of Myanmar respectfully requests the International Court of Justice to adjudge and declare that:

(1) the requests in paragraphs (1) *(a)*, (1) *(b)*, (1) *(c)*, (1) *(d)*, (1) *(e)*, (2) *(a)*, (2) *(b)*, (2) *(c)*, and (4) of the submissions of the Republic of The Gambia relating to alleged

violations of the Convention on the Prevention and Punishment of the Crime of Genocide are rejected as lacking any basis in law or in fact; and

(2) the requests in paragraph[s] (3) *(a)*, (3) *(b)*, and (4) of the submissions of the Republic of The Gambia relating to an alleged failure to implement the Order indicating provisional measures issued by the Court on 23 January 2020 are rejected as lacking any basis in law or in fact.

2. The Republic of the Union of Myanmar reserves the right to supplement or amend these submissions in the further proceedings."

in the Rejoinder:

"1. The Republic of the Union of Myanmar respectfully requests the International Court of Justice to adjudge and declare that:

(1) all requests in the submissions of the Republic of The Gambia relating to alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide are rejected as lacking any basis in law or in fact;

(2) all requests in the submissions of the Republic of The Gambia relating to an alleged failure to implement the Order indicating provisional measures issued by the Court on 23 January 2020 are rejected as lacking any basis in law or in fact; and

(3) all requests in the submissions of the Republic of The Gambia relating to remedies sought by the Republic of The Gambia are rejected as lacking any basis in law or in fact.

2. The Republic of the Union of Myanmar reserves the right to supplement or amend these submissions in the further proceedings."

63. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of The Gambia,

at the hearing of 27 January 2026:

"The Republic of The Gambia respectfully requests the International Court of Justice to adjudge and declare that:

(1) The Republic of the Union of Myanmar is responsible for genocide against the Rohingya group perpetrated by its security forces and individuals acting under their instruction, direction, or control, during the 'clearance operations' of 2016-2018 in northern Rakhine State, in violation of Article I, Article II (*(a)*, *(b)*, *(c)*, and *(d)*) and Article III *(a)* of the Convention on the Prevention and Punishment of the Crime of Genocide (the 'Convention');

(2) The Republic of the Union of Myanmar has failed to prevent acts of genocide perpetrated by individuals alongside its security forces during the 'clearance operations' of 2016-2018 in northern Rakhine State, in violation of Article I of the Convention;

(3) The Republic of the Union of Myanmar has directly and publicly incited acts of genocide, in violation of Article III *(c)* of the Convention;

(4) The Republic of the Union of Myanmar has failed to punish acts punishable under Article III of the Convention, in violation of Articles I, IV and VI of the Convention;

(5) The Republic of the Union of Myanmar has failed to enact the necessary legislation to give effect to the provisions of the Convention, in violation of Article V of the Convention;

(6) As a consequence of its responsibility for these violations of the Convention, the Republic of the Union of Myanmar:

(a) must cease forthwith any ongoing internationally wrongful act referred to in paragraphs 3, 4 and 5, in particular:

(i) take immediate and effective steps to suppress and prevent any direct and public incitement to commit genocide;

(ii) take immediate and effective steps to enact specific and complete genocide criminal legislation applicable to all individuals, addressing all the prohibited acts under Article III of the Convention and providing for adequate and severe penalties;

(iii) take immediate and effective steps to submit to trial before an independent and effective tribunal, including before an international penal tribunal, those members of its armed forces, police and other security forces or any other persons within its jurisdiction who are suspected on probable grounds of having committed acts of genocide referred to in paragraphs (1) and (2) and punishable under Article III;

(b) shall provide reparation for the victims of the genocide referred to in paragraph (1) and the acts of genocide referred to in paragraph (2), who are members of the Rohingya group, and shall:

(i) by way of restitution:

(1) allow the safe and dignified return to their place of residence of displaced members of the Rohingya group, whether they are displaced within Myanmar or abroad;

(2) return to the Rohingya their individual and collective property, including their land, houses, places of worship and communal life, fields, livestock and crops, or replace them in kind;

(3) allow and facilitate the safe and dignified reunification of families;

(4) provide for the rehabilitation of the physically or mentally injured members of the Rohingya group; such rehabilitation must include adequate medical and psychological care as well as legal and social services;

(5) facilitate the search for the disappeared and assist in the recovery, identification and reburial of the bodies of those killed in accordance

with the expressed or presumed wishes of the victims and in accordance with the cultural and religious practices of the Rohingya;

(6) ensure the protection of the Rohingya against discrimination and persecution;

(7) ensure the right of the Rohingya to identify as such;

(8) ensure the liberty and freedom of movement of the Rohingya within Myanmar and remove any restriction on their place of residence; and

(9) remove any restriction or discrimination on the employment or access to livelihoods of the Rohingya.

(ii) compensate, and provide any additional forms of reparation, for any harm, loss or injury suffered by the Rohingya victims that is not capable of full reparation by restitution.

(c) must offer assurances and guarantees of non-repetition by notably providing full and equal citizenship to all members of the Rohingya group who are present in Myanmar or have been displaced due to the events for which Myanmar bears responsibility under the Convention.

(7) The Republic of the Union of Myanmar has failed to fully and adequately implement the Provisional Measures Order and must:

(a) by way of restitution as referred to in paragraph (6) *(b)* (i) above, make good any bodily or mental injury, including death, suffered by members of the Rohingya group, or any material injury caused to their property, as a result of Myanmar's violations of paragraph 86 (1), (2) or (3) of the Order;

(b) compensate, and provide any additional forms of reparation, for any harm, loss or injury referred to in paragraph (7) *(a)* above that is not capable of full reparation by restitution.

(8) Failing agreement between the Parties on the amount of compensation and any additional forms of reparation referred to in paragraph (6) *(b)* (ii) and paragraph (7) *(b)* above, the question will be decided by the Court in a subsequent phase of the proceedings in this case."

On behalf of the Government of Myanmar,

at the hearing of 29 January 2026:

"The Republic of the Union of Myanmar respectfully requests the International Court of Justice to adjudge and declare that:

(1) all requests in the submissions of the Republic of The Gambia relating to alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide are rejected as lacking any basis in law or in fact;

(2) all requests in the submissions of the Republic of The Gambia relating to an alleged failure to implement the Order indicating provisional measures issued by the Court on 23 January 2020 are rejected as lacking any basis in law or in fact; and

(3) all requests in the submissions of the Republic of The Gambia relating to remedies sought by the Republic of The Gambia, and all other requests in the submissions of the Republic of The Gambia, are rejected as lacking any basis in law or in fact."

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* *

I. GENERAL BACKGROUND

64. Myanmar, known as Burma until 1989, is located in mainland South East Asia. It is bordered by the People's Republic of China to the north and north-east, by the Lao People's Democratic Republic and the Kingdom of Thailand to the east, and by the Republic of India and the People's Republic of Bangladesh to the west. To the south and south-west of Myanmar lie the Bay of Bengal and the Andaman Sea.

65. The territory of Myanmar is divided into 14 administrative units: 7 regions and 7 states, including Rakhine State, a coastal strip of land in the westernmost part of the country, facing the Bay of Bengal. States and regions of Myanmar are divided into districts, which are subdivided into townships. Townships comprise towns and villages. Towns are further subdivided into wards, and villages are grouped together in village tracts.

66. Myanmar's population is ethnically diverse and, according to the Respondent, estimated to be over 54 million. The Myanmar Government officially recognizes 8 "major ethnic national races", which are further subdivided into 135 "national ethnic groups" (see paragraph 137 below). The largest "major ethnic national race" in Myanmar is the Bamar, accounting for approximately 65 per cent of the country's total population. The Bamar are predominantly Buddhist and speak the Myanmar (or Burmese) language, which is part of the Sino-Tibetan language family and is the sole official language of Myanmar.

67. According to Myanmar's 2014 census, Rakhine State had a total population of approximately 3.2 million. Ethnic Rakhine (also known as Arakanese) — a group that is predominantly Buddhist and speaks a dialect closely related to the Burmese language — account for the majority of the population of Rakhine State. Rakhine State is also inhabited by a sizeable population designated by the Applicant as "Rohingya" and by the Respondent as "Bengali". The Court's references to the "Rohingya" in the present Judgment should be understood as references to the group that is commonly called the Rohingya, which self-identifies as such and claims a long-standing connection to Rakhine State (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment* (hereinafter the "2022 Judgment on preliminary objections"), *I.C.J. Reports 2022 (II)*, p. 491, para. 29; see paragraphs 308-310 below).

68. The Rohingya are predominantly Muslim and speak a language known as Rohingya, an Indo-Aryan tongue that is primarily oral and is closely related to the Chittagonian language spoken in Bangladesh. The Rohingya are not included in the 8 "major ethnic national races" or 135 "national

ethnic groups" officially recognized by the Government of Myanmar (see paragraphs 66 above and 137 below).

69. At the time of Myanmar's 2014 census, the Rohingya population of Rakhine State was estimated to comprise over one million people. Members of the Rohingya community lived mainly in northern Rakhine State, in the townships of Maungdaw, Buthidaung and Rathedaung, two of which border Bangladesh (see sketch-map No. 1 for locations). Prior to the "clearance operations" (a term used to refer to counter-insurgency operations) launched by the Myanmar authorities in 2017, the Rohingya population of northern Rakhine State comprised approximately 815,000 persons, 492,000 of whom were located in Maungdaw Township, 286,000 in Buthidaung Township and 37,000 in Rathedaung Township. At that time, the Rohingya accounted for approximately 93 per cent of the total population of Maungdaw Township, 80 per cent of the total population of Buthidaung Township and 22 per cent of the total population of Rathedaung Township.

*

70. Most of the territory of present-day Myanmar was first unified under the Kingdom of Pagan (which spanned the ninth to the thirteenth centuries), marking the beginning of the Burmese Empire. Rakhine State, historically known as Arakan, was not part of this Kingdom and developed independently from the central Burmese regions, from which it was geographically separated by the Arakan mountain range. Between the fifteenth and the eighteenth centuries, much of the territory of present-day Rakhine State was part of the independent Kingdom of Mrauk U, which also extended over large coastal areas that are now located within the Chittagong Division of Bangladesh. In 1784, the Konbaung Dynasty of Burma conquered Arakan, which was then incorporated into the Burmese Empire.

71. In 1826, as a result of the First Anglo-Burmese War (1824-1826), the Burmese Empire ceded Arakan to the British East India Company. Following further colonial wars, by 1886 the British Empire had conquered the entirety of present-day Myanmar. Having been subject to British colonial rule since 1826, Burma became an independent State on 4 January 1948 and joined the United Nations later that year. On 18 June 1989, the Union of Burma informed the United Nations that it had changed its name to the Union of Myanmar. On 30 March 2011, the Union of Myanmar changed its name to the Republic of the Union of Myanmar.

72. Sectarian tensions and armed conflict occurred at various points before independence. A significant outbreak of violence between Buddhists and Muslims took place in the village of Alethankyaw in Rakhine State in 1942, during the Second World War, resulting in thousands of deaths on both sides. Violence erupted again in northern Rakhine State not long after independence. In April 1948, insurgents sought to separate northern Rakhine State from Burma and to join what was then East Pakistan (later to become an independent State, the People's Republic of Bangladesh, in 1971). The Burmese military quashed the insurrection and launched several further armed operations in subsequent years, until the last insurgents surrendered in 1961.

73. In 1962, the armed forces of Burma, known as the Tatmadaw, removed the civilian government from power in a coup d'état, and ruled the country for over five decades until

March 2016, when a new civilian government was formed following a general election held in November 2015. During the period of military rule, the Tatmadaw twice undertook operations that led to the displacement of large sections of northern Rakhine State's Rohingya population. In 1978, a registration operation, accompanied by acts of violence, resulted in the flight to Bangladesh of an estimated 200,000 Rohingya, nearly all of whom were subsequently repatriated pursuant to an agreement between Myanmar and Bangladesh. In late 1991 and early 1992, the Tatmadaw launched a further operation, similar to that of 1978. This operation led to the displacement to Bangladesh of an estimated 200,000 Rohingya, the great majority of whom were later repatriated to Myanmar.

74. Sectarian and intercommunal violence resurfaced in Rakhine State on several occasions. Armed confrontations and acts of violence took place in 2012, involving members of Rakhine State's Buddhist and Muslim communities, as well as members of the Tatmadaw, the Border Guard Police (hereinafter the "BGP") and the Police (referred to collectively as "security forces"). These events resulted in casualties, extensive destruction and massive internal and cross-border displacement, primarily affecting the Rohingya, over 100,000 of whom remain in internally displaced persons ("IDP") camps in Rakhine State (see paragraph 151 below).

75. Following these events, in 2013 Rohingya insurgents formed an armed group, initially known as Harakah al-Yaqin, and subsequently known as the Arakan Rohingya Salvation Army or ARSA, which engaged in the recruitment and training of insurgents in northern Rakhine State. In October 2016, and again in August 2017, ARSA members launched attacks against certain police and military installations and personnel in northern Rakhine State. Thereafter, Myanmar security forces conducted a number of clearance operations at various localities in the townships of Maungdaw, Buthidaung and Rathedaung, with the stated purpose of responding to ARSA armed activities. These operations, according to Myanmar, were carried out between 9 October 2016 and 1 February 2017, and again between 25 August 2017 and 5 September 2017, with sporadic incidents occurring thereafter. The Gambia contends that the 2017 clearance operations extended into 2018. The United Nations Independent International Fact-Finding Mission on Myanmar (hereinafter the "FFM" or the "Mission") stated that "[a]lthough the Government officially declared 5 September 2017 to be the end of the offensive, Tatmadaw 'clearance operations' continued for some time after this date", referring to Myanmar's Office of the Commander-in-Chief, according to which "engagements were on the decrease after 5 September" (United Nations Human Rights Council, "Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar", UN doc. A/HRC/39/CRP.2 (17 September 2018) (hereinafter "FFM, Report of the detailed findings (2018)"), para. 1039).

As a result of these operations, approximately 87,000 Rohingya were displaced and fled to Bangladesh in 2016 (see paragraph 175 below), and over 700,000 fled in 2017 (see paragraph 262 below).

76. On 24 March 2017, the United Nations Human Rights Council adopted resolution 34/22 establishing the FFM. On 27 September 2018, by its resolution 39/2, the Human Rights Council established the IIMM (see paragraph 23 above). Myanmar did not allow either the FFM or the IIMM to enter its territory to access evidence or witnesses and did not respond to requests for information.

77. On 1 February 2021, the Tatmadaw again seized power in Myanmar, deposing the previously elected government and detaining many of its members. The acting head of the military government was the Commander-in-Chief of the military, Senior General Min Aung Hlaing. Following general elections held in December 2025 and January 2026, Mr Min Aung Hlaing was declared President in April 2026.

II. QUESTIONS OF PROOF

78. The Court observes that questions of proof assume particular significance in the present case because the Parties disagree on the relevant facts. Myanmar largely denies The Gambia's account of those facts, arguing that the Court should find that most of the evidence relied on by The Gambia has little or no evidential weight. The Court will consider in turn the questions of burden of proof, standard of proof and the weight of the evidence relied on by the Parties.

A. Burden of proof

79. The Court's established jurisprudence confirms that, "as a general rule, it is for the party which alleges a fact in support of its claims to prove the existence of that fact" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 54, para. 115; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 660, para. 54). For this reason, The Gambia bears the burden of identifying and proving facts to establish the alleged breaches of the Genocide Convention by Myanmar. However, in so far as Myanmar has invoked certain facts in support of its own contentions, it carries the burden of establishing those facts. The Court has stated that the rule that a party alleging a fact bears the burden of proof in respect of that fact "is not an absolute rule applicable in all circumstances. There are situations where 'this general rule would have to be applied flexibly . . . and, in particular, [where] the Respondent may be in a better position to establish certain facts'" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 54, para. 116, citing *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 332, para. 15). While the exercise of such flexibility does not reverse the burden of proof (see *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia* v. *Serbia), Judgment* (hereinafter the "2015 *Croatia* Judgment"), *I.C.J. Reports 2015 (I)*, pp. 73-74, paras. 172-174), it may have an effect on the assessment of the evidence, for example, in circumstances where the applicant State lacks access to evidence located in the respondent State's territory owing to the latter's lack of co-operation (see paragraphs 128-131 below).

B. Standard of proof

80. Claims alleging the commission of the acts enumerated in Article III of the Genocide Convention, including genocide, must be proved by "fully conclusive" evidence (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment* (hereinafter the "2007 *Bosnia* Judgment"), *I.C.J. Reports 2007 (I)*, p. 129, para. 209). The Court must "be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III [of the Genocide Convention] have been committed, have been clearly established" (*ibid.*; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 74, para. 178). As regards claims of violations of the obligations to prevent and punish genocide, the Court requires "proof at a high level of certainty appropriate to the seriousness of the allegation" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 130, para. 210).

This standard of proof also applies to the alleged violations of obligations under Articles I, IV and VI of the Convention at issue in this case. With respect to the obligation under Article V to enact the necessary legislation to give effect to the provisions of the Genocide Convention, the question for the Court concerns the interpretation to be given to national legislation and, specifically, whether the legislation in force gives effect to the requirements of the Convention.

C. Evidence relied on by the Parties

81. In the course of the oral proceedings, The Gambia called three Rohingya witnesses and an expert on counter-terrorism, all of whom gave oral testimony. The Gambia annexed to its written pleadings the written statements of 63 individuals, 53 of whom were Rohingya, drawn from a variety of sources, which will be discussed below (see paragraphs 89-96). The Gambia also introduced into the record the transcripts of video testimonies of Rohingya witnesses and of persons self-identifying as former Tatmadaw soldiers. It further relied on a document produced by the non-governmental organization Legal Action Worldwide (hereinafter "LAW") which collated short witness statements from 80 alleged victims, which were unsigned and in which, in some cases, the witnesses' identifying details had been redacted. Additionally, The Gambia submitted a collection of 49 witness statements by Rohingya that had been gathered by the non-governmental organization Fortify Rights, in which witnesses' identities were redacted. Other evidence relied on by The Gambia includes the reports of the FFM and the IIMM, reports from other United Nations bodies including the Office of the High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in Myanmar, as well as satellite images and satellite-based fire detection data from the United Nations Institute for Training and Research (UNITAR) and the United Nations Satellite Centre (UNOSAT). The Gambia also introduced more than 50 reports by non-governmental organizations.

82. Myanmar, for its part, called one witness during the oral proceedings to give testimony regarding an alleged attack by ARSA resulting in the deaths of civilians. It further submitted 45 witness statements by individuals, 20 of whom were Rohingya and the remainder security forces personnel and non-Rohingya villagers. Myanmar also relied on official documents including population lists, military operational reports and the military's rules of engagement, as well as Myanmar media reports. It also relied, to some extent, on the FFM reports and reports of non-governmental organizations to contradict The Gambia's allegations, while maintaining its reservations concerning the evidentiary value of these reports.

D. Evidential weight

83. The Court must make its own determination of the facts that are relevant to the legal obligations at issue (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 130, para. 212). In the 2007 *Bosnia* Judgment, the Court noted the "unusual feature" of that dispute, in so far as many of the allegations before the Court had already been the subject of processes and decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY) (*ibid.*). The ICTY had physical access to crime scenes, including mass graves, and collected forensic evidence that "corroborate[d] much of the testimony of the survivors" (*ibid.*, p. 137, para. 229). The *Croatia* case shared this feature. In both of these cases, the Court was thus able to rely on the decisions of the ICTY as a basis for its own findings on alleged breaches of obligations under the Genocide Convention. The Court described the factual findings of the ICTY as "highly persuasive" (*ibid.*, p. 134, para. 223) and

accorded them the "greatest weight" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 136, para. 469). In this case, by contrast, the Court does not have comparable judicial decisions available to support its factual findings and can only rely on the evidence proffered by the Parties to make its own determination of the facts.

84. In the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, the Court stated that it would

> "treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64). The Court will also give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains. The Court moreover notes that evidence obtained by examination of persons directly involved, and who were subsequently cross-examined by judges skilled in examination and experienced in assessing large amounts of factual information, some of it of a technical nature, merits special attention." (*Judgment, I.C.J. Reports 2005*, p. 201, para. 61.)

Below, the Court will identify the evidential weight that it attributes to the different types of evidence submitted by the Parties.

1. Witness testimony and other statements

85. The Court recalls that "[i]n determining the evidential weight of any statement by an individual, the Court necessarily takes into account its form and the circumstances in which it was made" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 78, para. 196). These considerations include whether the witness was an interested State official or a disinterested private individual, whether the statement was by a person with direct knowledge of the events and whether it was contemporaneous with the relevant events (*ibid.*, p. 78, para. 197). The Court will accord evidential weight to statements that are not eyewitness accounts "only where they have been . . . corroborated by credible evidence" (*ibid.*, pp. 78-79, para. 199). The Court has also indicated that the absence of the signatures of the persons who made or took the statements does not always exclude those documents, but the Court must ensure that the statements "faithfully record the evidence actually given by those individuals" (*ibid.*, p. 77, para. 196).

86. Myanmar has provided evidence that criminal and armed groups, including ARSA, have a presence in the camps in Bangladesh, and suggests that The Gambia's witnesses may have been reticent about ARSA for fear of reprisals when giving oral testimony and in their written testimony or other statements submitted by The Gambia. The Court observes that numerous Rohingya witnesses, in statements submitted to the Court, also expressed concern for their own safety if they returned to Myanmar, and for the safety of family members still present there, if it became known that they had co-operated with international investigations. While the Court will take fear of reprisal into account when evaluating witness evidence, it does not consider that this factor impugns the credibility of The Gambia's witnesses generally.

(a) ***Oral witness testimony***

87. During the oral proceedings, the Court heard from four witnesses who had direct experience of violence in the last week of August 2017, three of whom were called by The Gambia and one by Myanmar. These witnesses were heard in closed session for reasons of witness protection. As explained above (see paragraph 48), each witness first confirmed the written affidavit and any prior written statement setting out their testimony to the Court. The witnesses were then examined by the Party bringing their evidence, with the possibility of cross-examination and re-examination; this was followed by an opportunity for the judges to put questions to the witnesses.

88. The Court found The Gambia's witnesses credible in their accounts of the particular events to which they testified. Many of the witnesses' key statements were unchallenged in cross-examination. The Gambia's three witnesses each came from a village in the three main townships in northern Rakhine State — from the villages of Min Gyi, Chut Pyin and Maung Nu respectively. The descriptions offered by The Gambia's witnesses are consistent with other evidence before the Court regarding the events in these locations. Myanmar's witness testified to the alleged attack on 25 August 2017 at Kha Maung Seik, in which ARSA allegedly killed around 100 civilians of the Hindu faith. Her account of the attack is consistent with the evidence in the record (see paragraphs 177 and 546 below).

(b) ***Written witness testimony and other written statements***

89. As regards the written testimony and other written statements of Rohingya persons, The Gambia submitted 11 signed statements prepared by the IIMM in 2022 and 2023, 42 signed statements prepared by LAW in 2020 and 2024, 2 statements — one unsigned and one signed — by the same witness prepared by the non-governmental organization Fortify Rights, and 2 signed statements the origin of which is unclear. Myanmar also introduced a number of written testimonies and other statements by Rohingya persons: 18 signed witness statements prepared by the IIMM, an IIMM interview screening note and 2 signed statements taken from Rohingya held in Myanmar prisons.

90. For reasons of witness protection, many but not all of the signed statements have had identifying details redacted (see paragraphs 21 above and 91-92 below), and some are unsigned (see paragraph 93 below). Myanmar argues that no evidential weight can be given to any of the witness statements produced by The Gambia for a variety of reasons, including that the information contained in those statements is likely to emanate from the same sources and that the witnesses contradict themselves.

91. In the 2015 *Croatia* Judgment, the Court considered the issue of unsigned witness statements (*I.C.J. Reports 2015 (I)*, pp. 77-78, paras. 196-198; see paragraph 94 below). There is, however, a substantial difference between the evidential weight to be accorded to unsigned witness statements and that to be accorded to witness statements that were originally signed but have since had those signatures and other identifying details redacted to protect the witnesses' identity. With respect to such witness statements, the Court recognizes that, while redactions seek to protect the identity of victims, they may nevertheless limit the ability of the opposing party to contest the

evidence and of the Court to assess it. These redactions may accordingly reduce the evidential weight of a statement, although they do not preclude its consideration altogether.

92. In this connection, the Court notes that Myanmar identified a limited number of instances where it has been shown that the same witness gave statements to more than one body. Based on this, Myanmar argues that, because many witnesses remain unidentified, the true extent of such duplication cannot be known. Given the large number of interviews conducted by the various organizations and the fact that identifying details were often redacted, the Court recognizes the possibility that certain accounts may have originated from the same witness. However, having carefully assessed the evidence, it does not consider this to be a widespread characteristic of the witness statements before it. The Court has taken particular care to ascertain, based on the substance of the statements, that where facts have been corroborated by witness statements obtained from different sources, the statements came from different witnesses.

93. With respect to unsigned witness statements in the record, the Court notes that they represent only a very small portion of the witness statements on which the Court relies. In fact, the only unsigned statements that were submitted to the Court are those presented as part of the collated witness statements collected from 80 victims of sexual violence, prepared and submitted by LAW to the International Criminal Court in 2019 through a victim participation procedure (see paragraph 81 above).

94. The Court recalls that the absence of the signatures of the persons who made or took statements does not always exclude such documents, but the Court must ensure that they are faithful records of witness evidence (see paragraph 85 above). In its 2015 *Croatia* Judgment, the Court considered "records of interviews by the Croatian police of one or sometimes several individuals which [were] not signed by those persons and contain[ed] no indication that those individuals were aware of the content" to be "deficient", and the Court did not accord any evidential weight to them (*I.C.J. Reports 2015 (I)*, p. 78, paras. 197-198). The Court notes that, in the present case, unsigned witness statements were collected by a non-governmental organization, rather than by an organ of either Party, a circumstance relevant to the assessment of the weight to be accorded to such evidence. While they were unsigned, the witness statements were identified by individual codes, and in the majority of cases indicated the first names of the witness. The Court further recognizes that some of the alleged acts referred to in the unsigned witness statements, such as sexual violence and mutilation, generally pose challenges for evidence collection (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, pp. 77-78, paras. 189-191). Witnesses may be reluctant to reveal their identity because of the shame, social stigma and ostracization associated with being victims of sexual violence (see paragraphs 258 and 368 below; see also *Prosecutor* v. *Bosco Ntaganda*, ICC-01/04-02/06, Trial Chamber VI, Judgment of 8 July 2019, para. 88). Accordingly, the Court finds that such unsigned witness statements are not without evidential weight. The Court is nevertheless cautious in relying on them, only doing so rarely and where they are corroborated by other, more reliable, evidence (see paragraph 100 below).

95. The Court has also carefully reviewed the signed written witness statements, assessing their overall credibility and whether they are based on direct knowledge of events. The Court concludes that, to a large extent, the written statements are consistent with the oral witness testimony,

the factual findings of the FFM's reports and other information before the Court (see paragraphs 132-282 below). The Court finds the detailed witness statements that were collected by the IIMM to have considerable evidential weight in light of the IIMM's careful methodology (see Affidavit of Nicholas Koumjian, Head of the IIMM (15 November 2025), paras. 18-40). The IIMM's witness interviews were preceded by the preparation of detailed interview plans and they typically lasted for several days (*ibid.*, paras. 29-30). An important aspect of the Mechanism's methodology involved understanding what the witnesses' knowledge of the information shared was based on, "particularly, whether the information they disclose[d] [was] something they saw or experienced themselves or learned about through other sources" (*ibid.*, para. 33). Following the interview, the statements were read back to the witnesses to confirm their content and then signed (*ibid.*, para. 38). The Court also notes that both Parties rely on witness statements collected by the IIMM to substantiate their claims.

96. According to LAW, the signed witness statements it collected were gathered through remote and in-person interviews by qualified experts, including criminal and police investigators, and in line with LAW's standard operating procedures. The statements were also read back to the witnesses to confirm their content before they were signed. As the witness statements are less detailed, the evidential weight of these statements is lower than in the case of the IIMM's witness statements. Nevertheless, the Court considers that they generally constitute reliable evidence. The Court further notes that the written statements or affidavits of the three witnesses called by The Gambia to give oral testimony were collected by LAW and were corroborated by the witnesses' oral testimony.

2. Third-party fact-finding

(a) *General considerations*

97. In evaluating evidence from third-party fact-finding, the Court has generally considered the independence and qualifications of the author, the methodology used in the preparation of the evidence, and the comprehensive nature and overall quality of the evidence. In particular, when assessing reports from official or independent bodies, the Court has clarified that

> "[t]heir value depends, among other things, on (1) the source of the item of evidence (for instance partisan, or neutral), (2) the process by which it has been generated (for instance an anonymous press report or the product of a careful court or court-like process), and (3) the quality or character of the item (such as statements against interest, and agreed or uncontested facts)" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 135, para. 227; see also 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 76, para. 190).

98. In both the 2007 *Bosnia* Judgment and the 2015 *Croatia* Judgment, the Court made extensive use of reports prepared by independent United Nations bodies. For example, in the 2007 *Bosnia* Judgment, the Court stated that it had "gained substantial assistance" from the report entitled "The Fall of Srebrenica", prepared by the United Nations Secretary-General at the request of the General Assembly. The Court observed that "[t]he care taken in preparing the report, its comprehensive sources and the independence of those responsible for its preparation all lend considerable authority to it" (*I.C.J. Reports 2007 (I)*, p. 137, para. 230). In the 2015 *Croatia* Judgment, the Court relied on a report on the situation of human rights in the territory of the former

Yugoslavia of 7 November 1995 prepared by the Special Rapporteur of the Commission on Human Rights. It noted that "it must give evidential weight to [this] document[], by reason both of the independent status of its author" — which Croatia acknowledged even though it disputed some of the report's factual findings — and "of the fact that it was prepared at the request of organs of the United Nations, for purposes of the exercise of their functions" (*I.C.J. Reports 2015 (I)*, p. 133, para. 459; see also p. 141, para. 484, and p. 144, para. 495). The Court also stated in the *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)* case that it would "take into consideration evidence contained in certain United Nations documents to the extent that they are of probative value and are corroborated, if necessary, by other credible sources" (*Judgment, I.C.J. Reports 2005*, p. 239, para. 205).

99. More recently, in its Judgment in the case concerning *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation)*, the Court relied on a series of reports prepared by the Office of the United Nations High Commissioner for Human Rights (*I.C.J. Reports 2024 (I)*, p. 165, paras. 215-216; see also p. 171, para. 238). The Court noted in this regard that it "generally ascribes particular weight to reports by international organizations that are specifically mandated to monitor the situation in a given area" (*ibid.*, p. 165, para. 215). While it observed in this context that "it must also take into consideration the lack of access to Crimea of the Human Rights Monitoring Mission in Ukraine on whose observations the relevant reports are based", the Court ultimately relied on the reports to confirm the events in Crimea (*ibid.*, paras. 215-216).

100. The standard of proof in the present case requires a thorough assessment of the evidence. Thus, the Court will carefully assess the evidential weight to be given to third-party fact-finding reports in accordance with the criteria set out in its jurisprudence. Where such evidence is corroborated by other evidence, the Court will accord greater weight to it. Corroboration does not automatically establish weight or credibility, but the absence of corroboration is a factor to be considered when weighing the evidence and assessing credibility (*Dragomir Milošević*, IT-98-29/1-A, Appeals Chamber, Judgement of 12 November 2009, para. 248; *Kupreškić et al.*, IT-95-16-A, Appeals Chamber, Judgement of 23 October 2001, para. 220). This Court has held that evidence that has limited weight on its own may nevertheless be used to corroborate other evidence that emanates from a stronger source (see 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 78-79, para. 199; p. 87, para. 239; p. 107, para. 344; p. 132, para. 457; and p. 143, para. 489). Moreover, the fact that the Court determines that a particular report is entitled to evidential weight does not mean that all its contents have evidential value. The Court will apply its standard criteria in assessing the factual findings of the reports. However, it will not ascribe any probative value to the legal assessments contained therein.

(b) ***Reports of the FFM***

101. The FFM's mandate, under resolution 34/22 of the Human Rights Council, was

> "to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar, in particular in Rakhine State, including but not limited to arbitrary detention, torture and inhuman treatment, rape and

other forms of sexual violence, extrajudicial, summary or arbitrary killings, enforced disappearances, forced displacement and unlawful destruction of property, with a view to ensuring full accountability for perpetrators and justice for victims" (FFM, Report of the detailed findings (2018), para. 4).

102. The President of the Human Rights Council appointed three members of the Mission: Marzuki Darusman (Indonesia), who served as its chairperson, Radhika Coomaraswamy (Sri Lanka) and Christopher Sidoti (Australia). The Secretariat of the FFM included specialists and advisers in fact-finding, human rights law, military affairs and sexual violence (FFM, Report of the detailed findings (2018), para. 1).

103. The FFM investigated, *inter alia*, the 2016 and 2017 events in northern Rakhine State and produced two major reports, one in September 2018 and the other in September 2019 (United Nations Human Rights Council, "Detailed findings of the Independent International Fact-Finding Mission on Myanmar", UN doc. A/HRC/42/CRP.5 (16 September 2019) (hereinafter "FFM, Detailed findings (2019)")). The FFM further produced thematic reports on sexual and gender-based violence and on the economic interests of the Myanmar military in August 2019. The FFM's mandate ended in September 2019 and the FFM transferred its evidential material to the IIMM, which became operational in August 2019.

104. The FFM described the methodology used in the preparation of its reports in the following manner:

> "[T]he Mission strictly adhered to the principles of 'do no harm', independence, impartiality, objectivity, transparency and integrity.
>
> [T]he Mission followed the best practices established for commissions of inquiry and fact-finding missions, outlined in the 2015 [Office of the High Commissioner for Human Rights] publication, International Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and International Humanitarian Law — Guidance and Practice." (FFM, Report of the detailed findings (2018), paras. 8-9; see also FFM, Detailed findings (2019), paras. 31 and 35.)

105. The FFM conducted "875 in-depth interviews with victims and eyewitnesses" for its first report (FFM, Report of the detailed findings (2018), para. 19) and 419 further interviews for its second report (FFM, Detailed findings (2019), para. 32). The FFM assessed the reliability and credibility of each source, considering, among other things, the political and personal interests of each witness and any potential biases, their apparent capacity to recall events in light of their age, their exposure to traumatic events and the time period between the relevant events and the interview (FFM, Report of the detailed findings (2018), para. 16). Interviews were generally conducted in person in a safe and private place, and, when required, in the presence of a professional interpreter (*ibid.*, para. 21). As the FFM was unable to operate inside Myanmar, most of the interviews were conducted in displaced persons camps in Cox's Bazar in Bangladesh (see *ibid.*, para. 23). In identifying interviewees, the Mission used random selection — interviewing persons in different

areas of the refugee camps and in different refugee centres without prearrangement — as well as interviewing persons selected on the basis of their specific experiences, including people from different ethnic and religious backgrounds (*ibid.*, para. 20). The Mission endeavoured to speak only with persons who confirmed that they had not previously spoken with any other organization or media outlet (*ibid.*). The Court observes, however, that only one of the underlying interview records was presented to the Court, in the form of an interview note, and the Court has not been able to study the remaining witness records referred to in the FFM reports (see paragraph 110 below). The FFM also examined satellite imagery and satellite-based fire detection data analysed by UNITAR-UNOSAT, authenticated photographs and videos, publicly available accounts of relevant facts by Myanmar authorities, laws, policies and directives of Myanmar, and statistics, surveys and other quantitative information generated by Myanmar or the United Nations (FFM, Report of the detailed findings (2018), para. 13).

106. In making its factual determinations, the FFM adopted a "reasonable grounds" standard of proof (FFM, Report of the detailed findings (2018), para. 10; FFM, Detailed findings (2019), para. 31), which according to the FFM, is "[c]onsistent with the practice of United Nations fact-finding bodies" (FFM, Report of the detailed findings (2018), para. 10). The FFM considered this standard to be met "when a sufficient and reliable body of primary information, consistent with other information, would allow an ordinarily prudent person to reasonably conclude that a case, incident or pattern of conduct occurred" (*ibid.*). The FFM acknowledged that this standard of proof is "lower than that required in criminal proceedings" (*ibid.*).

* *

107. The Parties' assessment of the evidentiary value of the FFM reports differs sharply. The Gambia characterizes the FFM's reports as "authoritative", "convincing" and "reliab[le]". In its view, the FFM's reports merit "significant weight", based on the Mission's "detailed methodology" and "the care taken in obtaining and analysing evidence". The Gambia also contends that the FFM's findings, the witness testimony, the IIMM's reports and reports of other United Nations and non-governmental organizations are all reliable and mutually corroborative.

108. Myanmar, for its part, maintains that "no evidential weight" should be given to the FFM's reports. It draws attention to the fact that Myanmar did not recognize or co-operate with the FFM and submits that the reports are therefore one-sided and that the Mission was biased against Myanmar. Myanmar expresses concern that the FFM applied a standard of proof of "reasonable grounds", noting that this differs from the standard adopted by criminal courts, and that the FFM did not have a mandate to collect evidence for use in judicial proceedings. Myanmar points to the interview note that was prepared by the FFM, and made available to the Parties by the IIMM, arguing that this note demonstrates the methodological deficiencies in the FFM's process (see paragraphs 105

above and 110 below). Myanmar contrasts the evidential weight of the reports of the FFM with that of the ICTY's findings, on which the Court relied in the 2007 *Bosnia* Judgment and the 2015 *Croatia* Judgment, noting that the FFM's process was non-adversarial and the FFM was not a judicial body. Myanmar further argues that, as the FFM's reports are based on records of interviews, they constitute hearsay evidence at best or, since the members of the FFM were not directly involved in preparing the interviews, "double hearsay" evidence.

* *

109. Considering that, in making factual determinations, the FFM applied a standard of proof that is lower than the standard of proof that the Court has identified as applicable in this case (see paragraph 80 above), the Court has been cautious in assessing the evidential weight of the reports prepared by the Mission. Nevertheless, the Court finds the two major reports prepared by the FFM in general to be a reliable source of factual evidence in light of the following considerations: (1) the FFM employed a rigorous methodology, conducting 1,294 interviews altogether, gathering a broad range of other information and applying appropriate factors to the assessment of the reliability and credibility of each source; (2) the reports were prepared "at the request of organs of the United Nations, for purposes of the exercise of their functions" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 133, para. 459; see also p. 141, para. 484), and are "reports by international organizations . . . specifically mandated to monitor the situation in a given area" (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment, I.C.J. Reports 2024 (I)*, p. 165, para. 215); (3) many of the factual findings of the reports are extensively based on or corroborated by other — in some cases uncontested — evidence, such as satellite imagery and witness statements; and (4) Myanmar, despite alleging that the reports are unreliable, has not produced evidence of its own that has led the Court to question the reliability of the reports or identified any fundamental inconsistencies between the reports and other evidence on record.

110. The Court recalls that only one of the underlying interview records was presented to it, in the form of an interview note. The Court has not been able to examine any of the remaining witness records referred to in the FFM reports; nor has it been able to examine most of the other source materials on which those reports were based. In this regard, the Court observes that third-party reports rarely share their underlying source materials and the reliability of such reports is not contingent upon such disclosure, provided that the Court is able to examine the methodology employed in collecting and assessing the underlying source materials. In the present case, the Court has carefully examined the FFM's methodology, as described in its reports, and found it rigorous. With respect to the one interview note to which the Court had access, in the Court's view, there is nothing in the content of the note or in the way the FFM relied on it in its reports that would give rise to doubts concerning the FFM's methodology.

111. As noted above (see paragraph 99), the Court considers that the lack of access of fact-finding and monitoring bodies to the relevant territory is a factor to be taken into account in

assessing the persuasiveness of the evidence. In this case, the FFM and other fact-finding bodies were limited in their evidence-gathering by a lack of access to evidence and witnesses in northern Rakhine State and elsewhere in Myanmar (see paragraph 76 above). However, the Court notes that a substantial part of the field work undertaken by the FFM — conducting interviews with victims and eyewitnesses now located in the Cox's Bazar refugee camp in Bangladesh (see paragraph 105 above) — did not depend on the Mission having access to Myanmar.

112. Overall, the Court finds that the FFM's reports sought to provide a comprehensive account of the relevant facts, and that they are based on a rigorous methodology that enabled the FFM to carry out its mandate in an independent and impartial manner. The reports of the FFM demonstrate a level of detail and coverage that is comparable to, and in certain aspects exceeds, that of reports produced by independent fact-finding bodies relied upon by the Court in earlier cases (see paragraphs 98-99 above).

(c) ***Reports of the IIMM***

113. The IIMM was established in response to reports, including those of the FFM, that "gross human rights violations amounting to serious international crimes had been committed in Myanmar" (Affidavit of Nicholas Koumjian, Head of the IIMM (15 November 2025), para. 1; see paragraph 76 above). The Head of the IIMM, Mr Nicholas Koumjian, is an experienced criminal prosecutor. The IIMM comprises investigators, analysts and legal officers, and occasionally consultants with specific linguistic, thematic and/or geographic expertise (Affidavit of Nicholas Koumjian, Head of the IIMM (15 November 2025), paras. 13-14).

114. The IIMM has produced six reports on thematically distinct topics ("Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024); "Analysis of the Myanmar Government's encouragement of resettlement by Buddhists from Bangladesh to Rakhine State" (22 March 2024); "Efforts to investigate and punish sexual and gender-based crimes committed against Rohingya: Evidence analysis" (27 March 2024); "Evidence of ARSA weapons possession and use" (29 April 2024); "Evidence related to detention of Rohingya in Buthidaung Prison and other locations" (15 May 2024); and "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025)).

115. According to the Head of the IIMM, the Mechanism is "not focused on fact-finding"; its mandate is rather to "collect evidence of serious international crimes and facilitate criminal prosecution of such crimes in national and international courts" (Affidavit of Nicholas Koumjian, Head of the IIMM (15 November 2025), para. 12). The IIMM's Terms of Reference provide that the Mechanism "shall systematically record, organize, preserve and store all information, documentation and evidence in its possession, in accordance with international criminal law standards and the good practices of other comparable international accountability mechanisms".

116. As regards sources of evidence, the IIMM relies on

> "open-source information including social media, geospatial imagery and analysis, digital evidence including photographs and videos, primary documentation such as laws, orders and military documents, and witness testimonies, in the form of screening notes and witness statements" (Affidavit of Nicholas Koumjian, Head of the IIMM, para. 18).

* *

117. The Gambia argues that the IIMM's reports should be given "great evidentiary weight" since they emanate from an independent body established by the United Nations Human Rights Council, draw on comprehensive sources and follow best practices in fact-finding. According to The Gambia, they thus meet the relevant standard in the Court's jurisprudence for reliance on evidence collected by third parties. The Gambia emphasizes that the IIMM, like the FFM before it, attempted in good faith to obtain evidence from Myanmar and from sources close to Myanmar that might support Myanmar's position and that both of those bodies included in their reports Myanmar's public statements on the objectives of the clearance operations. The Gambia also points out that the IIMM's mandate was to collect evidence to facilitate criminal proceedings and that, in so doing, it applied an international criminal law standard of proof.

118. Myanmar, for its part, does not recognize and refuses to co-operate with the IIMM. It maintains that the IIMM's reports failed to deal with the "core events of 2016 and 2017" and, like the FFM reports, have no evidential weight since they are the product of a non-adversarial process in which Myanmar did not participate. Myanmar also argues that, as the reports' authors did not have first-hand knowledge of the events, the reports constitute a secondary, rather than a primary, source and are thus without evidential value (see paragraph 108 above).

* *

119. In accordance with the IIMM's mandate, the analytical reports aim to provide evidence on thematically distinct topics. For this reason, unlike the FFM's reports, the IIMM's reports are not designed to provide a holistic account of the 2017 clearance operations. The Court nevertheless considers them to have considerable evidential weight because of the demanding standard of proof and methodology applied by the Mechanism in collecting the evidence contained in the reports.

120. In making its own independent findings of fact, it is for the Court to determine the evidential weight of the particular factual information in the FFM and IIMM reports. In evaluating the information in the reports, the Court has taken into account the extent to which the facts therein

are substantiated. It has also considered the extent to which the information is corroborated by other credible evidence in the record, including by examining the source of the item of evidence, the process by which it was generated and its quality or character (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 135, para. 227; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 76, para. 190).

3. Other evidence

121. The Gambia relies extensively on satellite imagery and satellite-based fire detection data that was obtained by the FFM with the support of UNOSAT to substantiate its claims about the burning and destruction of Rohingya villages. While Myanmar disputes some of the inferences that The Gambia seeks to draw from the satellite imagery, noting that the periodic images do not allow for a precise determination of the date on which events occurred, Myanmar does not question the authenticity of the images as such. The Court finds the images which were collected periodically from 16 September 2017, as well as the accompanying satellite-based fire detection data which was collected at least once every two days (see paragraph 271 below), to be of considerable evidential weight in themselves. They also corroborate other categories of evidence, such as witness accounts and facts recorded in the reports prepared by the FFM and the IIMM. Myanmar did not challenge the use of fire detection data and relied on data from the same sources, alongside satellite imagery, in support of some of its contentions.

122. The Gambia also relies on other United Nations reports, statements and documents, including reports of the Secretary-General, the Office of the High Commissioner for Human Rights, the Special Adviser on the Prevention of Genocide and the Special Rapporteur on the situation of human rights in Myanmar. The Court has carefully analysed these materials in accordance with the criteria it applies generally to reports from official or independent bodies (see paragraphs 97-100 above), and it has relied on their contents where appropriate.

123. The Parties both present a wide array of reports prepared by non-governmental organizations, including the Public International Law & Policy Group (hereinafter "PILPG"), Amnesty International, Médecins Sans Frontières, Physicians for Human Rights, the International Crisis Group, LAW and Fortify Rights.

124. In its prior judgments on the application of the Convention, the Court duly considered the reports of non-governmental organizations although it did not accept them as "conclusive proof of the facts alleged" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 133, para. 459). In the 2015 *Croatia* Judgment, the Court confirmed that the criteria identified in the 2007 *Bosnia* Judgment (see paragraph 97 above) for assessing the evidential weight of reports of official or independent bodies are also applicable in the context of reports prepared by non-governmental organizations (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 89, para. 249, and p. 132, para. 457). The Court further notes that, in the present case, reports by non-governmental organizations were submitted and referenced by both of the Parties. They were typically prepared on the basis of interviews with Rohingya survivors, as well as with experts and other relevant sources. For example, PILPG's report was prepared based on interviews with 1,024 Rohingya (PILPG, "Documenting atrocity crimes

committed against the Rohingya in Myanmar's Rakhine State: Factual findings & legal analysis report" (December 2018) (hereinafter "PILPG, Factual findings & legal analysis report"), pp. 33, 40, 73 and 82). The Court will thus take these materials into account in this case, recognizing that they generally have lower evidential weight than other categories of evidence discussed above.

125. Myanmar, for its part, also relies on its own governmental statements, documents and reports, including statements collected from military personnel and from people currently held in Myanmar's custody. In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, the Court considered that declarations made by the authorities of a State party must be subject to "critical scrutiny" (*Merits, Judgment, I.C.J. Reports 1986*, p. 43, para. 69). In this case, the Court notes that some features of the documents relied on by Myanmar raise concerns about their reliability as evidence. For example, the military reports do not record the number of civilian casualties and no explanation is offered for the large number of rounds of ammunition reported as used in each incident during the clearance operations. These gaps are noteworthy in light of the number of casualties reported and the description of the shots fired. For these reasons, in the Court's view, aspects of Myanmar's governmental documents and reports are to be considered with caution, except to the extent that they are independently corroborated by credible evidence or present evidence "contrary to the interests or contentions of the State . . . or . . . relating to matters not controverted" (*ibid.*, para. 70).

126. The Parties also rely on the Executive Summary of the final report of the Independent Commission of Enquiry (hereinafter the "ICOE"), a body established by Myanmar in July 2018 to investigate allegations of human rights violations during the events in northern Rakhine State in 2016 and 2017 (see paragraphs 536 and 539 below). The detailed findings of the ICOE were not made public and neither Party annexed them to their written submissions. During the second round of the oral proceedings, however, in connection to a question from a judge, Myanmar's Counsel referred to witness evidence contained in several annexes of the ICOE final report for the purpose of addressing efforts by the security forces to protect civilians, and provided a web link to where certain annexes of the report were publicly available. Because of the limited purposes for which Myanmar invoked these documents and because The Gambia did not have an opportunity to review or comment on them while raising significant questions regarding the independence and methodology of the ICOE (see paragraphs 537-538 below), the Court has not considered the annexes of the ICOE final report, other than for the purposes identified by Myanmar.

127. Finally, the Court turns to the expert evidence provided by The Gambia (see paragraph 60 above). The Gambia submitted two expert reports, in October 2020 and May 2024, on the topic of whether Myanmar's clearance operations were consistent with "counter-insurgency doctrine". The author of these two reports was also called as an expert to give oral testimony at the hearings, where he was cross-examined by counsel for Myanmar and questioned by judges. The Court has considered the evidence given by the expert to the extent that the subject-matter concerned was within both his mandate and his expertise. It cannot attach any evidential weight to the expert's legal assessment and conclusions extending beyond the question whether Myanmar's actions during the clearance operations, as portrayed by the FFM, were conducted in a manner consistent with the "standards of counter-insurgency operations".

4. Myanmar's non-co-operation

128. As noted above (see paragraph 76), Myanmar did not co-operate with the two investigative bodies established by the United Nations Human Rights Council, refusing to allow entry into its territory for access to evidence and witnesses there, and failing to respond to requests for information. While Myanmar allowed access to the United Nations Special Rapporteur on the situation of human rights in Myanmar in the period between 2014 and 2017, it revoked permission for such access after what it described as the Rapporteur's "tactless and undiplomatic" statements in July 2017, and it continued to deny access to her successor. The IIMM issued 26 requests for information to the Myanmar authorities, including requests for information that was "potentially exonerating", to which Myanmar did not respond (Affidavit of Nicholas Koumjian, Head of the IIMM (15 November 2025), para. 22).

129. Myanmar justifies its refusal to co-operate with the FFM and the IIMM by citing its "distrust" of the Human Rights Council and the investigative bodies established by it, noting that these bodies were created without Myanmar's consent and arguing that the Human Rights Council was biased against Myanmar. Myanmar further points out that it was under no obligation "to grant the FFM and IIMM access to its territory or to provide them with information".

130. As a general rule, a State is not obliged to grant United Nations mechanisms access to its territory. The Court has found, however, that in cases where one of the parties exercises exclusive control over a territory, rendering the other party "unable to furnish direct proof of facts giving rise to responsibility", the latter State "should be allowed a more liberal recourse to inferences of fact and circumstantial evidence" (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 18; see also *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 67, para. 157). It was, for example, on this basis that the Court took account of Ukraine's lack of access to Crimea in its assessment of the evidence in *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation)* (*Judgment, I.C.J. Reports 2024 (I)*, p. 152, para. 169).

131. In the present case, neither the Applicant nor the United Nations fact-finding bodies on which The Gambia substantially relies had access to evidence within the territory where the alleged acts occurred. The Court observes that The Gambia is thus at a disadvantage with respect to direct access to certain kinds of evidence. Accordingly, in the assessment of the evidentiary record, the Court takes into account both Myanmar's failure to genuinely investigate the alleged atrocities itself (see paragraphs 511-516 and 553 below) and its refusal to allow access to evidence and witnesses in its territory and to respond to the requests of the fact-finding bodies established by the United Nations to investigate the matter. The Court may therefore have more liberal recourse to inferences of fact in relation to events with respect to which Myanmar has largely or wholly exclusive knowledge and for which it has not provided a satisfactory and convincing explanation (see paragraph 111 above).

III. EXAMINATION OF FACTUAL EVIDENCE

132. Much of the evidence in the record is contested between the Parties. The Court accordingly finds it appropriate to set forth its assessment of the central facts in the case, applying the criteria identified in the previous section with respect to the probative value and weight to be given to the evidence and the inferences to be drawn therefrom. The Court does not consider it necessary to examine every incident reported, nor to compile an exhaustive list of the allegations. Rather, it is sufficient to examine those facts which, viewed in their context, would elucidate whether acts prohibited under the Genocide Convention were committed (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 143, para. 242). The Court will therefore focus on the clearance operations of 2017 and related events, in the course of which Myanmar is alleged to have breached its obligations under the Convention, as well as the relevant context that informs the Court's understanding of these events.

133. The Court will begin with an assessment of the historical treatment of the Rohingya in Myanmar (Section A), paying particular attention to Myanmar's allegedly discriminatory laws and policies concerning citizenship, marriages and births, as well as other restrictions. It will also examine alleged anti-Rohingya hate speech. The Court will then consider the events of 2016 in northern Rakhine State, including the emergence of ARSA and its military capabilities (Section B). Finally, the Court will examine the evidence concerning the ARSA attacks of August 2017 and Myanmar's conduct during the 2017 clearance operations, first with respect to specific locations and then with respect to broader evidence (Section C).

A. Historical treatment of the Rohingya in Myanmar

1. Discriminatory laws and policies

(a) *Citizenship*

134. The Rohingya have been present and have maintained civil, economic, social and political connections in what is now Myanmar, including Rakhine State, for generations.

135. The Parties dispute when ancestors of the Rohingya first arrived in present-day Myanmar. Myanmar recognizes that "certain Bengali migrants . . . settled in Arakan even before the British colonial period", and that by the end of the Mrauk U dynasty in 1784, a Muslim population originating from Bengal was present in Arakan (see, for instance, Myanmar Institute of Strategic and International Studies (MISIS), "Background Paper on Rakhine State" (28 May 2018), pp. 8-9 and 17-18; United Nations High Commissioner for Refugees, Memorandum of Jacques Cuénod and Angelo Rasanayagam to United Nations High Commissioner for Refugees Headquarters, "Mission to Dacca: 11 May-14 May 1978" (17 May 1978), para. 16). Myanmar thus acknowledges that "[t]here was a population of Bengali-speakers in Arakan even before Burma became part of the British Empire". In 1799 reference was made to a dialect of Hindi spoken by Muslims "who have long [been] settled in *Arakan*, and who call themselves *Rooinga*" (F. Buchanan (1799), "A Comparative Vocabulary of Some of the Languages Spoken in the Burma Empire", republished in *SOAS Bulletin of Burma Research*, Vol. 1, No. 1 (Spring 2003), p. 55). In the nineteenth and twentieth centuries, during the British colonial period, a large number of Muslims from present-day Bangladesh also immigrated to modern Rakhine State. Myanmar contests, however, whether these populations self-identified as a single group.

136. The record shows that in the period after independence in 1948, Rohingya were treated as part of the polity of the Union of Burma ("Official transcript of the address delivered by Brigadier General Aung Gyi, Vice Chief of Staff (Army), The Union of Burma Armed Forces Muhajid Insurgents' Surrender Ceremony, Maung Daw Town, Rakhine, Burma, 4 July 1961", published in Ministry of Defence, Union of Burma, *Khit Yay (Current Affairs)*, Mayu Special Issue, Vol. 12, No. 6 (15 July 1961), pp. 8-10 and 23-26; Advisory Commission on Rakhine State, "Towards a peaceful, fair and prosperous future for the people of Rakhine: Final report of the Advisory Commission on Rakhine State" (August 2017) (hereinafter "Final report of the Advisory Commission on Rakhine State (2017)"), p. 29; F. Wade, "IIMM Rohingya report" (January 2022), p. 5, Sec. 1.3; United States Holocaust Memorial Museum, Video "Gradual Erasure: Burma's Path to Genocide" (May 2020)). The 1947 Constitution and 1948 Union Citizenship Act together recognized citizenship, *inter alia*, for members of "indigenous races" that had been permanently settled in the country in 1823, prior to British colonial rule. Under these instruments, citizenship was automatically recognized based on either third-generation residence or descent from "indigenous races", without the need to apply. No exhaustive list of the groups qualifying as "indigenous races" was created, and the record does not establish that Rohingya, as a group, were excluded from this category (United Nations High Commissioner for Refugees, Memorandum of Jacques Cuénod and Angelo Rasanayagam to United Nations High Commissioner for Refugees Headquarters, "Mission to Dacca: 11 May-14 May 1978" (17 May 1978), paras. 16 and 22-23). Separately, any person could "elect" to hold Burmese citizenship if they met certain conditions of birthplace and residence; Myanmar accepts that "[t]ens of thousands" of Rohingya received citizenship through this latter pathway. Like all residents, Rohingya were issued National Registration Cards, which indicated their type of citizenship and gave them access to the benefits enjoyed by citizens, although the cards did not constitute formal proof of citizenship.

137. In 1982, Burma adopted a new citizenship law (Socialist Republic of the Union of Burma, Burma Citizenship Law (15 October 1982) (hereinafter the "1982 Citizenship Law")), which established three types of citizenship, namely "citizen", "associate citizen" and "naturalized citizen", and introduced a hierarchy among them, with full citizenship primarily tied to "national" races (*ibid.*, Chap. I, Sec. 2). Section 3 of the 1982 Citizenship Law defined national races in a manner similar to "indigenous races" under the 1948 Union Citizenship Act — namely, as including "such . . . ethnic groups as have settled in any of the territories included within the State as their permanent home" prior to 1823 — and did not expressly exclude the Rohingya (*ibid.*, Chap. II, Sec. 3). However, the 1982 Citizenship Law further provided that it was for the Council of State to "decide whether any ethnic group is national or not" (*ibid.*, Chap. II, Sec. 4). The State exercised this authority by identifying 8 specified groups recognized as "major ethnic national races" indigenous to the country, which it later subdivided into 135 "national ethnic groups" (see paragraph 66 above). These latter groups included the Kaman Muslim population of Rakhine State, but not the Rohingya. As a result, the Rohingya were formally excluded for the first time from those entitled to citizenship based on race or ethnic origin.

138. Myanmar contends that other avenues of citizenship are available to Rohingya under the 1982 Citizenship Law. Onerous and discriminatory citizenship verification procedures, however, have resulted in the denial of citizenship to even Rohingya who could document their entitlement (FFM, Report of the detailed findings (2018), para. 479; United Nations 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. 32). The Myanmar authorities have also implemented successive identification régimes for the Rohingya. Following the 1982 Citizenship Law, in place of National Registration Cards, Myanmar began issuing Temporary Identity Cards, or "white cards", to the Rohingya population. As of 2015, Myanmar sought to replace white cards with National Verification Cards (hereinafter "NVCs"), which state that card holders are non-citizens (FFM, Report of the detailed findings (2018), paras. 483-484). At least until 2016, Rohingya were required to identify as "Bengali" on their application in order to receive a card (*ibid.*, paras. 484-485; Final report of the Advisory Commission on Rakhine State (2017), p. 27; see "Example of a National Verification Card (NVC)", Counter-Memorial of Myanmar, Vol. IX, Annex 469, and confidential document submitted as Annex 468 to Myanmar's Counter-Memorial).

139. It is uncontested that numerous rights are conditioned on the possession of an NVC, including the right to travel between townships, and the right to have access to employment, other economic activities and higher education. Witnesses reported efforts by village leaders and the military to pressure Rohingya to accept NVCs, which are widely perceived by the Rohingya as a rejection of their Rohingya identity and Myanmar citizenship (FFM, Report of the detailed findings (2018), para. 488). Witness NJ, for instance, told the Court that "that card says we are not nationals of this country, that's why we didn't accept it" (CR 2026/14, p. 22 (Witness NJ)).

140. In September 2016, Myanmar established an Advisory Commission on Rakhine State, with a mandate to examine the challenges facing Rakhine State and propose responses. The Commission, which was chaired by former United Nations Secretary-General Kofi Annan, comprised a majority of members from Myanmar and reported to the Government. In its final report of 24 August 2017, the Advisory Commission observed that

> "the [1982 Citizenship] law — and the way it was implemented — significantly narrowed the prospects of citizenship for the Muslims in Rakhine. In 1989, a citizenship inspection process was carried out across Myanmar . . . The majority of Muslims in Rakhine with NRCs [National Registration Cards] surrendered their documents, but were never issued with CSCs [Citizenship Scrutiny Cards], rendering them de facto stateless." (Final report of the Advisory Commission on Rakhine State (2017), p. 30.)

The Commission concluded that, as a result, only about 4,000 Muslims in Rakhine State were recognized as enjoying any form of citizenship, leaving approximately one million Muslims stateless (*ibid.*, p. 26).

141. In 1992, Myanmar's Permanent Mission to the United Nations conveyed through a Note Verbale that "the so-called 'Rohingyas' never belonged to the national races or national racial groups of Myanmar" and that "[t]he Rohingyas do not exist in Myanmar either historically, politically or legally" (United Nations, Commission on Human Rights, "Implementation of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief: Report submitted by Mr Angelo Vidal d'Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986", UN doc. E/CN.4/1993/62 (6 January 1993), pp. 76-77, para. 46). Officially and unofficially, "Bengalis" in Myanmar have been characterized as illegal immigrants or foreigners.

142. The Court notes that the manner of granting access to citizenship for the Rohingya through legal and administrative measures was discriminatory and contributed to the progressive erosion of the political and civil rights of the Rohingya in Rakhine State in the decades leading up to the 2017 clearance operations, leaving the group marginalized and particularly vulnerable (Final report of the Advisory Commission on Rakhine State (2017), p. 29; United Nations High Commissioner for Refugees, "Background note on discrimination in nationality laws and statelessness" (October 2021), p. 9).

(b) ***Restrictions on marriage, births and birth certificates***

143. The evidence establishes that in 1993 the Maungdaw Township border security force, noting that "[p]opulation increase in Maung Daw Township is extremely high" and that "the majority of residents in Maung Daw are Muslims", adopted a temporary regional order imposing distinct permission requirements for "Islamic" marriages. The measures were described as "for the good of the region and the race" (Border Region Immigration Control Headquarters, Maung Daw, Letter No. Na-Sa-Ka/56/U 4 (31 January 1993)). A subsequent regional order in force from 2005 to 2018 stated that "the birth rate is extremely high" and that "there is likely to be population explosion" (Maung Daw Township Peace and Development Council, Regional Order 1/2005 (1 May 2005) (hereinafter "Regional Order 1/2005"), para. 1). The order reiterated separate permission requirements for Islamic marriages and established additional "Requirements for Bengalis who apply for Permission to Marry", including that men be photographed without a beard (*ibid.*, Sec. 1 *(c)* and Addendum 3).

144. Regional Order 1/2005 further provided that "those who have permission to marry must limit the number of children, in order to control the birth rate" (Regional Order 1/2005, Sec. 1 *(f)*). The birth restrictions were not limited to Muslims. The regional authorities, however, officially described the order's marriage and birth limitations as "Processes for Controlling Bengali Population" (Border Region Immigration Control Headquarters, "Regional Order and Processes for Controlling Bengali Population" (11 February 2008)). Regional Order 1/2005 provided for intrusive verification measures, and witness testimony and evidence gathered by the FFM suggests it entailed the payment of exorbitant fees or bribes (Affidavit of Witness NJ, para. 22; Affidavit of Witness MN, para. 12; FFM, Report of the detailed findings (2018), para. 593).

145. Evidence before the Court also establishes that breaches of the measures prescribed to control marriages and births were subject to fines or imprisonment. Although such penalties were not always enforced, Witness NJ recounted before the Court that she and her husband had to sign a document stating that "we cannot [have] more than two children". As she had more than two children, Witness NJ had to hide one of her children from inspections for fear of her husband being sent to jail or facing fines (CR 2026/14, p. 29 (Witness NJ)). Myanmar did not challenge this account. Other witness testimony corroborates the existence of restrictions on marriage and children, and the impact of these measures on individuals and their community (IIMM, Witness Statement No. IIMM0019629329, para. 47; confidential witness statement submitted as Annex 343 to The Gambia's Memorial, para. 4).

146. Although the birth rate in northern Rakhine State was high, it was not the highest in the country, and Myanmar did not impose similar restrictions in other regions or on other groups (Republic of the Union of Myanmar, Ministry of Labour, Immigration and Population, Department of Population, *Census Atlas Myanmar: The 2014 Myanmar Population and Housing Census*).

147. With respect to the registration of births and the issuance of birth certificates, evidence in the record indicates that Myanmar stopped issuing birth certificates for Rohingya in the 1990s (FFM, Report of the detailed findings (2018), para. 463; United Nations Human Rights Council, "Situation on human rights in Myanmar since 1 February 2022: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/52/21 (2 March 2023), para. 39). Myanmar acknowledges that registration of "Bengali" newborns in northern Rakhine State ended after the 2012 violence. In 2012, Myanmar established a government Inquiry Commission on Sectarian Violence in Rakhine State which estimated that by 2013, approximately 60,000 Rohingya children were unregistered (Republic of the Union of Myanmar, "Final report of Inquiry Commission on Sectarian Violence in Rakhine State" (8 July 2013), para. 12.28). The Commission attributed this to the requirement that Bengalis obtain permission from local authorities to marry and to the lack of birth records for children of unregistered relationships (*ibid.*). Although Myanmar submits that over 15,000 birth certificates were issued in Buthidaung and Maungdaw Townships in 2017 as a result of renewed registration efforts, it does not represent that these were issued to Rohingya children. The evidence before the Court also establishes the difficulty of having Rohingya children included on household lists, the main form of documentation for Rohingya families in Rakhine State. Such inclusion was a prerequisite for the issuance of identity documents, access to education, and permission to travel within townships and to marry (Affidavit of Witness NJ, paras. 22-23; FFM, Report of the detailed findings (2018), paras. 583-585; United Nations High Commissioner for Refugees, "Study on community perceptions of citizenship, documentation and rights in Rakhine State" (August 2016), p. 9).

(c) ***Other restrictions***

148. Rohingya were subjected to other restrictions affecting numerous aspects of their daily lives. These included severe limitations on movement for Rohingya both between and within townships in northern Rakhine State (IIMM, Witness Statement No. IIMM0027995869, paras. 24-25, 28-29 and 31-32; IIMM, Witness Statement No. IIMM0019915259, paras. 35-36; FFM, Report of the detailed findings (2018), paras. 500-511; United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/32/18 (29 June 2016), paras. 28-31). Access to livelihoods, food, healthcare and other services for the Rohingya population was correspondingly constrained (*ibid.*; see also Final report of the Advisory Commission on Rakhine State (2017), p. 33; FFM, Report of the detailed findings (2018), paras. 509 and 534-539). The resulting delays in access to emergency healthcare could prove life threatening, including for babies and women experiencing complications during pregnancy and childbirth (United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/32/18 (29 June 2016), para. 39).

149. Rohingya travelling with or without documents faced arbitrary fees and demands for payment, while those travelling without the required certificates also risked arrest at security checkpoints (IIMM, Witness Statement No. IIMM0027992306, paras. 59, 61, 63-64 and 101; FFM, Report of the detailed findings (2018), paras. 511 and 525; United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/32/18 (29 June 2016), para. 28). The Court notes that restrictions on travel between townships also applied to the Kaman Muslims, despite their being recognized as Myanmar citizens (see paragraph 137 above), indicating an application of the policy to Muslims generally (FFM, Report of the detailed findings (2018), paras. 503-505).

150. Restrictions were also imposed on humanitarian aid to the region following the 2016 events (see paragraph 175 below). In 2017, just prior to the clearance operations, the Government of Myanmar banned the World Food Programme from operating in northern Rakhine State following a report finding that nearly one third of the population of northern Rakhine State was "severely food insecure", with women and children particularly affected (IIMM, Witness Statement No. IIMM0001557475, paras. 95-96; World Food Programme, "Food security assessment in the northern part of Rakhine State: Final report" (July 2017), p. 1). The report, which covered a geographic area that was 90 per cent populated by Rohingya, found that "[r]estriction of movement was one of the main constraints" for accessing food (*ibid.*, p. 2), and that "limited access to essential services including health care, and poor access to safe water and sanitation may have exacerbated . . . already serious malnutrition" (*ibid.*, p. 1). Médecins Sans Frontières was also required to terminate its services in northern Rakhine State two weeks prior to the 2017 clearance operations. A year later it had not been allowed to resume (Médecins Sans Frontières, "International humanitarian access to Rakhine State must urgently be permitted", press release (18 September 2017); Médecins Sans Frontières, "Myanmar continues to block humanitarian access in Rakhine State", press release (10 August 2018); see paragraph 124 above).

151. Following the sectarian violence in 2012, over 100,000 internally displaced Rohingya were confined in camps in central Rakhine State (United Nations Security Council, "Report of the Secretary-General on children and armed conflict in Myanmar", UN doc. S/2018/956 (29 October 2018), para. 3; United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/32/18 (29 June 2016), para. 30), with another 4,000 in the Aung Mingalar quarter of Sittwe (FFM, Report of the detailed findings (2018), para. 520; United Nations Human Rights Council, "Report of the Special Rapporteur on the situation of human rights in Myanmar", UN doc. A/HRC/25/64 (2 April 2014), para. 44). IDP camps for ethnic Rakhine and other non-Rohingya ethnic groups displaced in 2012 were subsequently closed, with the residents returned to their villages or resettled with government assistance (Final report of the Advisory Commission on Rakhine State (2017), p. 35; FFM, Report of the detailed findings (2018), paras. 689-691; United Nations and Partners, "Humanitarian Response Plan, January-December 2019" (December 2018), p. 10). However, Myanmar reports that, as of November 2025, over 100,000 Rohingya remained in IDP camps.

152. The Advisory Commission on Rakhine State found in 2017 that living conditions in the IDP camps "remain poor, with overcrowded shelters and inadequate access to services and livelihood opportunities", while "Muslim IDPs are almost entirely deprived of freedom of movement" (Final report of the Advisory Commission on Rakhine State (2017), pp. 33-35). Rohingya IDPs have been prevented "from engaging in livelihoods, attending school or accessing health services and they regularly face exploitation by the authorities" (United Nations General Assembly, "Report of the Special Rapporteur on the situation of human rights in Myanmar", UN doc. A/73/332 (20 August 2018), para. 52; see also United Nations and Partners, "Humanitarian Response Plan, January-December 2019" (December 2018), p. 11; FFM, Detailed findings (2019), paras. 156-159 and 172; Amnesty International, "'We will destroy everything': Military responsibility for crimes against humanity in Rakhine State, Myanmar" (27 June 2018) (hereinafter "Amnesty International, 'We will destroy everything'"), pp. 107-108; see paragraph 171 below).

2. Hate speech

153. The Court turns next to examining the allegations relating to anti-Rohingya speech, particularly messages emanating from the Myanmar military, including a military network on Facebook (see paragraphs 161-163 below). Both Parties refer to hate speech in their submissions, without defining such speech. While there is no international legal definition for hate speech, for purposes of analysing the arguments of the Parties and the record in this case, the Court considers hate speech to involve pejorative language that was derogatory towards or that dehumanized the Rohingya.

154. Myanmar acknowledges that hate speech within the general population has been a matter of concern, particularly since the intercommunal violence in 2012. It denies, however, that the Government of Myanmar or its military engaged in any campaign of hate speech and maintains that statements of political parties and monks cannot be taken to reflect the views of the Government.

155. The record establishes that following the 2012 violence, discourse that disparaged and dehumanized the Rohingya increased, including in the media and in the sermons of monks. In varying ways, the messages portrayed the Rohingya community as deceitful, threatening and a legitimate target of violence. Many messages used the derogatory slur "kalar", portraying the Rohingya as dark-skinned foreigners. Such speech was also propagated by State authorities, as described below.

(a) *Senior General Min Aung Hlaing and the Tatmadaw*

156. The Commander-in-Chief of the military, Senior General Min Aung Hlaing, delivered a series of speeches both during and after the 2017 clearance operations. While the Court does not have a transcript of those speeches, The Gambia submitted English versions of online reports of their content, the accuracy of which was not disputed by Myanmar.

157. For example, on 1 September 2017, while the clearance operations were under way, Senior General Hlaing gave a speech entitled "Entire government institutions and people must defend

the country with strong patriotism", at a fundraiser for the security forces that had participated in the clearance operations and for ethnic Rakhine civilians who had fled the ARSA attacks. The audience comprised high-level military and other government officials and private donors. The Senior General denounced the "Bengali terrorists" for their "well-planned terrorist acts" of 25 August 2017. He then stated:

> "There were Muslims but there was no problem. But the situation in Buthidaung and Maungtaw regions is different. Bengalis from those regions were taken into the country as manpower from Bengal region during the colonial era. Their population increased through various means, and later they attacked the local ethnics.
>
> During the Alethankyaw crisis in 1942, over 20,000 ethnic Rakhine people were slaughtered. Bengalis after murdering ethnic Rakhine people seized their land and villages and lived there. There is no oppression or intimidation against Bengalis in Rakhine region. The only measure security forces are taking is to ensure everything is within the framework of the law. The root cause of the recent crisis is the well-planned terrorist acts that came together with the denial of legal verification while ignoring the 1982 Citizenship Law. The act of using religion as a tool to make instigation and violent attacks is totally unacceptable. People living in Myanmar must obey its laws. The Bengali problem was a long-standing one which has become an unfinished job despite the efforts of the previous governments to solve it. The government in office is taking great care in solving the problem.
>
> As regards the term Bengali, . . . Bengalis calling themselves Rohingya has become a national cause. So we openly declare that 'absolutely, our country has no Rohingya race.'" (Senior General Min Aung Hlaing, "Entire government institutions and people must defend the country with strong patriotism" (1 September 2017).)

At a similar fundraiser on 10 September 2017, the Senior General reiterated that "the Bengali issue in Rakhine State occurred in the colonial era" and that "[e]fforts to solve this problem by the successive governments went unfinished" (Senior General Min Aung Hlaing, "Lack of country-loving spirits may lead to disunity and all citizens should have country-loving spirits, patriotic spirits and Myanmar spirits" (10 September 2017)).

158. At a speech later that month honouring members of the military for their "gallant" and "brilliant efforts" in the clearance operations, Senior General Hlaing again emphasized the attacks of the "extremist Bengali terrorists", and stated:

> "[T]he Bengali population exploded and the aliens tried to seize the land of local ethnics. The 1942 Alethankyaw crisis is the worst in history. Even during the post-independence era, the Tatmadaw had to crush the Mujahidin insurgents.
>
> . . . . . .
>
> [C]ollective efforts must be made to protect the minorities of Buthidaung/Maungtaw region . . . In checking the cases in which Bengalis trying to

> sneak into the country through various means were seized involvement of some officials [was] found. Race cannot be swallowed by the ground but only by another race. All must be loyal to the State in serving their duties, so that such cases will never happen again." (Senior General Min Aung Hlaing, "Gallant efforts to defend the HQ against terrorist attacks and brilliant efforts to restore regional peace, security are honoured" (20 September 2017).)

Finally, while addressing the ARSA attacks of 25 August at a speech to military graduates in December, he stated that the "Tatmadaw must fully protect the ethnic minorities in Rakhine region not to have the genocide" (Senior General Min Aung Hlaing, "Try to be good officers who are reliable for higher officials, given respect by lower ranks, be trustworthy of the populace" (2 December 2017)).

159. The Court considers that the Senior General's messages, as reported, were capable of fuelling hatred against the Rohingya. The speeches were not limited to condemning ARSA "terrorists" involved in the August 2017 attacks, but repeatedly portrayed the Rohingya in general as a violent threat to other ethnic groups that needed to be addressed. The Senior General described a "long-standing" "Bengali problem", accused the "Bengalis" of threatening to "swallow up" the legitimate races, and emphasized their non-recognition as a "national race". The speeches were widely disseminated through official Facebook Pages ("Pages"), including that of the Senior General, as well as other Pages of the Facebook military network (see paragraphs 161-162 below; IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 79; FFM, Report of the detailed findings (2018), paras. 1329 and 1336).

160. The Senior General's message echoed a 2012 Tatmadaw training presentation entitled "Fear of Extinction of Race", which was devoted to warning of the "danger of [Buddhism] being swallowed up by Bangladeshi Chittagonian Indian Muslims (TRANSLATOR'S NOTE Using derogatory phrase *kowtow kalars*)" and that "[n]o race faces extinction from being swallowed up by the earth, but by human beings" (Tatmadaw, Nyi Pyi Taw Divisional Military Headquarters, Organizing Public Lecture prepared by No. 13 Combatants Organizing School: "Fear of Extinction of Race" (Combatants organizing (officer) Training Batch No. 102) (26 October 2012), pp. 4-9; FFM, Report of the detailed findings (2018), para. 716).

(b) ***Facebook military network***

161. Facebook was Myanmar's most widely used social media network at the time of the clearance operations, with approximately 14 million resident users in 2018 (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 3). In August 2018, Facebook Inc. (known as Meta since 2021) removed 43 Pages containing public content from the platform. Six of the Pages were linked to persons or entities that were banned from Facebook for "human rights abuses" in Myanmar, including Pages in the name of Senior General Min Aung Hlaing and the Office of the Commander-in-Chief of the Defence Services (*ibid.*, paras. 6-10), which had 1.4 and 2.9 million followers, respectively. The other 37 were removed for "engaging in coordinated inauthentic behaviour" to "covertly push the messages of the Myanmar military" (*ibid.*, para. 6; see also Affidavit of Nathaniel Gleicher, Head of Security Policy at Meta Platforms, Inc. (2 November 2022)).

162. According to an independent investigation conducted by the IIMM, 36 of the removed Pages included a total of 10,485 pieces of content containing hate speech against the Rohingya between July and December 2017 (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 175). For example, the IIMM found posts containing hate speech on "'verified' Pages, which *de facto* served as the official presence of the Tatmadaw on Facebook", including the Pages of Senior General Min Aung Hlaing and his office (*ibid.*, paras. 8-10 and 176). The IIMM further found extensive confirmation of a "coordinated network" among all 43 Pages "with clear ties to the Myanmar military" (*ibid.*, para. 5). Often, the Pages shared creators, administrators and/or editors and were posting material using the same IP addresses and the same shared devices as those used for Pages overtly affiliated with the military. The same material was frequently posted on multiple Pages, sometimes within minutes (*ibid.*, paras. 88-159 and 177). The linkages among the Pages "demonstrate[d] the systematic and coordinated nature of the hate speech content" (*ibid.*, para. 178), which explains why the IIMM used the term Facebook "Military Network" (*ibid.*, para. 93).

163. Myanmar disputes the existence of a co-ordinated network, contending that while members of the Tatmadaw or police force may have administered such Pages from their office internet connection, they operated "outside the scope of their employment" and without instruction. Myanmar provides no evidence to rebut the findings of the IIMM that there was an interconnected network of Pages, while the IIMM persuasively establishes a co-ordinated relationship between hate speech posted on Pages and members of the Tatmadaw.

164. The IIMM considered hate speech in this context to be content "intended or likely to influence its Facebook audience to fear . . . [or] hate the target group and/or to encourage, support or excuse discriminatory measures or violence directed against the target group" (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 13). The IIMM found that posts on the Facebook military network "often played upon prevalent discriminatory and derogatory narratives", including "that the Rohingya pose an existential threat to Myanmar through violence, terrorism or 'Islamisation'", and "pose a threat to Burmese racial purity through their alleged rampant breeding" (*ibid.*, para. 175). Examples of posts found on the Facebook military network include the following:

— Portraying the "Kalar" as "murderous, rapists who will root out the entire Buddhism" (*ibid.*, para. 189);

— "'Kalar-soe' [bad Kalar], like you, relatives of cows, we don't hesitate to punch you till your teeth fall out! . . . If you say you love the Myanmar land so much, you can get a six-foot pit [a grave]" (*ibid.*, para. 228);

— Claiming that India is "eliminating all the Bengalis who enter the [border] area under the shoot-to-kill policy [and i]t is high time for Myanmar" to do the same (*ibid.*, para. 199);

— Warning of the "reproduction rate of the . . . extremist, terrorist Bengali Muslim people . . . [and] the brutal killing of our races" (*ibid.*, para. 192);

— "[T]he Bengali turned Rohingya [to] try to become '*Taing-Yin-Thar'* [ethnic group] . . . There is no limit on population, marrying as they wish, birthing children as they wish, they draw up plans to increase their population size" (*ibid.*, para. 218).

165. A video posted on at least four different sites of the Facebook military network on 28 August 2017, the day after the clearance operations in Chut Pyin and Maung Nu, shows a uniformed soldier explaining the plan for the clearance operations to a group of people, presumably non-Rohingya civilians in Rakhine State (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), paras. 321-329). The soldier states:

> "They [the Rohingya] are eating what we give them . . . they will even take over the whole country if they can. That's why, these animals, who are not from our country, infiltrating into our country . . . and making all kinds of threats . . . [W]e will clear the villages where those animals live . . . We have guns. We have bullets. That's what we came with. With ammunitions and the spirit to attack these animals, we have come here . . . [I]f you can carry a sword, then carry a sword, if you can carry a stick, then carry a stick. Carry whatever you can and bravely face these animals." (*Ibid.*, para. 320.)

166. Another message posted on two different Facebook military network Pages on 6 September 2017 asked: "How have you prepared to face Jihad?" (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 360). The post explained that "[t]he Muslims" had "systematically laid down [a] tactical plan" of jihad for murder and burning of homes. "Therefore, all the ethnic Myanmar people need to respond systematically". The message then described the analogous fate of others:

> "During the Jihad attack of Muslims in Indonesia and Bangladesh, . . . all the Muslims came out with swords/knives drawn from their houses at the same time. They forcefully entered the houses of the Buddhist people, and acted as if they were possessed by demons — old people killed other old people, women killed other women, children killed children. The Buddhist people who did not keep a sharp blade at home even for chopping onions suffered under the brilliant pre-planning of the Muslims. Hundreds of thousands of Buddhist necks were slain by Muslims' blades. Now, Myanmar, which is a Buddhist country, in order to prevent the same scenario that happened in Indonesia and Bangladesh, I want you to sharpen even the knives at home that you do not use." (*Ibid.*)

The post was accompanied by four cartoons portraying masked "terrorists" infiltrating the country and murdering people (*ibid.*, p. 179).

167. These and other messages dehumanized the Rohingya, portrayed them as foreign infiltrators and as violent and existential threats to the purity and existence of other ethnic groups and to Buddhism, and at times encouraged and justified violence against them.

168. On 24 August 2017, the day before the ARSA attacks and the commencement of the clearance operations, the Facebook Page of the Office of the Commander-in-Chief of the Defence Services reported that security forces had repelled an attack by 200 "Bengali carrying sticks, swords, and spears" (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 64). This post alone, according to the IIMM, "unleashed a torrent of public vitriol" (*ibid.*, para. 65). Of the 685 comments posted in reaction, over 200 "explicitly called for the Rohingya villagers, as well as Rohingya and/or Muslims in general, to be shot, killed, exterminated or permanently removed from Myanmar" (*ibid.*).

B. Events of 2016 to 2017

169. The Court now turns to the facts regarding the events of 2016 to 2017 in northern Rakhine State. It will begin with an examination of the nature and activities of ARSA (see paragraph 75 above), and then consider the evidential record relating to the events of 2016 in northern Rakhine State and the clearance operations that commenced on 25 August 2017.

1. Arakan Rohingya Salvation Army

170. Myanmar contends that in 2016 and 2017 it conducted counter-terrorism operations in northern Rakhine State, in response to attacks by ARSA and its supporters (see paragraph 75 above). The existence of ARSA is not in dispute. However, the Parties differ regarding the size, degree of organization and sophistication, and military capabilities of the group. Other armed groups also operated in northern Rakhine State during the relevant period, most notably the Arakan Army, a Rakhine insurgent group allegedly established in 2015 and whose activities intensified after 2018, but their activities are not directly relevant to the situation before the Court.

171. In support of their contentions regarding ARSA, both Parties have relied on a report by Amnesty International introduced into the record by The Gambia (Amnesty International, "We will destroy everything"). The report is based on interviews with over 300 Rohingya in Bangladesh, as well as 41 interviews conducted within Rakhine State with members of other ethnic groups, several members of Myanmar's security forces and village administrators, and on analysis of satellite imagery and forensic evidence (*ibid.*, pp. 17-18; see paragraph 124 above). The Amnesty International report thus constitutes one of the few sources in the record based in part on evidence collected within Myanmar independently of either Party. Myanmar also produced reports from the International Crisis Group addressing the development of ARSA, which were also relied upon by The Gambia in relation to ARSA activities and other matters (International Crisis Group, "Myanmar: A new Muslim insurgency in Rakhine State", Asia Report No. 283 (15 December 2016); International Crisis Group, "Myanmar's Rohingya crisis enters a dangerous new phase", Asia Report No. 292 (7 December 2017), p. 6). These reports by the International Crisis Group are based on information and assessments gathered in the field by teams of political analysts (see paragraph 124 above).

172. ARSA first emerged in northern Rakhine State in the wake of the sectarian violence in 2012 (see paragraph 75 above), with the stated objective of "defend[ing], salvag[ing] and protect[ing] [the] Rohingya community in Arakan" (ARSA, press release, ARSA/PR/01/2017 (29 March 2017)). According to Myanmar, participation in the group was limited to a few hundred members in 2016. By 25 August 2017, the group appears to have grown to at least "several thousand" (Amnesty International, "We will destroy everything", p. 23), including "supporters" — local villagers who joined in violence initiated by the group — often spontaneously (FFM, Report of the detailed findings (2018), para. 1022; Amnesty International, "We will destroy everything", p. 23). ARSA's structure, including its senior leadership, is not well-documented, but evidence shows that ARSA had a network of village "cells" in northern Rakhine State, as well as a hierarchy of leadership, some of whom appear to have been based in foreign countries and may have benefited from some amount of foreign funding (IIMM, Witness Statement No. IIMM0028674762, paras. 139-152; FFM, Report of the detailed findings (2018), paras. 1016-1017; International Crisis Group, "Myanmar: A new

Muslim insurgency in Rakhine State", Asia Report No. 283 (15 December 2016), p. 15). ARSA's activities in 2016 and 2017 (see paragraphs 175-178 below) also evidence its ability to co-ordinate its members.

173. The evidence in the record indicates that ARSA had a modest weapons arsenal, estimated at 40 to 70 firearms, and that "the majority of ARSA members used bladed weapons, sticks and a small number of locally produced (artisanal) firearms" (IIMM, "Evidence of ARSA weapons possession and use" (29 April 2024), para. 3; see also FFM, Report of the detailed findings (2018), para. 1032). This is consistent with the Tatmadaw's own records of the weapons seized during the 2017 clearance operations. In Chut Pyin in August 2017, for example, where Myanmar contends its security forces confronted 200 to 400 fighters, killing 32 of them, its military recovered "2 homemade guns (not functioning)" (confidential document submitted as Annex 120 to Myanmar's Counter-Memorial, p. 7, para. (F)); and in Min Gyi, where Myanmar contends it killed 101 ARSA fighters, no guns were seized (confidential document submitted as Annex 127 to Myanmar's Counter-Memorial, pp. 5-6). While ARSA made use of crude improvised explosive devices ("IEDs"), the evidence is inconclusive regarding the extent of its ability to manufacture and use them effectively (IIMM, Witness Statement No. IIMM0019628625, paras. 82-83; see also IIMM, "Evidence of ARSA weapons possession and use" (29 April 2024), para. 3).

174. Although ARSA possessed limited weapons capabilities and to a significant extent comprised individuals with little or no military training, by August 2017 it appears to have been sufficiently organized to be capable of conducting approximately 30 co-ordinated violent attacks and mobilizing several thousand Rohingya villagers to participate, as discussed below (FFM, Report of the detailed findings (2018), paras. 56, 58, 1029-1030 and 1038; Amnesty International, "We will destroy everything", p. 38). The International Crisis Group reported that ARSA's 9 October 2016 attack "marked a major escalation of violence in Rakhine and reflected an unprecedented level of planning" (International Crisis Group, "Myanmar: A new Muslim insurgency in Rakhine State", Asia Report No. 283 (15 December 2016), p. 6). The Gambia's expert also testified orally that, as of 25 August 2017, ARSA constituted a "serious" insurgency. All told, Myanmar submits that a total of 13 members of its security forces were killed in the 2017 ARSA attacks and the ensuing clearance operations.

2. Events leading up to the August 2017 clearance operations

175. The Court accepts Myanmar's contention that on 9 October 2016, ARSA attacked three Border Guard Police headquarters, with the stated objective of acquiring weapons. Those attacks resulted in the deaths of nine police officers and eight assailants (FFM, Report of the detailed findings (2018), para. 1036; International Crisis Group, "Myanmar: A new Muslim insurgency in Rakhine State", Asia Report No. 283 (15 December 2016), p. 6). While subsequent clashes allegedly occurred between October and November 2016, including several attacks on security force convoys, the record does not establish whether ARSA was involved (FFM, Report of the detailed findings (2018), para. 1037; see also International Crisis Group, "Myanmar: A new Muslim insurgency in Rakhine State", Asia Report No. 283 (15 December 2016), pp. 6-7). Myanmar's first clearance operation was in response to the October 2016 attacks. The resulting violence and conflict led to the displacement and flight of approximately 87,000 Rohingya to Bangladesh (see paragraph 75 above; FFM, Report

of the detailed findings (2018), paras. 1070 and 1404). Following ARSA's 2016 attacks, at least 416 individuals suspected of involvement in the ARSA attacks were arrested, investigated, charged and prosecuted (IIMM, "Evidence related to detention of Rohingya in Buthidaung Prison and other locations" (15 May 2024), paras. 28-30).

176. ARSA killed or abducted Rohingya informants both before and after 9 October 2016, and such practices increased in 2017 (FFM, Report of the detailed findings (2018), paras. 1052-1055; International Crisis Group, "Myanmar: A new Muslim insurgency in Rakhine State", Asia Report No. 283 (15 December 2016), p. 16). Myanmar referred to five ARSA attacks against other ethnic groups in the months preceding 25 August 2017. The evidence it relied upon, however, indicates that only the attack in the Kyun Pauk Pyu Su village tract on 24 June 2017, in which two villagers were killed, could be conclusively attributed to ARSA (International Crisis Group, "Myanmar's Rohingya crisis enters a dangerous new phase", Asia Report No. 292 (7 December 2017), p. 3; Amnesty International, "We will destroy everything", p. 44; see also FFM, Report of the detailed findings (2018), para. 1137). The Court notes that Myanmar did not declare ARSA a terrorist organization prior to 25 August 2017.

177. On 25 August 2017, ARSA carried out co-ordinated attacks on at least 30 security force outposts across northern Rakhine State using the weaponry indicated above (see paragraph 173), with further attacks occurring in the days that followed. The Court will review the evidence regarding ARSA attacks in relation to specific locations below. The Court observes that, while these attacks primarily targeted police and military outposts, there is credible evidence that ARSA also carried out several attacks against civilians. In two villages in the Kha Maung Seik village tract, where a police station was also attacked on 25 August, up to 99 Hindus were killed, while another attack the following day near Myo Thu Gyi killed 6 other Hindus (FFM, Report of the detailed findings (2018), paras. 1039, 1042, 1050, 1060 and 1163; Amnesty International, "We will destroy everything", p. 45; Amnesty International, "Myanmar: New evidence reveals Rohingya armed group massacred scores in Rakhine State" (22 May 2018), pp. 2-6; International Crisis Group, "Myanmar's Rohingya crisis enters a dangerous new phase", Asia Report No. 292 (7 December 2017), pp. 4 and 7).

178. The record supports Myanmar's contention that in the days following the co-ordinated attacks of 25 August 2017, the ARSA commander-in-chief issued a message ordering the burning of non-Rohingya villages (International Crisis Group, "Myanmar's Rohingya crisis enters a dangerous new phase", Asia Report No. 292 (7 December 2017), p. 6; Amnesty International, "We will destroy everything", p. 47). The Court is satisfied, on the basis of satellite imagery and other evidence in the record, that ARSA burned the villages of Ah Htet Pyu Ma and Khu Daing (FFM, Report of the detailed findings (2018), paras. 1061-1064; International Crisis Group, "Myanmar's Rohingya crisis enters a dangerous new phase", Asia Report No. 292 (7 December 2017), p. 7). With respect to Ah Htet Pyu Ma, satellite imagery indicated that both the Rakhine and Rohingya parts of the village were burned, in contrast to other villages burned during the 2017 clearance operations, in which Rakhine areas were left intact (FFM, Report of the detailed findings (2018), para. 1063; see also paragraph 271 below). Although Myanmar suggests the possibility of other burnings, no additional specific instances of village burning attributable to ARSA are substantiated by the record (FFM, Report of the detailed findings (2018), paras. 757 and 1062-1065; International Crisis Group, "Myanmar's Rohingya crisis enters a dangerous new phase", Asia Report No. 292 (7 December 2017), p. 7).

C. Myanmar's clearance operations

179. The Court now turns to the clearance operations launched by the Myanmar security forces in Rohingya villages in northern Rakhine State in August 2017. The Parties agree that in the months leading up to the co-ordinated ARSA attacks of 25 August 2017, the Tatmadaw built up its military capacity in northern Rakhine State, which Myanmar contends was in response to ARSA's increasing activities. During this period, Myanmar also took measures such as confiscating any objects considered capable of being used as weapons from Rohingya across the region and ordering the removal of barriers and fences around Rohingya homes and land (see, for instance, Affidavit of Witness NJ, para. 29; Affidavit of Witness MS, para. 25; IIMM, Witness Statement No. IIMM0019629206, para. 58; IIMM, Witness Statement No. IIMM0027971404, para. 32; IIMM, Witness Statement No. IIMM0027992947, para. 63; FFM, Report of the detailed findings (2018), paras. 1123-1126). The Gambia contends that these actions rendered the Rohingya defenceless; Myanmar maintains that they were legitimate counter-terrorism measures. Even if adopted for the security reasons advanced by Myanmar, these measures foreseeably reduced the ability of Rohingya civilians to protect themselves.

180. On 10 August 2017, over 1,600 members of the Tatmadaw's 33rd and 99th Light Infantry Divisions were airlifted into Rakhine State (FFM, Report of the detailed findings (2018), para. 1151). Additional military units were attached to Military Operational Command (MOC)-15, covering Buthidaung Township (*ibid.*, para. 1152). Moreover, in the weeks prior to 25 August 2017, the Tatmadaw moved closer to the border areas and increased its presence in areas normally guarded by BGP units (*ibid.*, para. 1153). According to Myanmar, 3,000 to 3,500 frontline and 1,000 to 1,500 support security forces were ultimately deployed.

181. The clearance operations began on 25 August 2017, the day the ARSA attacks commenced. The evidence demonstrates that in the hours following ARSA's initial attacks, Myanmar's security forces were deployed to several Rohingya villages which housed security force outposts targeted by ARSA's attacks, including Kha Maung Seik, Ta Man Thar, Myin Hlut (see paragraph 245 below) and Ah Lel Than Kyaw (see paragraph 242 below), all located in Maungdaw Township. Myanmar's security forces conducted wider and more systematic operations over the following days, with multiple units operating simultaneously across all three townships, including in the villages of Chut Pyin (Rathedaung) and Maung Nu (Buthidaung) on 27 August 2017 (see paragraphs 200 and 213 below). The following day, separate units undertook operations in villages including Gu Dar Pyin (Buthidaung) (see paragraph 226 below), and Koe Tan Kauk and Chein Khar Li (Rathedaung) (see paragraph 234 below). Min Gyi (Maungdaw) was among the villages subject to clearance operations on 30 August 2017 (see paragraph 186 below), while locations including Inn Din (Maungdaw) were targeted on 1 September 2017 (see paragraph 230 below) (see sketch-map No. 1 for locations).

SKETCH-MAP NO. 1 — THE TOWNSHIPS OF NORTHERN RAKHINE STATE AND THE LOCATION OF VILLAGES REFERRED TO IN THE GAMBIA'S MEMORIAL



(Source: Memorial of The Gambia, Vol. XII, fig. 1.2.)

182. Both ARSA's offensive and Myanmar's response caused residents to flee into nearby villages, some of which were in turn targeted by clearance operations. For instance, in Buthidaung Township, ARSA's attack on Hpaung Taw Pyin's BGP outpost and Myanmar's subsequent operation in that village on 25 August 2017 caused residents to flee into Maung Nu, which was in turn targeted on 27 August 2017 (see paragraph 217 below). The security forces involved in the Maung Nu clearance operation, specifically the 552nd and 564th Light Infantry Regiments, had conducted operations in the preceding days in Taung Bazar and Nga Yant Chaung.

183. In Maungdaw Township, clearance operations in Wet Kyein (also spelled "Wat Kyein") and Pa Da Kar Ywar Thit on 26 and 29 August 2017 followed ARSA's attacks at Net Chaung and Wet Kyein on 25 and 26 August 2017. These clearance operations caused numerous residents of those two villages to flee to Min Gyi, which was in turn targeted by the security forces on 30 August 2017 (see paragraph 187 below). Witness NJ recalled that several days after she fled Chut Pyin, the village in which she was sheltering was in turn attacked by Myanmar's security forces (Affidavit of Witness NJ, para. 70).

184. Myanmar contends that the clearance operations officially ended on 5 September 2017 but acknowledges sporadic incidents thereafter (see paragraph 75 above). The evidence establishes that, after that date, Myanmar continued to engage in the burning and destruction of villages targeted by clearance operations (FFM, Report of the detailed findings (2018), para. 969; see paragraphs 272-282 below).

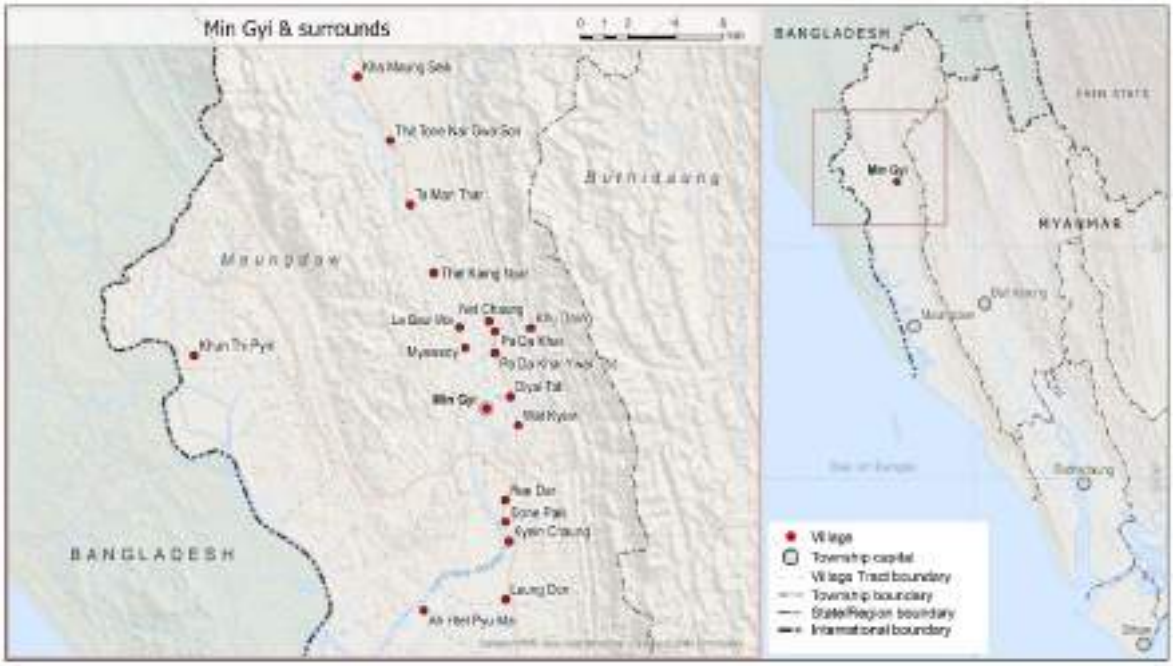
185. As noted, the Court will not examine every alleged incident, finding it sufficient to examine those facts that may elucidate whether acts prohibited under the Genocide Convention were committed (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 143, para. 242; see paragraph 132 above). The Court accordingly will examine (1) the events in the three locations primarily addressed by the Parties: *(a)* Min Gyi, *(b)* Chut Pyin and *(c)* Maung Nu. It will then examine (2) other locations identified as sites of grave incidents during the clearance operations, before finally assessing (3) the broader evidence regarding the common aspects of Myanmar's clearance operations. The Court will use the Burmese name for locations and indicate the Rohingya name in parentheses, in line with the practice followed by both Parties.

1. Events in Min Gyi, Chut Pyin and Maung Nu

(a) *Min Gyi (Tula Toli)*

186. Min Gyi was a majority Rohingya village situated in Maungdaw Township, which was surrounded on three sides by the Purma River (see sketch-map No. 2 below). As set forth below, the Court finds that on the morning of 30 August 2017, the Tatmadaw's 99th Light Infantry Division conducted a clearance operation during which it engaged in the indiscriminate and targeted killing of civilians, including children and persons fleeing; separated and executed men; committed widespread sexual violence; and burned people, bodies and homes, while leaving the settlement inhabited by the Rakhine ethnic group largely untouched.

SKETCH-MAP NO. 2 — MIN GYI AND SURROUNDING VILLAGES



(Source: Material submitted by Myanmar at the hearing pursuant to Practice Direction IX*quater*.)

187. Myanmar alleges that the operation was conducted in response to ARSA violence on 25 and 26 August 2017 in the vicinity of Min Gyi. Myanmar does not contend that any ARSA operation took place within the village of Min Gyi itself prior to the clearance operation. The record, however, indicates that some ARSA activity occurred in nearby areas across the river from Min Gyi beginning on 25 August 2017, including at the police checkpoint at Net Chaung, a few kilometres north of Min Gyi, and at the deserted police checkpoint at Wet Kyein (FFM, Report of the detailed findings (2018), para. 757; see also Amnesty International, "We will destroy everything", p. 73; see paragraph 183 above). Witnesses confirmed signs of skirmishes between ARSA and the military in the period between 26 and 29 August 2017 (IIMM, Witness Statement No. IIMM0027992990, para. 153; see also confidential witness statement submitted as Annex 157 to Myanmar's Counter-Memorial, pp. 1-3; confidential witness statement submitted as Annex 83 to Myanmar's Rejoinder, pp. 1-3). As noted above (see paragraph 183), the security forces conducted two clearance operations between 26 and 29 August 2017 in the Rohingya villages in the Wet Kyein and Pa Da Kar Ywar Thit village tracts across the river from Min Gyi, shooting villagers and using "launchers" — weapons firing explosive projectiles — to set houses on fire (FFM, Report of the detailed findings (2018), paras. 758-759, and satellite image, p. 181). A number of villagers who escaped those operations fled to Min Gyi.

188. On the morning of 30 August 2017, Myanmar's security forces entered Min Gyi from the north, accompanied by ethnic Rakhine and members of other ethnic groups from nearby villages equipped with long knives, machetes and other types of local weapons (FFM, Report of the detailed findings (2018), paras. 761-762 and 777). Upon approaching the village, the security forces opened fire and began burning houses from the outskirts, using launchers (*ibid.*, para. 761). An IIMM witness and other written testimony establish the presence of a helicopter flying over the village that morning, which was observed landing in a nearby ethnic Rakhine village and unloading containers of petrol

(IIMM, Witness Statement No. IIMM0027993001, paras. 154-155; LAW, Witness Statement No. 009, paras. 37-38; confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 16).

189. As the security forces advanced into the village, inhabitants fled, some towards the surrounding hills and others towards a large sandbank area by the river, commonly referred to as the shore. Witness MS testified before the Court that he observed houses burning and heard continuous gunfire as he and his family fled towards the shore (CR 2026/15, pp. 13-14 (Witness MS)). IIMM Witness P1301 similarly recounted that he was at home that morning and heard shooting, so he and his family left their house and fled towards the riverbank, with the hope of crossing to Wet Kyein (IIMM, Witness Statement No. IIMM0027993001, paras. 122-123). Another IIMM witness, identified as P1477, watched from the opposite side of the river as soldiers shot at villagers fleeing towards the riverbank (IIMM, Witness Statement No. IIMM0019629206, paras. 138-145 and 156).

190. The evidence before the Court indicates that those who managed to reach the shore were effectively cornered by security forces on the riverbank, the only available route to safety being to swim across the river (FFM, Report of the detailed findings (2018), paras. 761-764 and 766-770). Security forces opened fire on the population fleeing to, and assembled along, the riverbank (IIMM, Witness Statement No. IIMM0027993001, paras. 122-123 and 127; IIMM, Witness Statement No. IIMM0019629206, para. 138; LAW, Witness Statement No. 011, para. 23; confidential witness statement submitted as Annex 349 to The Gambia's Memorial, paras. 18 and 21). Witness MS testified orally that the security forces trapped the villagers against the shore, "then they targeted and intentionally started shooting towards the people who gathered in that area" (CR 2026/15, p. 14 (Witness MS)). IIMM Witness P1301 also described standing on the shore with his family and other villagers when security forces surrounded them on the bank of the river, then started shooting at the crowd indiscriminately (IIMM, Witness Statement No. IIMM0027993001, para. 127). Those on the shore "numbered in the hundreds" (FFM, Report of the detailed findings (2018), para. 766). These accounts are corroborated by extensive non-governmental organization reporting (see Human Rights Watch, *Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli* (19 December 2017), pp. 13-15; Fortify Rights and United States Holocaust Memorial Museum, "'They tried to kill us all': Atrocity crimes against Rohingya Muslims in Rakhine State, Myanmar" (November 2017), pp. 1 and 9; Amnesty International, "We will destroy everything", p. 73).

191. A number of individuals, including Witness MS and IIMM Witness P1301, attempted to cross the river (CR 2026/15, p. 14 (Witness MS); IIMM, Witness Statement No. IIMM0027993001, para. 128; see FFM, Report of the detailed findings (2018), para. 764). Witness MS recounted that many, particularly the elderly and children, drowned in the process, while others were shot by security forces as they tried to swim to safety (CR 2026/15, p. 16 (Witness MS)). There were numerous reports of bodies floating in the river (LAW, Witness Statement No. 009, para. 31; FFM, Report of the detailed findings (2018), paras. 763-765).

192. The security forces subsequently rounded up the several hundred people who remained on the shore. According to the testimony of Witness MS and other evidence, women and children

were separated from the men and compelled to sit in a depressed area of the shoreline (CR 2026/15, p. 15 (Witness MS); FFM, Report of the detailed findings (2018), para. 767; Amnesty International, "We will destroy everything", p. 73; Human Rights Watch, *Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli* (19 December 2017), p. 13). The men who remained on the shore were instructed to sit in a line and subsequently ordered to walk (CR 2026/15, p. 15 (Witness MS)). Witness MS testified orally that as the men began to move, the military "started shooting, gun firing towards [them]" (*ibid.*; Affidavit of Witness MS, paras. 23 and 26). Soldiers then turned to the women and children, some of whom were shot, some thrown into the river and others onto fires (FFM, Report of the detailed findings (2018), para. 770). Individuals who survived initial gunshot wounds, including children, were killed with long knives (*ibid.*, para. 767; confidential witness statement submitted as Annex 347 to The Gambia's Memorial, para. 23; LAW, Witness Statement No. 024, para. 21; see also Affidavit of Witness MS, para. 26).

193. The security forces placed the bodies of those killed in multiple pits and set them alight using petrol. One IIMM witness described seeing the security forces "taking some of the men they found alive and making them dig . . . As soon as the hole was ready, the soldiers shot the people who had been digging and everyone fell in the holes." (IIMM, Witness Statement No. IIMM0027993001, paras. 147 and 149.) After the holes were dug, the witness saw security forces drag dead bodies to the holes and "take the gallons delivered by the helicopter . . . and pour liquid out of the gallons over the bodies in the holes" (*ibid.*, para. 157). Witness MS similarly testified: "the military and Rakhine . . . put [the bodies] all together in 4 big holes" (Affidavit of Witness MS, para. 28). He "saw them pour something from the bottle and set light to these holes full of bodies" (*ibid.*; see also IIMM, Witness Statement No. IIMM0027993001, paras. 147-157; LAW, Witness Statement No. 030, para. 27; LAW, Witness Statement No. 009, para. 39; FFM, Report of the detailed findings (2018), paras. 761-764 and 766-770).

194. The evidence establishes that children were deliberately shot, killed with knives or thrown into the river or onto fires. Witness MS testified:

> "The children were running in the shore and they were crying, the children who were close to the military, the military took them and threw them in the water or on the fire.
>
> Some of the small children died from the initial shooting or being attacked by knives but most were later thrown on the fire in the graves that were dug. Some of the children were walking and crawling in the sand, and the military hit them and put them in the fire. Some were thrown into the water." (Affidavit of Witness MS, paras. 29-30; see also CR 2026/15, pp. 15-16 (Witness MS).)

IIMM Witness P1301 saw children "who were scattered everywhere . . . being killed with knives and machetes" and testified that "the soldiers snatched the babies from their mothers and threw the babies into the holes after they had been set on fire" (IIMM, Witness Statement No. IIMM0027993001, paras. 137 and 161). Six of Witness MS's family members were killed that day, including five children (Affidavit of Witness MS, paras. 1-2; CR 2026/15, p. 17 (Witness MS)). IIMM Witness P1477 lost ten family members, including a two-and-a-half-year-old daughter, and testified to the killings of other children and babies and seeing children's bodies recovered from the river (IIMM, Witness Statement No. IIMM0019629206, paras. 10-15, 125 and 146). One FFM witness

recounted that soldiers took infants from their mothers' laps and threw them into the river, and recalled seeing children's bodies floating away. Another described seeing soldiers stabbing a ten-year-old boy who was trying to run away (FFM, Report of the detailed findings (2018), para. 770). Other witnesses testified to the killing of children (see confidential witness statement submitted as Annex 345 to The Gambia's Memorial, para. 33; LAW, Witness Statement No. 009, para. 40; confidential witness statement submitted as Annex 347 to The Gambia's Memorial, para. 23; confidential witness statement submitted as Annex 360 to The Gambia's Memorial, paras. 25-29; LAW, Witness Statement No. 024, para. 22; confidential witness statement submitted as Annex 364 to The Gambia's Memorial, para. 17; confidential witness statement submitted as Annex 365 to The Gambia's Memorial, paras. 28-29).

195. Thereafter, security forces took groups of women and girls to larger houses within the village, together with any surviving young children and infants accompanying them. IIMM Witness P1477 saw "70 to 80 women all together" taken in groups by soldiers into houses (IIMM, Witness Statement No. IIMM0019629206, paras. 149-150). Another IIMM witness saw approximately 200 women taken into houses, and testified that the soldiers "took not only the women but also the babies they were carrying and the toddlers they had with them". His own wife escaped from one of the houses (IIMM, Witness Statement No. IIMM0027993001, paras. 158 and 167). Other witnesses consistently reported seeing, or being part of, groups of five or more women who were taken by the military into houses (LAW, Witness Statement No. 009, para. 42; confidential witness statement submitted as Annex 349 to The Gambia's Memorial, para. 19; see also Human Rights Watch, *Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli* (19 December 2017), p. 21; Fortify Rights and United States Holocaust Memorial Museum, "'They tried to kill us all': Atrocity crimes against Rohingya Muslims in Rakhine State, Myanmar" (November 2017), p. 10). Additional evidence indicates that once the groups were inside the houses, the women were subjected to beatings, rape and, in numerous instances, stabbing, while the children and infants were killed or seriously injured, frequently by stabbing (confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 17; confidential witness statement submitted as Annex 357 to The Gambia's Memorial, paras. 26-33; confidential witness statement submitted as Annex 360 to The Gambia's Memorial, para. 29; FFM, Report of the detailed findings (2018), paras. 771-772; Human Rights Watch, *Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli* (19 December 2017), pp. 21-24, 26 and 28; Amnesty International, "We will destroy everything", p. 91).

196. Some witnesses stated that their groups were taken into a house where women had been killed and reported seeing numerous dead bodies (confidential witness statement submitted as Annex 357 to The Gambia's Memorial, para. 28; see also confidential witness statement submitted as Annex 360 to The Gambia's Memorial, para. 29; "Myanmar's Killing Fields", transcript, *Frontline* (8 May 2018)). One witness testified that she was taken into a house with her three-month-old daughter, where she witnessed dead women on the ground and saw the military rip off the clothing of other women, rape them and beat them to death. She reported that she and her infant were slashed and that she was beaten with a large stick by the military and subsequently raped by five of them, after which more women were brought into the house (confidential witness statement submitted as Annex 360 to The Gambia's Memorial, para. 29). Women survivors from Min Gyi who spoke with the FFM, "displayed both serious burn marks and stab wounds, which were consistent with their accounts, and were deeply traumatised" (FFM, Report of the detailed findings (2018), para. 772).

197. Oral and written testimony, including that of Witness MS, indicates that the houses in which these acts occurred were subsequently locked and set on fire, killing the women and children who remained inside, save the few who were able to escape (CR 2026/15, p. 16 (Witness MS); confidential witness statement submitted as Annex 349 to The Gambia's Memorial, para. 19; confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 17; confidential witness statement submitted as Annex 357 to The Gambia's Memorial, paras. 31-33; confidential witness statement submitted as Annex 360 to The Gambia's Memorial, para. 30; FFM, Report of the detailed findings (2018), paras. 771-772, 909 and 924; Human Rights Watch, *Massacre by the River: Burmese Army Crimes against Humanity in Tula Toli* (19 December 2017), pp. 21-22 and 24).

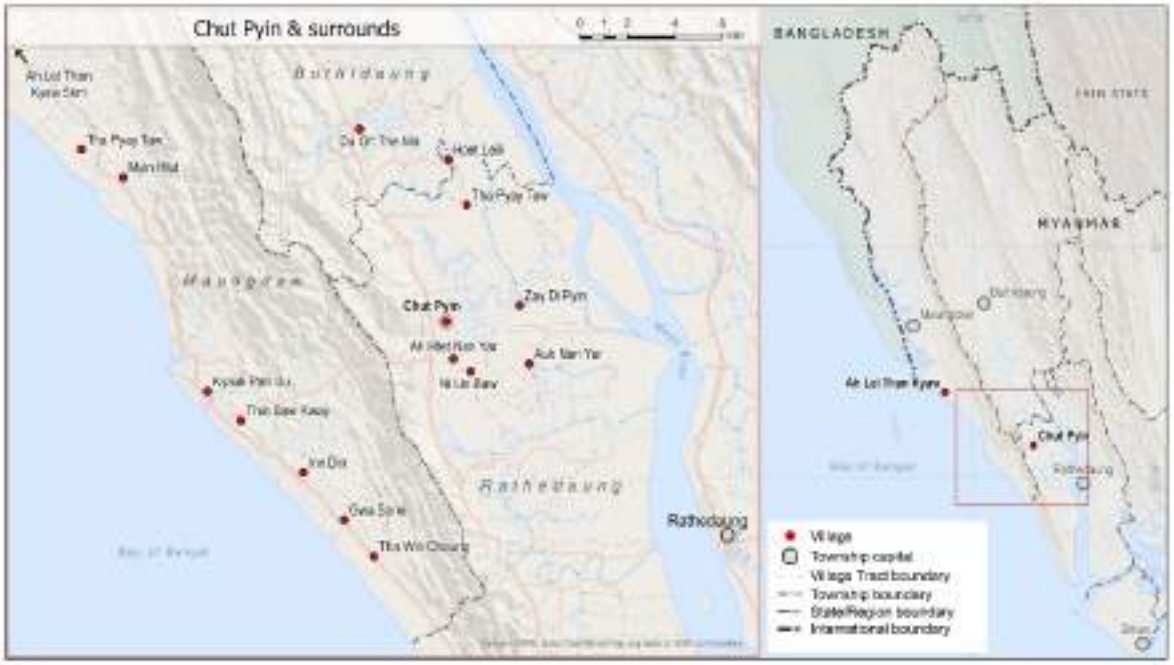
198. Satellite imagery was collected on 16 September 2017 of the locations examined by the Court. That imagery, together with witness accounts, establishes that the approximately 440 houses and other structures in the various Rohingya hamlets of Min Gyi were burned and completely destroyed (CR 2026/15, pp. 14 and 16 (Witness MS); LAW, Witness Statement No. 009, para. 42; confidential witness statement submitted as Annex 349 to The Gambia's Memorial, para. 19; confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 17; confidential witness statement submitted as Annex 364 to The Gambia's Memorial, para. 18; confidential witness statement submitted as Annex 365 to The Gambia's Memorial, para. 29; FFM, Report of the detailed findings (2018), para. 773). The satellite imagery shows Min Gyi to have been completely destroyed, in contrast to the neighbouring Rakhine settlement which remained intact (FFM, Report of the detailed findings (2018), para. 773, and satellite image, p. 185).

199. While the Court is unable to determine the precise number of deaths at Min Gyi on 30 August 2017, the FFM found to be credible information compiled by the Rohingya refugee community that 750 people were killed, including at least 400 Min Gyi residents, as well as Rohingya who had fled from other villages (FFM, Report of the detailed findings (2018), paras. 774-775). The Court finds these figures supported by the evidence.

(b) ***Chut Pyin (Shuap Praung)***

200. Chut Pyin was a Rohingya village situated within a village tract of the same name in Rathedaung Township, close to the junction of the three townships in northern Rakhine State. It included a Rohingya village and an ethnically Rakhine village (see sketch-map No. 3 below). On 27 August 2017, the Tatmadaw's 33rd Light Infantry Division conducted a clearance operation in Chut Pyin. As set forth below, the operation was characterized by the encirclement of the Rohingya civilian population, indiscriminate and targeted killings, including of children, the separation and killing of men, sexual violence, shooting of villagers who were fleeing, and the deliberate burning of Rohingya homes, while the nearby Rakhine village was left intact.

SKETCH-MAP NO. 3 — CHUT PYIN AND SURROUNDING VILLAGES



(Source: Material submitted by Myanmar at the hearing pursuant to Practice Direction IX*quater*.)

201. The Respondent contends that Chut Pyin was "a particularly important foothold" for ARSA fighters. The material in the record indicates limited ARSA activity in that village in the months preceding 25 August 2017, but establishes heightened tensions in July and August before the clearance operation, including intercommunal conflict, increased security presence and restrictions on movement (FFM, Report of the detailed findings (2018), para. 780).

202. ARSA attacked several outposts in the general vicinity of Chut Pyin on 25 August 2017 (Kyauk Pan Du, Ah Lel Than Kyaw, Thin Baw Kway, and Gwa Sone). Myanmar contends that the clearance operation in Chut Pyin responded to an attack on the Chut Pyin police outpost on 27 August 2017. According to Myanmar's records, that attack was carried out by one individual who threw an IED and ran away towards Chut Pyin, where pursuing security forces were confronted with several hundred attackers bearing "IEDs and homemade guns" (confidential document submitted as Annex 120 to Myanmar's Counter-Memorial, pp. 5-6, para. (B)). The written testimony to support this claim, however, is inconsistent regarding the number of attackers and was given by persons in Myanmar's custody (see paragraph 125 above; confidential witness statement submitted as Annex 105 to Myanmar's Rejoinder; confidential witness statement submitted as Annex 106 to Myanmar's Rejoinder). IIMM witness testimonies regarding Chut Pyin do not mention such a confrontation. While the Court cannot rule out that ARSA members may have been present in Chut Pyin at the time of the clearance operation, the evidence indicates that the operation was primarily directed against civilians.

203. The record establishes that Myanmar's security forces encircled the village of Chut Pyin at around 2 p.m. on 27 August 2017; this was followed by an immediate escalation of violence, including heavy gunfire across the village and direct attacks on civilians at or near their homes

(Affidavit of Witness NJ, paras. 41, 43-46, 48 and 51-52; CR 2026/14, pp. 13-14 and 31 (Witness NJ); IIMM, Witness Statement No. IIMM0027971404, paras. 98-103; IIMM, Witness Statement No. IIMM0027992301, paras. 31-37; IIMM, Witness Statement No. IIMM0027999848, paras. 63-74; IIMM, Witness Statement No. IIMM0019925304, paras. 103-110; FFM, Report of the detailed findings (2018), paras. 782-783). Witness NJ testified that she "could see the military personnel moving door to door" and "heard them yelling words such as 'minglo', 'kola', 'bengali'" (Affidavit of Witness NJ, para. 44). Witness NJ testified that the members of the military were accompanied by "non-military Rakhine men assisting with the mission" (*ibid.*, paras. 44 and 46). Other witnesses reported to the FFM that the security forces were accompanied by armed ethnic Rakhine, including from neighbouring villages. Some of the ethnic Rakhine were wearing military-style uniforms and equipped with guns, while others were in non-military clothing and equipped with weapons such as knives and machetes (FFM, Report of the detailed findings (2018), paras. 782 and 797-798).

204. IIMM Witness P2334 stated that the military used "[self-loading rifles] and Bren guns", with which "you can shoot non-stop and you wear the bullets in a big chain across the shoulder", and that the military were shooting from all directions. The sight of so many bullets looked like "drops of rain" (IIMM, Witness Statement No. IIMM0027971404, paras. 99-102). Another IIMM witness "saw two military soldiers positioning two of those big weapons . . . with a round wheel and a tube in front . . . The militar[y] fired, the bullets from those weapons were non-stop" (IIMM, Witness Statement No. IIMM0027999848, para. 73).

205. Men and boys were separated from women and younger children (IIMM, Witness Statement No. IIMM0019925304, paras. 107-109 and 117). Witness NJ testified before the Court that the military severely beat and took away her husband and father-in-law, after which she never saw them again (CR 2026/14, pp. 13 and 30-31 (Witness NJ)). The evidence describes individuals being captured and held in a paddy field, followed by separation and killing. IIMM witnesses testified that the women were made to kneel in one row and the men in another. The men were then taken away from the field and gunfire was heard; women later saw bodies or learned that the men had been killed (IIMM, Witness Statement No. IIMM0027971404, para. 98, see also paras. 115-116; IIMM, Witness Statement No. IIMM0027992301, paras. 39-45). IIMM witnesses described point-blank executions (IIMM, Witness Statement No. IIMM0027992301, paras. 43-44; IIMM, Witness Statement No. IIMM0027999848, para. 63). IIMM Witness P2252 testified that, once her family reached the paddy field, "[f]our soldiers surrounded" her son, then "a soldier put the bullets into his long gun and shot him in the temple". Her son "died immediately" before her eyes. She saw her husband and two other sons handcuffed with a group of men outside a school near the field but never saw them again (IIMM, Witness Statement No. IIMM0027992301, paras. 41-42 and 45).

206. There are numerous reports of sexual violence at Chut Pyin. Witness NJ told the Court that, following the killing of her child, she was beaten, stabbed and gang-raped by two soldiers "one after another" in her home until she lost consciousness (Affidavit of Witness NJ, paras. 54-59; CR 2026/14, p. 15 (Witness NJ)). IIMM Witness P2499 testified to being gang-raped at a nearby school that was being used as a military base:

> "I feel ashamed to talk about what happened to me at the school . . . The soldiers took me inside the school before *Maghrib* prayer time . . . [I]nside the school, they blindfolded me with my hijab . . . I tried to fight back as much as I could, I remember I even bit one of them . . . I felt in my heart they would kill me . . . Then the soldiers tore my clothes apart. When I was resisting so much, a soldier pointed the gun at my back. At that point, I did not fight back anymore; I gave up the hope for life . . . More than one raped me but I don't know how many, maybe two or three" (IIMM, Witness Statement No. IIMM0027999848, paras. 81-84).

Other accounts confirm gang rapes perpetrated at the school (FFM, Report of the detailed findings (2018), para. 790; Amnesty International, "We will destroy everything", p. 91; Physicians for Human Rights, "'Please tell the world what they have done to us': The Chut Pyin massacre — Forensic evidence of violence against the Rohingya in Myanmar" (July 2018), p. 19; see paragraph 124 above).

207. The testimonies of multiple witnesses, including that of Witness NJ above, establish that women were subjected to serious physical injuries before or after being raped, and that some were then killed. IIMM Witness P1461 testified that women were taken into houses, sometimes at knifepoint, and raped. She stated: "I have seen with my own eyes a woman nine month pregnant being raped and killed with a knife. They attacked her with a knife and cut her belly." (IIMM, Witness Statement No. IIMM0019922097, para. 50; see also confidential document submitted as Annex 336 to The Gambia's Memorial, pp. 2, 6, 8, 11-14, 16-18, 20, 49, 61, 65 and 69.) The evidence indicates at least one instance of serious sexual mutilation. IIMM Witness P1235 testified:

> "I saw a lady whose breast was cut and who died instantly . . . I saw that she was taken by [the] militar[y] . . . When she tried to resist, I saw that a mogh [Rakhine] man came, held one of her breasts and chopped it off. She started bleeding a lot and screaming, and the militar[y] shot her from a distance." (IIMM, Witness Statement No. IIMM0019925304, para. 161.)

Similar evidence was reported by the FFM (FFM, Report of the detailed findings (2018), para. 790; see also confidential document submitted as Annex 336 to The Gambia's Memorial, p. 49; Fortify Rights, "'They gave them long swords': Preparations for genocide and crimes against humanity against Rohingya Muslims in Rakhine State, Myanmar" (July 2018), p. 69).

208. The evidence in the record shows that disabled persons, the elderly and children were among the victims (IIMM, Witness Statement No. IIMM0019922097, para. 62; IIMM, Witness Statement No. IIMM0027971404, para. 116; IIMM, Witness Statement No. IIMM0027992301, paras. 42 and 52; IIMM, Witness Statement No. IIMM0019925304, para. 161; IIMM, Witness Statement No. IIMM0028059653, para. 157; FFM, Report of the detailed findings (2018), paras. 785-789). Witness NJ testified that her child was taken from her arms by the military, stabbed with a knife and thrown into a burning house. IIMM Witness P2252 "saw that the militar[y] gathered hay to start a fire and threw some little children in the fire. I saw four or five of them being thrown . . . They were throwing them like a ball" (IIMM, Witness Statement No. IIMM0027992301, para. 52;

see also FFM, Report of the detailed findings (2018), para. 789; "Myanmar's Killing Fields", transcript, *Frontline* (8 May 2018)).

209. Many people attempting to flee were killed, as a result of both deliberate targeting and indiscriminate shooting. IIMM Witness P2334 reported that, "[a]mongst all the shooting and burning, people started fleeing from Shuap Praung towards the west, crossing the rice fields, because they couldn't flee to other directions because of the military" (IIMM, Witness Statement No. IIMM0027971404, para. 103). He later "saw the bodies" of the villagers who "got shot while they were running away from the village" (*ibid.*). IIMM witness statements indicate that villagers were shot as they ran away (IIMM, Witness Statement No. IIMM0027992301, para. 36; IIMM, Witness Statement No. IIMM0027971404, para. 103; Amnesty International, "We will destroy everything", pp. 65-66). Women were sometimes slower to flee and were therefore easier targets, particularly if they were carrying infants and children (FFM, Report of the detailed findings (2018), para. 789).

210. The evidence establishes that the destruction of the Rohingya part of Chut Pyin was extensive and deliberate. Witness NJ and numerous IIMM witnesses confirmed that the security forces burned down houses, including buildings that were occupied, using launchers (Affidavit of Witness NJ, para. 43; IIMM, Witness Statement No. IIMM0027999848, para. 73; FFM, Report of the detailed findings (2018), para. 784; PILPG, Factual findings & legal analysis report, pp. 44-46). IIMM Witness P1235 recounted that the soldiers burned houses when the people inside did not come out (IIMM, Witness Statement No. IIMM0019925304, paras. 107-109), and that men were then attacked as they came out of burning buildings (*ibid.*, para. 129). IIMM Witness P2334 provided this account:

> "I heard the military saying '*Mee Shoet Lite*' (set fire) and they started to set the houses in Shuap Praung on fire . . . I could hear the loud sound, like 'GOONE!!' and I knew they were using launchers to set fire to the houses . . . A launcher has something like mortar and it was like a fire-cracker. It could be aimed from a distance at a house, and as soon as it lands on the house, it would immediately set fire." (IIMM, Witness Statement No. IIMM0027971404, paras. 99-100.)

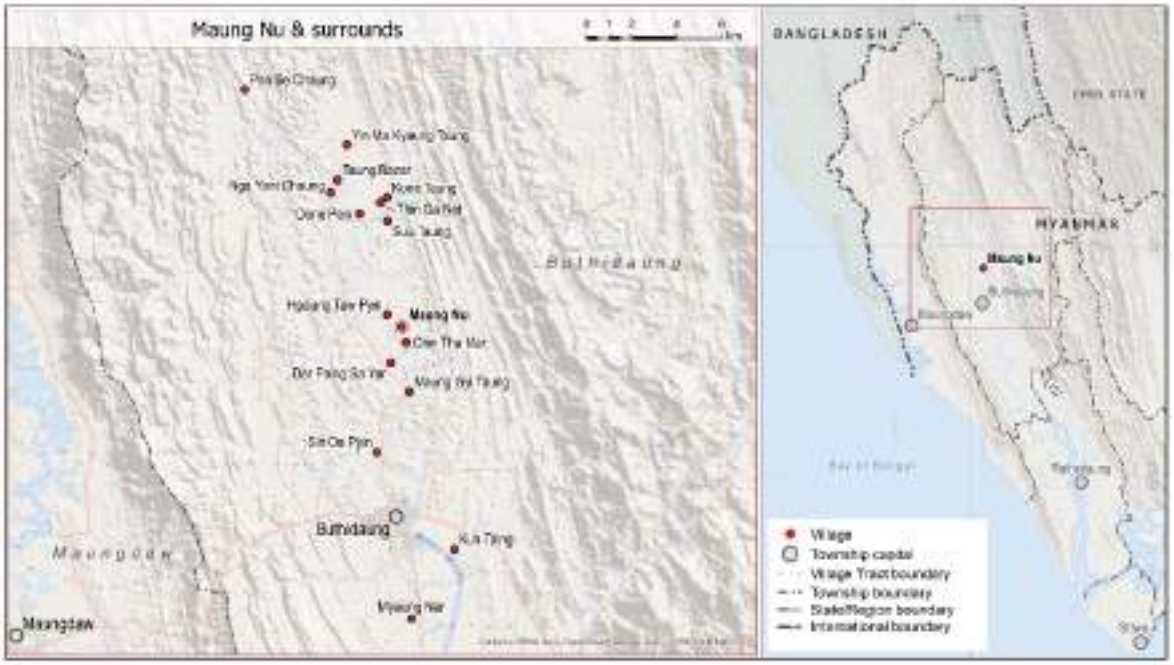
211. Satellite images captured on 16 September 2017 show that Chut Pyin was entirely destroyed while the neighbouring ethnic Rakhine village was left intact (FFM, Report of the detailed findings (2018), satellite image, p. 189).

212. The Tatmadaw reported using 1,700 rounds of ammunition and killing "32 ARSA extremist Bengali terrorists" at Chut Pyin (confidential document submitted as Annex 120 to Myanmar's Counter-Memorial, p. 7, para. (F)). Rohingya refugees in Bangladesh prepared a list indicating that 358 persons were killed in Chut Pyin, which the FFM considered consistent with the information it had received (FFM, Report of the detailed findings (2018), para. 796). The list also indicated that 127 children aged five or under were killed, 19 women were raped, 94 people lost limbs and 57 people remained unaccounted for (*ibid.*). While the Court cannot confirm these estimates, they are credible in light of the evidence at the Court's disposal.

(c) ***Maung Nu (Monu Para)***

213. Maung Nu is a village in Buthidaung Township, situated near two military bases under the Western Command of the Myanmar military (see sketch-map No. 4 below). As set forth below, a company of the 564th Light Infantry Regiment conducted a clearance operation in Maung Nu on 27 August 2017. The operation was characterized by indiscriminate shooting, the separation and execution of men and boys, sexual violence and the burning of the village.

SKETCH-MAP NO. 4 — MAUNG NU AND SURROUNDING VILLAGES



(Source: Material submitted by Myanmar at the hearing pursuant to Practice Direction IX*quater*.)

214. The evidence before the Court shows that there was some ARSA presence in Maung Nu prior to the military operation. One IIMM witness relied upon by both Parties reported that, prior to the clearance operation, ARSA was active in Maung Nu and had patrolled the streets, killed suspected informants and attempted to make crude IEDs. The witness also testified that ARSA's numbers were relatively limited (estimated at between 20 and 60 persons), that its weapons were rudimentary and that it was not able to assemble working explosive devices (IIMM, Witness Statement No. IIMM0019628625, paras. 53, 80 and 82). At least one ARSA leader, identified alternatively as "Mojia" or "Mojir", lived in Maung Nu (*ibid.*, para. 80).

215. Three ARSA attacks were reported in the immediate vicinity of Maung Nu on 25 August 2017, including an attack on the 552nd Light Infantry Regiment near Taung Bazar and on BGP posts in Hpaung Taw Pyin and Nga Yant Chaung (FFM, Report of the detailed findings (2018), paras. 801-802). Thereafter, Tatmadaw soldiers entered Hpaung Taw Pyin and opened fire, causing many people to flee to Maung Nu (*ibid.*, paras. 803-804). Evidence also points to a confrontation between the 562nd Light Infantry Regiment in Sin Oe Pyin and around 300 to 500 men armed with farming tools on 27 August 2017 (confidential screening note submitted by The Gambia under Article 56, paragraph 2, of the Rules of Court, para. 23).

216. Myanmar offered two accounts of the purposes of the clearance operation which are difficult to reconcile. On the one hand, Myanmar characterized the operation as a targeted action against an alleged ARSA cell leader, referred to as "Zahid Hussein", and his home address, although Myanmar, and the IIMM witness on whom it relies, acknowledged that the house that was actually attacked belonged to a different individual of the same name (see IIMM, Witness Statement No. IIMM0019628625, para. 80). On the other hand, Myanmar also asserted that its actions were a response to the alleged attack by "about 100 militants" in Maung Nu, followed by a further attack by about 300 others several hours later (confidential document submitted as Annex 118 to Myanmar's Counter-Memorial, p. 4, para. 14). Myanmar provides no evidence corroborating its assertions in the internal reporting offered in support of this second contention, however, and the IIMM witness upon whom it relies does not mention such an attack (IIMM, Witness Statement No. IIMM0019628625, paras. 101-103; see also Affidavit of Witness MN, paras. 14 and 16; CR 2026/13, pp. 17-19 (Witness MN)).

217. When the security forces entered Maung Nu on the morning of 27 August 2017, the village was temporarily housing people who had recently fled from Hpaung Taw Pyin and surrounding areas (IIMM, Witness Statement No. IIMM0019915116, para. 78; FFM, Report of the detailed findings (2018), para. 804; Amnesty International, "We will destroy everything", pp. 69-70). Witness MN testified before the Court that at around 9 a.m., the military "came and started firing" (Affidavit of Witness MN, paras. 14 and 16; CR 2026/13, p. 19 (Witness MN)). His account is corroborated by other witness statements.

218. The record shows that a large number of villagers attempted to seek refuge in the compound of Zahid Hussein (the non-ARSA member), which many believed would be safe because Zahid Hussein was thought to have good relations with the security forces (IIMM, Witness Statement No. IIMM0019628625, para. 103; Affidavit of Witness MN, paras. 14 and 16; CR 2026/13, pp. 19 and 33 (Witness MN); Amnesty International, "We will destroy everything", pp. 69-70), and because it was less visible from the road (CR 2026/13, pp. 18-19 (Witness MN)).

219. The security forces entered the compound in large numbers and threatened to fire launchers at the houses in the compound if people did not come out. Zahid Hussein was ordered out of the house and was injured (LAW, Witness Statement No. 003, para. 21; FFM, Report of the detailed findings (2018), para. 808). Witness MN testified orally that soldiers then broke into the house and forced people out (CR 2026/13, pp. 19-22 (Witness MN)). Men and older boys were separated from women and younger children. The military tied the hands of the men and boys behind their backs and made them lie face down while beating and kicking them on the neck and back (CR 2026/13, pp. 20-22 (Witness MN)). Some of the men and boys were bound with women's headscarves (LAW, Witness Statement No. 003, para. 22). This testimony is corroborated by IIMM and other witnesses (IIMM, Witness Statement No. IIMM0028048879, paras. 34-35, 44 and 52; IIMM, Witness Statement No. IIMM0019915116, paras. 96-97 and 116-117; IIMM, Witness Statement No. IIMM0027992867, paras. 67-69; Affidavit of Witness MN, para. 17; FFM, Report of the detailed findings (2018), paras. 805-809; Amnesty International, "We will destroy everything", p. 70).

220. Witness MN recounted that he heard one of the officers make a phone call asking what to do with the 87 people who had been caught. The soldiers then began to take groups of five to six people to a place he could not see, with their hands tied (CR 2026/13, pp. 22-23 (Witness MN); Affidavit of Witness MN, paras. 17 and 23). Numerous witnesses testified that after being beaten and tied, the detained men and boys were moved to another location and then killed. Witnesses reported passing sites containing large numbers of dead bodies, including members of their families (IIMM, Witness Statement No. IIMM0019915116, para. 103; IIMM, Witness Statement No. IIMM0028048879, para. 51; confidential witness statement submitted as Annex 339 to The Gambia's Memorial, para. 11; LAW, Witness Statement No. 004, paras. 23-34; confidential witness statement submitted as Annex 342 to The Gambia's Memorial, paras. 21-24; confidential witness statement submitted as Annex 343 to The Gambia's Memorial, paras. 29-36; confidential witness statement submitted as Annex 361 to The Gambia's Memorial, paras. 19-21; FFM, Report of the detailed findings (2018), para. 808; Amnesty International, "We will destroy everything", p. 71). Witness MN stated that he was made to walk with his hands tied behind his back to a place where he saw piles of dead bodies, including that of his father (CR 2026/13, pp. 22-24 and 43 (Witness MN); Affidavit of Witness MN, paras. 24-26). His eight-year-old nephew was also killed that day (*ibid.*, para. 25). IIMM Witness P1244 "saw that soldiers started shooting men in the front yard as they were still lying face down on the ground" and "[a]fter shooting them, the soldiers cut the men with . . . a long sword, until they died" (IIMM, Witness Statement No. IIMM0019915116, para. 103; LAW, Witness Statement No. 004, para. 22; FFM, Report of the detailed findings (2018), para. 808). An IIMM witness recounted that soldiers took away her two sons, who were 9 and 12 years old, and made them lie face down with adults. She was taken away and "never saw [her] two sons again" (IIMM, Witness Statement No. IIMM0028048879, para. 50; CR 2026/13, pp. 22-24 and 43 (Witness MN); IIMM, Witness Statement No. IIMM0027992867, paras. 69 and 78-80). In the aftermath of the attack, witnesses reported "seeing bodies, including of children, and body parts scattered on the ground" and some bodies with their throats slit (FFM, Report of the detailed findings (2018), para. 813).

221. The Court observes that women and girls do not appear to have been targeted for execution. Witnesses testified that after the men were separated, women hiding at Zahid Hussein's compound were taken to another location where they suffered no further harm (IIMM, Witness Statement No. IIMM0019915116, paras. 99-102; LAW, Witness Statement No. 004, para. 29; confidential witness statement submitted as Annex 342 to The Gambia's Memorial, para. 31). However, several FFM witnesses recounted that some women in Maung Nu were subjected to sexual violence, including gang rape and sexual mutilation (FFM, Report of the detailed findings (2018), paras. 810-811). One survivor described being caught while fleeing Maung Nu with her husband, being stripped and raped by two men in front of her husband (*ibid.*, para. 811). The Court finds all these accounts to be credible.

222. Witnesses described the presence of piles of corpses and of soldiers removing bodies with carts and loading bodies onto military trucks, as well as evidence of shallow mass graves (FFM, Report of the detailed findings (2018), paras. 812-814). IIMM Witness P1493 returned to Zahid Hussein's house around 10 p.m. on the night of the operation to search for his missing brother

(confidential witness statement submitted as Annex 152 to Myanmar's Rejoinder, paras. 128-130) and found the ground covered with sticky blood, women's scarves and slippers (*ibid.*, para. 130; see also FFM, Report of the detailed findings (2018), para. 813). Outside Zahid Hussein's house, he saw the "dead body of a child, aged about two years old" with part of the child's head missing (IIMM, Witness Statement No. IIMM0027992947, para. 130).

223. Witness MN testified orally that the village was "burned down" and that his own house had been "burned down to ash" (CR 2026/13, pp. 26 and 39 (Witness MN)). Satellite imagery confirms that more than 320 structures were destroyed by fire in the area between Maung Nu and the neighbouring Rohingya village of Hpaung Taw Pyin (FFM, Report of the detailed findings (2018), paras. 816-817, and satellite image, p. 194).

224. The number of deaths in Maung Nu is difficult to estimate. Witness MN overheard a military officer state that he had 87 detained men and boys, and testified that those men and boys were later executed (CR 2026/13, p. 22 (Witness MN)) (see paragraph 220 above). A non-exhaustive list of the dead compiled by the Rohingya refugee community identified at least 82 people killed, and the FFM estimated that up to 100 people were executed in Maung Nu (FFM, Report of the detailed findings (2018), para. 815). The Court finds these figures supported by the evidence.

2. Other locations

225. Having examined the events in Min Gyi, Chut Pyin and Maung Nu, the Court will now address six additional locations which the FFM identified as sites of grave incidents during the clearance operations and which it subjected to specific and detailed examination. The six locations are: *(a)* Gu Dar Pyin, *(b)* Inn Din, *(c)* the neighbouring villages of Koe Tan Kauk and Chein Khar Li (addressed together), *(d)* Kyauk Pan Du, *(e)* Ah Lel Than Kyaw and *(f)* Myin Hlut.

(a) *Gu Dar Pyin (Gudam Para)*

226. Gu Dar Pyin was a Rohingya village situated within a village tract of the same name in Buthidaung Township that was inhabited by persons of different ethnicities. While Myanmar presented contemporaneous official reports asserting that the actions of its military forces in Gu Dar Pyin were undertaken in response to an attack by "500 ARSA terrorists" on 28 August 2017, no other evidence before the Court corroborates that assertion.

227. The clearance operation was conducted in two distinct phases: in the early morning of 28 August 2017 and then on 29 August 2017. In the course of these operations, security forces encircled the village and fired upon those attempting to flee, including children (IIMM, Witness Statement No. IIMM0019629265, para. 84; confidential witness statement submitted as Annex 44 to The Gambia's Reply, paras. 8-14, 18-20 and 23-29; confidential witness statement submitted as Annex 45 to The Gambia's Reply, paras. 16-28; confidential witness statement submitted as Annex 64 to The Gambia's Reply, paras. 27-31; FFM, Report of the detailed findings (2018), para. 824; Amnesty International, "We will destroy everything", pp. 11 and 80). Launchers were used to burn houses (IIMM, Witness Statement No. IIMM0019629265, paras. 91-92; IIMM, Witness Statement No. IIMM0027997604, paras. 104 and 106; FFM, Report of the detailed findings (2018),

para. 822), and acts of rape and gang rape occurred, including in the surrounding forested areas as women and girls fled (FFM, Report of the detailed findings (2018), para. 826). The security forces were accompanied by non-uniformed ethnic Rakhine individuals, including people recognized as being from a nearby village, who captured Rohingya persons, killed them, or injured them by slitting their throats and helped burn houses with petrol (*ibid.*, paras. 821-822 and 827).

228. Bodies were placed in mass graves. Citing numerous witnesses, the FFM found that

> "[a] series of pits were dug in different locations and the bodies put in them. A number of villagers who returned to Gu Dar Pyin some days after the operation described seeing bodies, uncovered in shallow graves, that were blackened and swollen. Video footage reviewed by the Mission shows blackened and swollen human heads demonstrating putrefactive change (decomposition)." (FFM, Report of the detailed findings (2018), para. 830; see also Foster Klug, "AP finds evidence for graves, Rohingya massacre in Myanmar", *AP News* (1 February 2018).)

229. One woman described how she had to choose to try to save her two younger children when her older girl and boy were attacked by the security forces. The next day her husband dug through pits of bodies until he found the corpse of their son. They never found the body of their daughter (FFM, Report of the detailed findings (2018), para. 825). Satellite imagery confirms that the entire Rohingya village was burned (*ibid.*, para. 828, and satellite image, p. 197). Rohingya community volunteers estimate that 243 people were killed in Gu Dar Pyin (*ibid.*, para. 833).

(b) ***Inn Din (Aung Dung)***

230. Inn Din is a village tract in Maungdaw Township that comprised six Rohingya settlements and two small ethnic Rakhine hamlets. Myanmar carried out clearance operations in Inn Din following ARSA attacks on 25 August 2017 against police posts in neighbouring villages, including Thin Baw Kwe and Tha Win Chaung (FFM, Report of the detailed findings (2018), para. 871). Myanmar also refers to an alleged ARSA attack on Inn Din on 29 August, but the assertions in its internal reporting are not corroborated by any other evidence before the Court (confidential document submitted as Annex 148 to Myanmar's Counter-Memorial, para. 12).

231. The Court finds that Myanmar's security forces, accompanied by ethnic Rakhine, conducted clearance operations across the Rohingya settlements of Inn Din in the days following 25 August 2017 for approximately one week (IIMM, Witness Statement No. IIMM0019922078, paras. 41-66; FFM, Report of the detailed findings (2018), paras. 873 and 878). They arrived, often in the early morning, shooting, and burning houses. Men, women and children were shot; they were also slashed with large knives, including by persons in civilian clothes, believed to be ethnic Rakhine (IIMM, Witness Statement No. IIMM0019922078, paras. 42-60; FFM, Report of the detailed findings (2018), para. 873). Homes were set on fire with launchers — at times with the occupants still inside — and security forces opened fire on those attempting to resist or flee (IIMM, Witness

Statement No. IIMM0019922078, para. 64; FFM, Report of the detailed findings (2018), paras. 873-876; Amnesty International, "We will destroy everything", p. 83; Wa Lone, Kyaw Soe Oo, Simon Lewis and Antoni Slodkowski, "Massacre in Myanmar: How Myanmar forces burned, looted and killed in a remote village", *Reuters* (8 February 2018); BBC, "Rohingya crisis: Reuters journalists held 'for investigating Myanmar killings'" (8 February 2018)).

232. The Court finds that during a clearance operation on 1 September 2017, as hundreds of Rohingya were assembled on the beach close to Inn Din, soldiers selected ten adult males and separated them from the group. They were then marched towards the ethnic Rakhine part of the village tract, where they were made to sit in a row with their hands tied behind their backs. These individuals were executed the following day: one was beheaded, a second had his throat slit, the other eight were killed by firing squad (FFM, Report of the detailed findings (2018), paras. 877, 957 and 1331; Amnesty International, "We will destroy everything", pp. 83-84). The killings were later disclosed by Reuters journalists (Wa Lone, Kyaw Soe Oo, Simon Lewis and Antoni Slodkowski, "Massacre in Myanmar: How Myanmar forces burned, looted and killed in a remote village", *Reuters* (8 February 2018); BBC, "Rohingya crisis: Reuters journalists held 'for investigating Myanmar killings'" (8 February 2018)) (see also paragraph 544 below). Myanmar later acknowledged that the Tatmadaw had been involved in killing the ten men in breach of the applicable rules of engagement.

233. Witness testimony, satellite imagery and other evidence indicated that the majority of, if not all, Rohingya structures were destroyed by 16 September 2017, while the neighbouring ethnic Rakhine village of Pae Youne remained unaffected (IIMM, Witness Statement No. IIMM0019922078, para. 67; FFM, Report of the detailed findings (2018), para. 879; Amnesty International, "We will destroy everything", pp. 82-83).

(c) ***Koe Tan Kauk (Ko Tan Kaung) and Chein Khar Li (Ku Lar)***

234. Koe Tan Kauk and Chein Khar Li were neighbouring Rohingya villages in the Koe Tan Kauk village tract in Rathedaung Township, with a shoreline along the Bay of Bengal. Myanmar contends that clearance operations were undertaken here in response to "repeated ARSA attacks between 25 and 28 August 2017, involving hundreds of armed terrorists confronting the military". The assertions in Myanmar's internal government reporting, however, are not corroborated by any other evidence before the Court (confidential witness statement submitted as Annex 92 to Myanmar's Rejoinder, pp. 1-2; confidential document submitted as Annex 117 to Myanmar's Counter-Memorial, pp. 83-86).

235. On 25 August 2017, security forces and ethnic Rakhine individuals entered Chein Khar Li. The security forces opened fire on villagers as they attempted to flee, killed others at close range and then systematically burned the village from south to north, using launchers, accelerants such as petrol, and matches (LAW, Witness Statement No. 043, paras. 23-27 and 31; FFM, Report of the detailed findings (2018), paras. 837-838). On 28 August 2017, security forces conducted a similar operation in Koe Tan Kauk. Security forces and ethnic Rakhine individuals entered the village from two sides, firing on those attempting to escape and using launchers against residential structures. Weapons were also fired from two naval vessels that had been stationed offshore since mid-August (FFM, Report of the detailed findings (2018), paras. 839-840).

236. With respect to both locations, evidence indicates that security forces shot individuals attempting to flee (Amnesty International, "We will destroy everything", pp. 76-77). A number of people who were unable to flee, particularly the elderly, children and persons with disabilities, were burned inside their houses (FFM, Report of the detailed findings (2018), paras. 838 and 840).

237. The Court takes note of the FFM's finding of sexual violence, including rape, in both locations (FFM, Report of the detailed findings (2018), para. 841) but considers the available evidence insufficient as it is uncorroborated.

238. Information compiled by the Rohingya refugee community suggests that more than 180 persons were killed in the two villages, and other credible sources noted significant casualties (FFM, Report of the detailed findings (2018), para. 843).

239. Satellite imagery and other evidence indicate that the Rohingya villages were completely destroyed by fire, while neighbouring Rakhine villages remained intact (FFM, Report of the detailed findings (2018), para. 842; Amnesty International, "'My world is finished': Rohingya targeted in crimes against humanity in Myanmar" (October 2017), p. 27; confidential document submitted as Annex 336 to The Gambia's Memorial, pp. 70-71).

(d) ***Kyauk Pan Du (Shitar Fawrikka)***

240. Kyauk Pan Du, situated in southern Maungdaw Township, comprised two Rohingya hamlets and one Rakhine hamlet. According to the FFM, ARSA attacked a BGP camp there on 25 August 2017, and reportedly destroyed a small bridge (FFM, Report of the detailed findings (2018), para. 846). Myanmar claims that military reinforcements sent on 28 August were confronted by "30-40 terrorists", but the assertions in the internal reporting on which it relies are not corroborated by any other evidence before the Court (confidential document submitted as Annex 149 to Myanmar's Counter-Memorial, p. 16, Item No. 5; confidential document submitted as Annex 121 to Myanmar's Counter-Memorial, p. 5, Sec. B, para. (10)).

241. The clearance operation was conducted by the Tatmadaw accompanied by the BGP and non-uniformed persons believed to be ethnic Rakhine villagers, and lasted for at least two days. According to the FFM, additional Tatmadaw soldiers reportedly arrived on the second day (FFM, Report of the detailed findings (2018), para. 847). The security forces used automatic weapons to open fire on people as they fled, and used knives to kill those who were caught or injured (*ibid.*, paras. 848-849). The security forces used launchers to destroy the entire village (*ibid.*, para. 850), and some who tried to escape burning houses were pushed back inside (*ibid.*, para. 946). There is credible evidence that women and girls were subjected to rape, including gang rape (*ibid.*, para. 854). Satellite imagery shows that nearly all Rohingya property in the village was burned (*ibid.*, para. 847 and fn. 1896).

(e) ***Ah Lel Than Kyaw (Hassu Rata)***

242. Ah Lel Than Kyaw consisted of seven hamlets in southern Maungdaw Township, with a large Rohingya majority and a small ethnic Rakhine population. It contained a BGP checkpoint and camp, where Tatmadaw soldiers were also based. On 25 August 2017, ARSA attacked the two BGP locations (FFM, Report of the detailed findings (2018), para. 866; confidential document submitted as Annex 149 to Myanmar's Counter-Memorial, Item No. 19). Myanmar contends that the attack involved "hundreds of terrorists" armed with small weapons, and that it lasted between one and three hours, and resulted in the death of one government official and 17 attackers. A police official indicated that advance warning of the attack had enabled him to evacuate ethnic Rakhine civilians to safety (FFM, Report of the detailed findings (2018), para. 866; confidential document submitted as Annex 148 to Myanmar's Counter-Memorial, para. 8 (xxiv)). The Gambia does not dispute the presence and activity of ARSA in this location but contends that any threat from ARSA had been neutralized before the commencement of the clearance operation.

243. Shortly after the ARSA attack, a clearance operation lasting three days was launched by the Tatmadaw and police from the BGP camp. The operation involved continuous, indiscriminate shooting directed at Rohingya civilians, including young children and the elderly, and at people fleeing (confidential witness statement submitted as Annex 353 to The Gambia's Memorial, paras. 8-12, 15 and 24; FFM, Report of the detailed findings (2018), paras. 867-868). Security forces used launchers to systematically destroy most of the Rohingya property. Witnesses later saw bodies in the village, including up to 15 bodies discovered in a well in the market area (confidential witness statement submitted as Annex 353 to The Gambia's Memorial, paras. 15-16, 22 and 31-32; FFM, Report of the detailed findings (2018), paras. 867-868).

244. The number of casualties is difficult to quantify with precision. The Court notes that a casualty list prepared by Rohingya villagers recorded up to 77 deaths. The FFM could not verify this figure, but found it consistent with the interviews it conducted (FFM, Report of the detailed findings (2018), para. 869). One witness statement collected by LAW, while corroborating the FFM's account of the series of events, reports a higher number of bodies found in the well in the market area and provides a substantially higher estimate of deaths at a nearby reservoir, but acknowledges that this latter observation was made from a distance (confidential witness statement submitted as Annex 353 to The Gambia's Memorial, paras. 31 and 33).

(f) ***Myin Hlut (May Rulla)***

245. Myin Hlut was a majority Rohingya village tract in southern Maungdaw Township. On 25 August 2017, ARSA attacked a police outpost there (FFM, Report of the detailed findings (2018), para. 857).

246. The evidence in the record shows that a clearance operation commenced that same morning, lasting several days (FFM, Report of the detailed findings (2018), para. 857; confidential witness statement submitted as Annex 69 to The Gambia's Reply, paras. 26-29). A witness described approximately 300 military and police personnel surrounding the village from all parts, arriving on

motorcycles and in military vehicles, and shooting randomly as civilians fled. The witness himself was shot in the right leg while escaping, an injury confirmed by contemporaneous Médecins Sans Frontières referral documents (confidential witness statement submitted as Annex 69 to The Gambia's Reply, paras. 28-29, 33 and 43-44). The FFM likewise reported that Tatmadaw soldiers, assisted by members of the BGP, entered the village, firing weapons at people fleeing, slitting peoples' throats with knives and burning buildings with launchers as they proceeded through the tract (FFM, Report of the detailed findings (2018), paras. 858-860). Some women and girls were subjected to sexual violence, including rape, by members of the security forces both in their homes and in forested areas as they attempted to escape (*ibid.*, para. 862).

247. Satellite imagery confirmed that the Rohingya hamlets were burned and destroyed (FFM, Report of the detailed findings (2018), paras. 862-863 and 1223). A list of casualties prepared by Rohingya in the refugee community indicates up to 70 deaths, a figure that the FFM could not verify but that it found to be consistent with testimony it had received (*ibid.*, para. 864).

3. Assessment of common aspects of the clearance operations

248. Having examined the events in specific locations, the Court now turns to assessing the broader evidence concerning Myanmar's conduct during the clearance operations. The FFM recorded that it had "verified, through multiple interviews and other information, 'clearance operations' . . . in a total of 54 separate locations", and that it had "received first-hand accounts of additional 'clearance operations' in a further 22 locations" (FFM, Report of the detailed findings (2018), paras. 880-881). The Court observes that the manner in which the operations were carried out reveals a degree of consistency across a wide geographic area. Witnesses described substantial similarities in the timing and sequence of events, the types of weapons employed, the co-ordination among different perpetrators and the nature of the violations committed. Evidence regarding such common aspects of the clearance operations was also gathered by the FFM and the IIMM and can be found in numerous reports of the United Nations and non-governmental organizations. The Court will consider, in turn, common aspects of the evidence with respect to *(a)* deaths, *(b)* sexual violence, *(c)* attacks on children, *(d)* attacks on fleeing Rohingya and *(e)* the destruction of villages and their subsequent replacement with new infrastructure.

(a) *Deaths*

249. The precise number of deaths resulting from the clearance operations is not definitively established. Myanmar maintains that during the 2017 confrontations 13 members of the security forces, 376 ARSA fighters, and 131 "ethnic/Hindu/Bengali people" were killed. Although the reference to "ethnic/Hindu/Bengali" people appears to refer to civilian deaths, Myanmar acknowledges that in establishing the number of casualties from the clearance operations, it did not estimate casualties among civilians not taking part in hostilities.

250. The Court observes that the numbers reported by Myanmar are significantly lower than the number that the evidence establishes were killed during the 2017 clearance operations. The FFM

estimated that these operations caused 10,000 violent deaths and considered this number to be conservative (FFM, Report of the detailed findings (2018), paras. 1006-1008 and 1275). The FFM also pointed to substantially higher estimates calculated by other entities (*ibid.*, para. 1007). In reaching its conclusion, the FFM relied, *inter alia*, on evidence of large-scale massacres in several locations, as well as on detailed accounts of numerous other incidents in which dozens of individuals were killed. Rohingya refugee camp volunteers, with the help of affected family members, prepared casualty lists identifying the names, ages and villages of persons killed or presumed killed, which identified a total of 9,208 persons killed and 1,358 presumed disappeared or killed. The FFM indicated that the list had not been completed at the time of reporting (*ibid.*, para. 1006).

251. The Court observes that a finding of large-scale deaths is corroborated by the evidence from numerous locations, including from those examined above. The evidence establishes deliberate executions, indiscriminate shootings, killings at riverbanks and of persons injured or captured, shooting of those attempting to flee, burnings, and killings of children and infants (see paragraphs 188-197, 203-205, 207, 208-210, 217, 220, 227, 229, 231-232, 235-236, 241, 243 and 246 above).

252. The Court further notes the results of six pooled surveys conducted by Médecins Sans Frontières among Rohingya families who had fled to Bangladesh, which estimated that at least 6,700 to 9,867 people died as a result of violence between 25 August and 24 September 2017 (Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar" (2018), p. 5, fns. 4 and 6). These surveys were limited to deaths witnessed by family members and thus may have undercounted the total number of deaths. The surveys, which are publicly available, involved over 11,000 participants and sought to assess mortality rates and causes of death based on a detailed methodology (see paragraph 124 above). They were not meaningfully challenged by Myanmar. Médecins Sans Frontières estimated that 69.4 per cent of violent deaths resulted from gunshots, 8.8 per cent from being burned inside homes and 5 per cent from being beaten to death, and also noted violent deaths resulting from sexual violence and landmine explosions (Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar" (2018), p. 9). Médecins Sans Frontières further estimated that, in total, between 9,425 and 13,759 Rohingya deaths occurred between 25 August and 24 September 2017 (*ibid.*, p. 5). Some of the non-violent deaths may also be attributable to the clearance operations, for example, as a result of risks associated with the flight to Bangladesh (see paragraphs 262-263 below; FFM, Report of the detailed findings (2018), para. 1006).

PILPG also interviewed 1,024 Rohingya individuals in Bangladesh following a methodology similar to that of the FFM. Its investigators gathered extensive evidence of killings in a variety of forms and documented "an exceptionally high incidence of severe brutality in the attacks against the Rohingya" (PILPG, Factual findings & legal analysis report, pp. vi, 40-43 and 49; see paragraph 124 above).

253. The Court considers that the FFM's estimate of at least 10,000 deaths is supported by the record. The evidence before the Court demonstrates the pervasive and lethal nature of the violence inflicted upon the Rohingya population, and establishes that thousands of Rohingya civilians were killed by the Myanmar security forces during the clearance operations.

(b) ***Sexual violence***

254. The evidence establishes that the Myanmar security forces committed extensive acts of rape and other forms of sexual violence during the clearance operations. The Court observes in particular that gang and mass rape was a notable and recurrent feature of the violence (see paragraphs 195-196, 206-207, 212, 221, 227 and 241 above; see also confidential witness statement submitted as Annex 64 to The Gambia's Reply, paras. 84-119; FFM, Report of the detailed findings (2018), paras. 921, 932 and 1006; FFM, "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. 83; PILPG, Factual findings & legal analysis report, pp. 37-38). The FFM reported that it had verified that mass gang rapes, involving multiple perpetrators and multiple victims in the same incident, occurred in at least ten village tracts in northern Rakhine State (FFM, Report of the detailed findings (2018), para. 921). The IIMM also concluded, on the basis of extensive testimonial and corroborative evidence, that Myanmar security forces committed a large number of sexual and gender-based crimes during the clearance operations (IIMM, "Efforts to investigate and punish sexual and gender-based crimes committed against Rohingya: Evidence analysis" (27 March 2024), para. 100; see also paras. 7-22 (collecting reports on sexual violence)). A report by Physicians for Human Rights on sexual and other violence experienced by the Rohingya community as a result of the clearance operations also found that sexual violence against the Rohingya was widespread and followed common patterns (Physicians for Human Rights, "Sexual violence, trauma, and neglect: Observations of health care providers treating Rohingya survivors in refugee camps in Bangladesh" (October 2020), p. 2). The assessment, which was conducted by experts in documenting or responding to violence, was based on in-depth interviews with 26 healthcare workers who provided direct services to Rohingya refugees in Bangladesh between August 2017 and 2020 and was designed to identify experiences of physical and sexual violence based on medical evaluations and clinical encounters (see paragraph 124 above). The record also contains some evidence regarding incidents of sexual violence against men and boys during the 2017 clearance operations (FFM, "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. 167; FFM, Report of the detailed findings (2018), para. 939; Physicians for Human Rights, "Sexual violence, trauma, and neglect: Observations of health care providers treating Rohingya survivors in refugee camps in Bangladesh" (October 2020), p. 12).

255. Most rapes were perpetrated by members of the Tatmadaw (FFM, Report of the detailed findings (2018), para. 932). Acts of sexual violence were frequently accompanied by extreme physical brutality. Victims were subjected to severe beatings prior to rape, including with weapons and other implements, and perpetrators killed victims following acts of rape or inflicted fatal injuries during the commission of such acts (*ibid.*, para. 934). PILPG's survey recorded such killings, as well as "the use of extreme violence targeting young and unmarried women" (PILPG, Factual findings & legal analysis report, pp. 35 and 38). Pregnant women were also raped (IIMM, Witness Statement No. IIMM0019922097, para. 50; FFM, Report of the detailed findings (2018), para. 921). A witness self-identifying as a former Tatmadaw soldier stated that "many" rapes occurred during the clearance operations and that the women were often then killed (Interview of Zaw Naing Tun (15 August 2020), pp. 8-10; see also Interview of Myo Win Tun (15 August 2020), pp. 6-7).

256. Sexual violence was also accompanied by incidents of mutilation, scarring or branding, including of breasts or genitalia (IIMM, Witness Statement No. IIMM0019922097, para. 50; IIMM, Witness Statement No. IIMM0019925304, para. 161; FFM, Report of the detailed findings (2018), paras. 790 and 810). PILPG found "a high incidence of mutilation related to sexual violence" (PILPG, Factual findings & legal analysis report, p. 38; see also LAW, "'Every day, I remember they destroyed my life': Long-term physical and psychosocial consequences of genocidal sexual and gender-based violence the Myanmar military committed against the Rohingya in its 2017 'clearance operations'" (November 2023), pp. 32-33; Fortify Rights, "'They gave them long swords': Preparations for genocide and crimes against humanity against Rohingya Muslims in Rakhine State, Myanmar" (July 2018), p. 61). Such scarring contributed to the visibility, stigma and long-term impact of sexual violence on the survivors (FFM, Report of the detailed findings (2018), paras. 926 and 1397; Physicians for Human Rights, "Sexual violence, trauma, and neglect: Observations of health care providers treating Rohingya survivors in refugee camps in Bangladesh" (October 2020), p. 2; Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar" (2018), pp. 18-19; LAW, "'Every day, I remember they destroyed my life': Long-term physical and psychosocial consequences of genocidal sexual and gender-based violence the Myanmar military committed against the Rohingya in its 2017 'clearance operations'" (November 2023), p. 30).

257. The evidence establishes that members of the Rohingya community have been traumatized by the brutal sexual violence that they suffered or witnessed (FFM, Report of the detailed findings (2018), para. 941). The FFM obtained credible information and an expert opinion "indicating that many survivors of rape and other forms of sexual violence currently residing in the refugee camps in southern Bangladesh have become socially withdrawn, reluctant to eat and passive and fearful in their behaviour" (*ibid.*, para. 1398). PILPG reported that women described physical and mental health symptoms, "including feelings of shame and despair", and its psychosocial expert documented that many Rohingya women exhibited symptoms of post-traumatic stress disorder (PILPG, Factual findings & legal analysis report, pp. 35 and 39). A focused expert medical assessment of the physical and psychological impact of sexual violence from the 2017 clearance operations on the Rohingya refugee population in Bangladesh undertaken by LAW also documented significant long-term physical impacts affecting survivors, as well as complex psychological, social and community effects (LAW, "'Every day, I remember they destroyed my life': Long-term physical and psychosocial consequences of genocidal sexual and gender-based violence the Myanmar military committed against the Rohingya in its 2017 'clearance operations'" (November 2023), pp. 31-54). The assessment was conducted by four expert psychologists and a medical doctor, and was based on 30 in-depth interviews with Rohingya survivors of sexual violence, focus groups with 34 Rohingya survivors or witnesses of sexual violence, reviews of medical records, and key informant interviews with service providers from United Nations agencies, humanitarian organizations and healthcare clinics implementing sexual and reproductive health programmes for the Rohingya community in Cox's Bazar (*ibid.*, p. 24; see paragraph 124 above).

258. The precise number of victims of sexual violence is difficult to establish due, *inter alia*, to the significant stigma associated with reporting such acts (United Nations Human Rights Council, "Report of the independent international fact-finding mission on Myanmar", UN doc. A/HRC/42/50 (8 August 2019), paras. 113 and 934; Amnesty International, "We will destroy everything";

Physicians for Human Rights, "Sexual violence, trauma, and neglect: Observations of health care providers treating Rohingya survivors in refugee camps in Bangladesh" (October 2020), p. 5). The Court notes the detailed lists provided by Rohingya community volunteers to the FFM estimating that at least 1,834 individuals were raped during the clearance operations (FFM, Report of the detailed findings (2018), para. 1006; see paragraph 250 above). The Court considers this figure to be supported by the evidence. Based on the record before it, the Court concludes that widespread acts of gang and mass rape and other forms of sexual violence against the Rohingya were perpetrated by the Myanmar security forces in northern Rakhine State.

(c) ***Attacks on children***

259. The evidence before the Court demonstrates the widespread intentional killing of children, including very young children, during the clearance operations (see, for example, paragraphs 191-192, 194-195, 197, 205, 208, 212, 220, 222, 227, 229, 231, 236 and 243 above). As set out above, witness testimony from a number of locations describes incidents of children killed in burning houses or by being thrown onto fires, of boys being separated out for execution, and of children being stabbed, shot or thrown into rivers — evidence that is corroborated by the findings of the FFM (FFM, Report of the detailed findings (2018), paras. 770, 789, 909-911, 924 and 942-947). PILPG identified, *inter alia*, incidents involving the execution of large numbers of children, as well as acts of extreme cruelty, including "children being stabbed, slaughtered, dismembered and beheaded" (PILPG, Factual findings & legal analysis report, pp. 33-34). Pooled surveys conducted in November 2017 by Médecins Sans Frontières with over 11,000 Rohingya who had fled northern Rakhine State indicated that between 25 August and 24 September 2017, at least 730 and up to 2,109 Rohingya children under the age of five died as a result of violence (Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar" (2018), p. 5, fn. 6; see paragraph 252 above). Médecins Sans Frontières estimated that the most common causes of violent death for children under the age of five were by gunshot (59.1 per cent), by being burned to death in their home (14.8 per cent), by being beaten (6.9 per cent) and as a result of stepping on a landmine (2.3 per cent; see *ibid.*, p. 9).

260. Children were also victims of sexual violence. Like women, girls were the victims of rape, gang rape, sexual humiliation, and physical and mental torture (FFM, Report of the detailed findings (2018), para. 1372). There is some evidence that boys were also victims of sexual violence (see paragraph 254 above). Witnesses testified to the rape of children; IIMM Witness P1235 listed victims including girls estimated to be 13 years old (IIMM, Witness Statement No. IIMM0019925304, para. 159) and IIMM Witness P2894 was herself a rape victim at under 14 years of age (IIMM, Witness Statement No. IIMM0028123039, paras. 52 and 59; see also confidential witness statement submitted as Annex 64 to The Gambia's Reply, para. 116). Médecins Sans Frontières treated survivors of sexual violence as young as age nine and reported, based on its health surveys, that "[s]exual violence was experienced or witnessed by 3.3% of the recently displaced female population between 25 August and 24 September, and did not appear to be limited to any age group" (Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar" (2018), p. 18). PILPG also recorded victims of rape as young as age seven (PILPG, Factual findings & legal analysis report, p. 37).

261. The Court finds that widespread acts of extreme violence were perpetrated by the Myanmar security forces against children, including very young children, in northern Rakhine State in the course of the clearance operations.

(d) ***Attacks on fleeing Rohingya and conditions on the flight to Bangladesh***

262. Over 700,000 Rohingya, representing over 85 per cent of the Rohingya population who remained in northern Rakhine State after the events of 2016, fled to Bangladesh as a result of the 2017 clearance operations (see paragraph 66 above). Many travelled significant distances under extreme hardship, some walking for two weeks through jungles and mountainous terrain and crossing rivers swollen by the monsoon, with no shelter and limited access to food or water (IIMM, Witness Statement No. IIMM0019915116, para. 137; confidential witness statement submitted as Annex 345 to The Gambia's Memorial, para. 43; LAW, Witness Statement No. 009, para. 45; confidential witness statement submitted as Annex 347 to The Gambia's Memorial, para. 29; confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 18; confidential witness statement submitted as Annex 357 to The Gambia's Memorial, para. 36; confidential witness statement submitted as Annex 360 to The Gambia's Memorial, paras. 33-34; LAW, Witness Statement No. 032, para. 34; see also FFM, Report of the detailed findings (2018), paras. 984-998).

As IIMM Witness P1461 stated:

> "[A]t one of [the] rivers . . . because of the injury in my arm I couldn't swim properly and I almost drowned . . . People had water up to their throats and carried small children with the arms over their heads through these waters. I have heard many stories about people drowning, but only saw one with my eyes . . . He was very old, he was on that gallon makeshift boat to cross the big river, when a wave washed it away and he drowned." (IIMM, Witness Statement No. IIMM0019922097, para. 70.)

Another witness recounted that their family did not eat until their arrival in Bangladesh. Her children were crying and screaming from hunger, and the family was compelled to drink contaminated river water that made them nauseous. She further stated that they were too afraid to sleep (confidential witness statement submitted as Annex 347 to The Gambia's Memorial, para. 29).

Rohingya fled with few, if any, possessions. Many had sustained injuries and needed urgent medical care; others had to assist children, the wounded or the elderly during the journey (IIMM, Witness Statement No. IIMM0019915116, para. 137; confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 18; confidential witness statement submitted as Annex 360 to The Gambia's Memorial, para. 33; confidential witness statement submitted as Annex 69 to The Gambia's Reply, para. 44; FFM, Report of the detailed findings (2018), para. 989). Pregnant women gave birth on the route (IIMM, Witness Statement No. IIMM0019629265, para. 120; FFM, Report of the detailed findings (2018), para. 992).

263. Numerous Rohingya died on the journey as a result, particularly the elderly and wounded. One IIMM witness recounted walking with a group of between 2,000 and 3,000 Rohingya villagers to Bangladesh and having to walk past dead and dying people left by those ahead (IIMM, Witness Statement No. IIMM0019628625, paras. 115, 119 and 121). Another described walking with the inhabitants of eight villages, saying:

> "A lot of people disappeared. I lost my mother like that. I was carrying my son [redacted] who had a bullet injury, we couldn't find any better way to carry him, so I was carrying him on my shoulder . . . [My son's] mother was very upset, she was screaming, crying, sometimes she would fall down on the ground and have difficulties in walking. By that time my mother was still walking, but at some point we lost her and we couldn't find her later, not ever after coming here to Bangladesh. We searched for her and asked everyone, both on the spot and once arrived." (IIMM, Witness Statement No. IIMM0019925304, para. 173.)

An additional IIMM witness recalled:

> "It took a long time to cross the mountain . . . It was so hard for us to walk. I cannot tell you the suffering of this journey. I saw people become ill. I saw people dying. Some people died on the way in the mountains . . . People who died were older people who could not walk themselves." (IIMM, Witness Statement No. IIMM0019915116, para. 137.)

Rohingya who were fleeing also drowned trying to cross rivers and from boats capsizing in the Bay of Bengal (see, for example, IIMM, Witness Statement No. IIMM0027997604, paras. 127 and 129; FFM, Report of the detailed findings (2018), paras. 984-998). Numerous witnesses related similar descriptions of deaths during the journey (IIMM, Witness Statement No. IIMM0019629265, para. 120; IIMM, Witness Statement No. IIMM0027971404, para. 133; IIMM, Witness Statement No. IIMM0027992301, para. 57; IIMM, Witness Statement No. IIMM0019629302, para. 72; IIMM, Witness Statement No. IIMM0028048879, para. 82).

264. Fleeing Rohingya were also attacked. Written and oral witness testimonies establish that in numerous locations Myanmar security forces targeted fleeing Rohingya. As noted above, this included Rohingya who were first attacked in their villages as they sought to flee from the clearance operations (see paragraphs 189, 191, 194, 209, 227, 231, 235-236, 241, 243 and 246 above; see also confidential witness statement submitted as Annex 342 to The Gambia's Memorial, para. 12; confidential witness statement submitted as Annex 344 to The Gambia's Memorial, para. 27; confidential witness statement submitted as Annex 345 to The Gambia's Memorial, paras. 18-19; LAW, Witness Statement No. 009, para. 31; confidential witness statement submitted as Annex 360 to The Gambia's Memorial, para. 19). It also included Rohingya who were attacked again during subsequent clearance operations in villages where they had sought refuge (see, for example, paragraphs 217 and 182 above; IIMM, Witness Statement No. IIMM0019629265, paras. 109 and 111; LAW, Witness Statement No. 009, paras. 21, 22-25 and 47). These testimonies are corroborated by other evidence (FFM, Report of the detailed findings (2018), paras. 758, 837, 848, 858 and 867; Amnesty International, "We will destroy everything", pp. 61-62).

265. Many Rohingya avoided main roads, travelling longer and arduous routes and hiding while fleeing out of fear that they would be targeted by security forces (see IIMM, Witness Statement No. IIMM0019922097, para. 66; IIMM, Witness Statement No. IIMM0027992990, para. 198; IIMM, Witness Statement No. IIMM0027993001, paras. 181 and 193; IIMM, Witness Statement No. IIMM0028048879, paras. 80-81 and 89; IIMM, Witness Statement No. IIMM0019915259, paras. 148 and 161; confidential witness statement submitted as Annex 344 to The Gambia's Memorial, paras. 34-35; confidential witness statement submitted as Annex 347 to The Gambia's Memorial, para. 29; confidential witness statement submitted as Annex 352 to The Gambia's Memorial, para. 14; confidential witness statement submitted as Annex 363 to The Gambia's Memorial, para. 35; confidential witness statement submitted as Annex 364 to The Gambia's Memorial, para. 20; LAW, Witness Statement No. 030, para. 31; LAW, Witness Statement No. 031, para. 35; LAW, Witness Statement No. 032, para. 35). Many Rohingya thus did not encounter security forces once on the journey but endured extreme hardship (see paragraphs 262-263 above).

266. However, numerous witness statements also establish that fleeing Rohingya were killed or attacked by Myanmar's security forces on their way to Bangladesh (IIMM, Witness Statement No. IIMM0019629265, paras. 123 and 128-130; IIMM, Witness Statement No. IIMM0027992301, para. 51; IIMM, Witness Statement No. IIMM0019925094, para. 64; IIMM, Witness Statement No. IIMM0019915259, para. 173; LAW, Witness Statement No. 011, para. 28; confidential witness statement submitted as Annex 358 to The Gambia's Memorial, para. 24; confidential witness statement submitted as Annex 61 to The Gambia's Reply, para. 101; confidential witness statement submitted as Annex 62 to The Gambia's Reply, paras. 79-82; confidential witness statement submitted as Annex 64 to The Gambia's Reply, para. 125; see also FFM, Report of the detailed findings (2018), paras. 985-987).

One witness recounted:

> "We walked approximately 15 miles through the forest. While in Balukhali, a group of approximately 60 to 70 militaries arrived and started shooting at us. There were maybe 10,000 people in the group I was travelling with . . . I saw people running in different directions; some ran into the forest, some into the fields, into the village or toward the river, all trying to hide. I ran toward the river." (LAW, Witness Statement No. 009, para. 47.)

Another witness explained that the journey was very difficult. Having lost significant amounts of blood from a prior attack during the clearance operation (see paragraph 197 above), she and her child were extremely weak and could walk only brief periods before needing to rest. They lived for nine days in the mountains without food, subsisting on leaves; on the last day they were fired upon by security forces, but managed to hide (confidential witness statement submitted as Annex 355 to The Gambia's Memorial, para. 18).

According to an IIMM witness, security forces opened fire on groups of Rohingya at or close to border crossing points, including on large numbers who gathered on the shores of the Bay of Bengal or Naf River while they were seeking to cross to Bangladesh (LAW, Witness Statement No. 009, para. 48; see also FFM, Report of the detailed findings (2018), paras. 900-903). Another stated that security forces shot at boats carrying Rohingya to Bangladesh (IIMM, Witness Statement No. IIMM0028048879, para. 89; see also FFM, Report of the detailed findings (2018), para. 901). Security forces tried to take young women from groups, sometimes successfully. For example, an IIMM witness recalled that at one point the military separated the men from the women in their group, picked out seven girls

> "and said they had to go with them. . .
>
> . . . . . .
>
> The next morning, four of the girls returned . . . They had escaped from the camp while the troops slept . . . They told us the soldiers raped them and tortured them at the camp . . .
>
> The three other girls . . . never came back" (IIMM, Witness Statement No. IIMM0019629265, paras. 128 and 130-131; see also confidential witness statement submitted as Annex 64 to The Gambia's Reply, para. 125).

267. The record contains evidence that Myanmar had planted landmines along certain roads and at some crossing points on the border with Bangladesh, resulting in several casualties and forcing Rohingya off the main roads and into mountainous terrain (IIMM, Witness Statement No. IIMM0027992867, para. 100; see also FFM, Report of the detailed findings (2018), paras. 412-414 and 914; Amnesty International, "We will destroy everything", pp. 97-100; Fortify Rights, "'They gave them long swords': Preparations for genocide and crimes against humanity against Rohingya Muslims in Rakhine State, Myanmar" (July 2018), pp. 69-70). Multiple witnesses stated that they were prevented by groups of security forces from crossing bridges and instead were forced to swim or use makeshift rafts to cross rivers within Myanmar (IIMM, Witness Statement No. IIMM0019628625, paras. 120-121; IIMM, Witness Statement No. IIMM0019922078, para. 69; IIMM, Witness Statement No. IIMM0027995869, paras. 130-131; IIMM, Witness Statement No. IIMM0028048879, paras. 81-82).

268. The FFM documented numerous witnesses reporting attacks on Rohingya en route to Bangladesh or at the border, while other witnesses described encountering bodies of persons who had been violently attacked along the route (FFM, Report of the detailed findings (2018), paras. 900-903 and 985-987). PILPG also reported multiple accounts of attacks on the Rohingya as they fled their villages for Bangladesh, including dozens of documented attacks at the border:

> "The investigation documented attacks on refugees travelling on foot, including an attack on an 'enormous crowd,' which the military fired upon and a respondent estimated to have killed approximately 1,000 people; the military shooting randomly at large groups of fleeing Rohingya, creating a 'killing field;' and the military firing from a clifftop on a line of refugees walking towards the border with Bangladesh.
>
> . . . . . .
>
> The Myanmar armed forces also used helicopters to attack columns of fleeing Rohingya. As one respondent described, 'Helicopters would search for us and then throw light and shoot at us.'
>
> The Rohingya were often attacked while waiting for boats to cross into Bangladesh, including attacks from military 'speedboats.' Myanmar Navy boats rammed boats or rafts full of fleeing Rohingya refugees to flip or sink them, resulting in numerous drownings at the border with Bangladesh.
>
> The military also raped women on the way to Bangladesh, usually on the side of the road, and they sometimes then killed the women. Multiple interviewees reported seeing naked dead women near the border." (PILPG, Factual findings & legal analysis report, pp. 47-48.)

On the basis of two of the six pooled surveys covering 6,799 Rohingya refugees in Bangladeshi camps (see paragraph 252 above), who reported 209 violent deaths, Médecins Sans Frontières estimated that "13.4 per cent of violent deaths [among the Rohingya] occurred during the period between displacement from their village and arrival in Bangladesh" (FFM, Report of the detailed findings (2018), para. 988, citing Médecins Sans Frontières, "Retrospective mortality, nutrition and measles vaccination coverage: Survey in Balukhali 2 & Tasnimarkhola camps, Cox's Bazar, Bangladesh" (November 2017), p. 20; see also Médecins Sans Frontières, "'No one was left': Death and violence against the Rohingya in Rakhine State, Myanmar" (2018), p. 10, fn. 23).

269. The Court observes that the record also contains credible statements from numerous witnesses who encountered security forces on their journey to Bangladesh but were permitted to proceed unimpeded (IIMM, Witness Statement No. IIMM0027999848, para. 101; IIMM, Witness Statement No. IIMM0027971404, para. 132; IIMM, Witness Statement No. IIMM0019925304, para. 172; IIMM, Witness Statement No. IIMM0028059653, para. 184; IIMM, Witness Statement No. IIMM0028050361, para. 144; LAW, Witness Statement No. 024, para. 35; confidential witness statement submitted as Annex 365 to The Gambia's Memorial, para. 46; LAW, Witness Statement No. 029, para. 29; confidential witness statement submitted as Annex 47 to The Gambia's Reply, para. 48). Multiple statements also report security forces ordering Rohingya to remain in Myanmar or to return to their point of origin, despite their villages having been burned. As one IIMM Witness explained, "[w]e thought they told us to stay, so that they could kill us later" (IIMM, Witness

Statement No. IIMM0027997604, para. 123; see also IIMM, Witness Statement No. IIMM0019629265, para. 125; IIMM, Witness Statement No. IIMM0019627993, para. 76; confidential witness statement submitted as Annex 45 to The Gambia's Reply, para. 43; IIMM, Witness Statement No. IIMM0019922078, paras. 70-71; IIMM, Witness Statement No. IIMM0019629302, para. 80). Some Rohingya interviewed by the FFM who were not attacked reported being ordered by the security forces they encountered during the journey to leave or they would be killed (FFM, Report of the detailed findings (2018), para. 903).

270. Based on the evidence before it, the Court is convinced that, in addition to the extreme hardship of the journey, the Myanmar security forces systematically shot at Rohingya as they were fleeing the clearance operations in villages, and that a significant number of Rohingya were subjected to killing, rape and other attacks or threats of attack during the flight to Bangladesh.

(e) ***Destruction of villages and their subsequent replacement with new infrastructure***

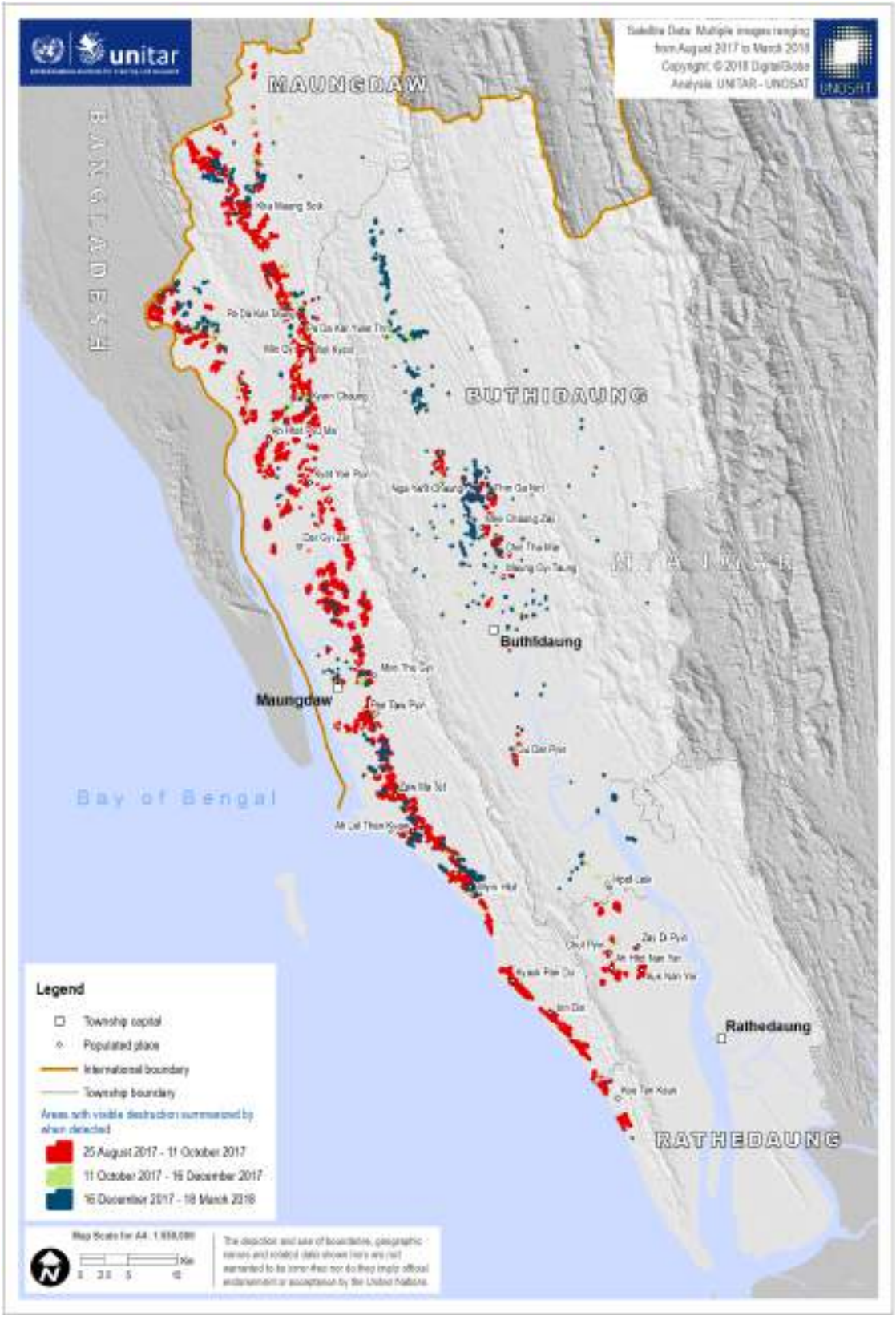
271. Satellite imagery and satellite-based fire detection data analysed by UNITAR-UNOSAT (see paragraph 121 above), together with witness accounts, document the destruction of Rohingya villages targeted by the clearance operations. The Court notes that while satellite imagery, which was taken periodically, cannot confirm the particular date on which events may have occurred, it demonstrates changes in the situation as of the date that an image is collected and also provides data regarding the scale and precise location of the destruction. Satellite-based fire detection data, on the other hand, which was collected at least once every two days (UNITAR-UNOSAT, "UNOSAT analysis of destruction and other developments in Rakhine State, Myanmar" (7 September 2018), p. 7) uses heat anomaly detection to identify the number and locations of active fires and to more accurately identify the date on which a burning event occurred, provided that the fires were active at the moment of the satellite overpass (*ibid.*). Both systems may nevertheless fail to detect fires due to considerations such as unfavourable timing or cloud cover.

272. The Court has observed that satellite imagery collected on 16 September 2017, together with witness testimonies, documents the partial or total destruction of each of the Rohingya villages examined above (see paragraphs 187-189, 197-198, 208, 210-211, 223, 227, 229, 231, 233, 235, 239, 241, 243 and 246-247). Satellite imagery covering the period up to March 2018 also shows that, after 25 August 2017, approximately 392 villages were either partially destroyed (214 villages) or totally destroyed (178 villages), representing approximately 40 per cent of all 993 villages identified in the 3 townships of northern Rakhine State (UNITAR-UNOSAT, "UNOSAT analysis of destruction and other developments in Rakhine State, Myanmar" (7 September 2018), p. 7; FFM, Report of the detailed findings (2018), para. 959; see sketch-map No. 5 below). Seventy per cent, or 277 of these villages, were located in Maungdaw Township, where the majority of the Rohingya population of northern Rakhine State resided (UNITAR-UNOSAT, "UNOSAT analysis of destruction and other developments in Rakhine State, Myanmar" (7 September 2018), p. 7). It is estimated that the combined population of the partially or totally destroyed villages amounted to approximately 326,000 people.

273. UNOSAT analysis further concluded that approximately 80 per cent of the destruction of the 392 villages was visible by 16 September 2017, and that this figure is "very likely underestimated" owing to the presence of extensive cloud cover in images collected on that date, making it difficult to determine whether subsequently identified destruction occurred before or after 16 September 2017 (UNITAR-UNOSAT, "UNOSAT analysis of destruction and other developments in Rakhine State, Myanmar" (7 September 2018), p. 8). Satellite-based fire detection data also indicates that, between 25 August and 15 September 2017, fires were detected in 140 locations over the 3 townships, with nearly half of the fires occurring prior to 5 September 2017, and 130 of them occurring in Maungdaw Township (*ibid.*, pp. 21-22). UNOSAT noted that historical fire detections over the same period in those 3 townships were "exceedingly rare" and that no seasonal pattern explained the number of fires detected during this period (*ibid.*, p. 22). Evidence of burn injuries among those who fled (see paragraphs 252 and 259 above), and of bodies found in burned homes, also corroborate reports that Rohingya were present in many cases when their homes were burned, at times locked, forced or trapped inside (see paragraphs 196-197, 208, 210, 231, 236 and 241 above; FFM, Report of the detailed findings (2018), paras. 905-911). PILPG found that of the 1,024 Rohingya it interviewed, "nearly 70 percent witnessed their homes or villages being destroyed" (PILPG, Factual findings & legal analysis report, p. vi).

274. The Court considers that, together with the numerous first-hand witness accounts, the satellite imagery and fire detection data indicate that the vast majority of the village destruction was caused by fire and mostly occurred while clearance operations were ongoing. However, the Court is not in a position to determine precisely how many structures were burned while Rohingya were present at the locations concerned.

SKETCH-MAP NO. 5 — AREAS WITH VISIBLE DESTRUCTION BETWEEN 25 AUGUST 2017 AND 18 MARCH 2018



(Source: FFM, Report of the detailed findings (2018), p. 225.)

275. Myanmar does not dispute that the burning took place, but it argues that its security forces were not solely responsible or suggests that either ARSA or unknown persons might have burned villages. Witness accounts regarding numerous villages, however, including the specific locations examined by the Court, establish that Myanmar security forces entered Rohingya villages armed with launchers, and at times petrol; they then systematically burned the villages as part of the clearance operations, and the burning in some locations continued for some period of time. Two witnesses who self-identified as former Tatmadaw soldiers also stated that soldiers participating in the clearance operations were instructed to burn the villages (Interview of Myo Win Tun (15 August 2020), p. 5; Interview of Zaw Naing Tun (15 August 2020), p. 7).

276. The evidence in the record does not support a conclusion that systematic burning of villages was perpetrated by ARSA or other actors (see paragraph 178 above; see also Witness Statement of Jonathan Head (14 October 2020), paras. 18-19). The Court considers that the totality of the evidence establishes that it was primarily Myanmar's security forces that burned the Rohingya villages during and after the clearance operations.

277. The Court further observes that the destruction of Rohingya villages was followed by bulldozing and large-scale terrain clearance. The FFM found that as of December 2017,

> "the Myanmar Government embarked on a major operation to remove and clear burned structures, with the use of heavy machinery, and build new infrastructure in their place . . . Through this process, many Rohingya villages have been rendered unrecognisable, devoid of all structures, trees and vegetation" (FFM, Report of the detailed findings (2018), para. 1216).

In 2018, UNOSAT estimated that 78 of the villages previously destroyed during the clearance operations evidenced signs of bulldozing or terrain clearance. In most cases, this occurred on a large scale, affecting the totality of the village (UNITAR-UNOSAT, "UNOSAT analysis of destruction and other developments in Rakhine State, Myanmar" (7 September 2018), pp. 9-10). The destruction included structures that had survived the burnings, in particular in Maungdaw Township, including in Chein Khar Li, War Char, Gaw Du Thar Ra (Ywar Thit Kay), Du Chee Yar Tan and Myin Hlut (*ibid.*, p. 11). The IIMM and FFM also found evidence of further destruction after 2018 (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 43; FFM, Detailed findings (2019), para. 128). UNOSAT estimates that, in total, approximately 40,600 structures across Maungdaw, Buthidaung and Rathedaung Townships were destroyed (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 43).

278. The evidence also establishes that the clearing of terrain was followed by rapid construction and development of new infrastructure, including BGP battalion bases, other security installations, and other government or civilian infrastructure (FFM, Report of the detailed findings (2018), para. 1224).

279. In September 2025, the IIMM published a public summary of its report on Myanmar's destruction and dispossession of Rohingya land and property. The report focused on seven village

tracts in northern Rakhine State where Rohingya villages were destroyed in the 2017 clearance operations (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 5). The IIMM's conclusions were based on, among other things, UNOSAT satellite imagery, aerial photographs with available metadata indicating GPS co-ordinates, eyewitness accounts, sale contracts, property records, other Myanmar government documents, non-governmental organizations' reports and news media (*ibid.*, para. 5). In each of the village tracts, the IIMM found that villages had been replaced by BGP battalion bases. These included Rohingya villages in U Daung, Myo Thu Gyi (Hainda Fara), Inn Din (Aung Dung), Aung Seik Pyin (Done Paik), Myin Hlut (May Rulla) and Zin Paing Nyar (Doinor Zum Boyim Na) village tracts (*ibid.*, paras. 5, 6 and 61).

280. The IIMM found that in addition to building new infrastructure, Myanmar actively promoted resettlement by Buddhists from Bangladesh and other ethnic groups on lands on which Rohingya had formerly lived, particularly in Maungdaw Township (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), paras. 55-56; see also IIMM, "Analysis of the Myanmar Government's encouragement of resettlement by Buddhists from Bangladesh to Rakhine State" (22 March 2024), paras. 2, 10, 22-24 and 31). Such measures included constructing housing and facilitating the use of confiscated Rohingya farmland. For example, "[b]etween April and May 2018, hundreds of new houses funded by regional governments and foundations were handed over to ethnic Mro and Daing Net families and recent [Buddhist] immigrants from Bangladesh" (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 55).

281. The IIMM concluded that, "[b]y destroying and repurposing Rohingya farms, homes, businesses and land", Myanmar "authorities reinforced the effects of the clearance operations and forced deportations, and created very serious impediments to the ability of Rohingya to ever reconstitute the communities where they had lived for generations" (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 61). It further observed that, in so doing,

> "[b]y fundamentally altering or destroying crime scenes, Myanmar authorities have obstructed the possibility of onsite investigations and forensic analysis, making other forms of evidence, such as official records, geospatial and aerial imagery, crime scene photographs, environmental spatial evidence, and open-source material, indispensable in the investigation of destruction and dispossession of Rohingya homes, businesses, farms, schools and places of worship" (*ibid.*, para. 59).

282. The Court concludes that the evidence demonstrates a deliberate, organized process of destroying Rohingya villages and farmland, replacing them with other permanent structures, including security force bases, and promoting resettlement by non-Rohingya ethnic groups on land on which Rohingya had formerly lived.

IV. APPLICABLE LAW

283. The Court will now consider the definition of genocide under the Convention (Section A), followed by the relationship between international humanitarian law and the Convention (Section B).

A. Definition of genocide

284. The Court recalls that the object and purpose of the Convention is to prevent and punish the crime of genocide which, at its core, involves "a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind" (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23, quoting United Nations General Assembly resolution 96 (I) of 11 December 1946). The preamble to the Convention underscores that "genocide has inflicted great losses on humanity", and that the contracting parties seek to "liberate mankind from such an odious scourge".

285. Article II of the Convention defines genocide as

> "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> *(a)* Killing members of the group;
>
> *(b)* Causing serious bodily or mental harm to members of the group;
>
> *(c)* Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> *(d)* Imposing measures intended to prevent births within the group;
>
> *(e)* Forcibly transferring children of the group to another group".

286. According to this provision, the crime of genocide has two constituent elements: the material element or *actus reus* set forth in Article II *(a)* to *(e)*; and the specific mental element or *mens rea* of genocide (*dolus specialis*) set forth in the *chapeau* of Article II — namely the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 62, para. 130).

287. The Court recalls that each of the material acts under Article II also carries its own general mental element (*dolus generalis*), which is distinct from genocidal intent. Thus,

> "'[k]illing' [under subparagraph *(a)*] must be intentional, as must 'causing serious bodily or mental harm' [under subparagraph *(b)*]. Mental elements are made explicit in [sub]paragraphs *(c)* and *(d)* of Article II by the words 'deliberately' and 'intended', quite apart from the implications of the words 'inflicting' and 'imposing'; and forcible transfer [under subparagraph *(e)*] too requires deliberate intentional acts." (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 186.)

Moreover, "[t]he prohibited acts enumerated in subparagraphs *(a)* to *(e)* are by their very nature conscious, intentional or volitional acts which an individual could not usually commit without

knowing that certain consequences were likely to result" (International Law Commission (hereinafter the "ILC"), Draft Code of Crimes against the Peace and Security of Mankind, *Yearbook of the International Law Commission*, 1996, Vol. II, Part Two, p. 44, paragraph 5 of the commentary on Article 17; 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 186).

288. In order for genocide to be established, the specific intent to destroy the group in whole or in part must be present, in addition to the general intent required for each of the individual material acts involved (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 62, para. 132, citing the 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 187). The requirement of genocidal intent is the essential characteristic of genocide, which distinguishes it from other serious crimes such as crimes against humanity (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 62, para. 132; 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 121-122, paras. 187-188). Acts that fall within the *actus reus*, when committed with genocidal intent, constitute acts of genocide under the Convention.

289. In particular, it is the specific intent to destroy the "group, as such", in whole or in part, that is the defining feature of genocide (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 62, para. 132; 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 121-122, paras. 187-188). The Court has indicated that the term "destroy", for the purposes of genocidal intent, refers to the physical or biological destruction of the group rather than destruction of the group's culture in its various aspects (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 63, para. 136). Such destruction of the group, however, is not confined to the death or biological destruction of its individual members, or even their physical harm. This is demonstrated by the exhaustive list of material acts set forth in Article II *(a)* to *(e)* of the Convention, which are not cumulative. Acts causing serious bodily or mental harm to members of the group under Article II *(b)* do not, per se, involve their death or biological destruction, and serious mental harm may not involve physical harm at all. The injuries set forth in subparagraph (*b*) can, however, impact the ability of the group, as such, to maintain its existence as a group.

290. Similarly, forcibly transferring children of the group to another group under Article II *(e)* does not in and of itself involve the death or biological destruction of any individual member of the group. It does, however, lead to the dispersal of at least a part of the group, making it difficult for that part to continue its existence as a group. The forcible transfer of children, as the biological future of the group, can also "have consequences for the group's capacity to renew itself, and hence to ensure its long-term survival" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 63, para. 136).

291. The preparatory work regarding Article II *(e)* confirms that the concern of the drafters of the Convention was the destruction of the group, as distinguished from the physical destruction of its individual members. Some United Nations Member States in the Sixth Committee of the General Assembly opposed including the forcible transfer of children among the *actus reus* on the grounds that genocide was limited to physical extermination; others supported including the forcible transfer of children due to the gravity of its consequences, despite the fact that it does not require the physical destruction of any individual member of the group (United Nations, *Official Records of the General Assembly*, Third Session, Part I, Sixth Committee, Summary Records of Meetings, UN doc. A/C.6/SR.61-140, 82nd meeting (23 October 1948), pp. 186-191). As with serious mental harm under Article II *(b)*, the ultimate inclusion of the forcible transfer of children within the *actus reus* of genocide thus recognized that, for the purposes of the Convention, a group may be destroyed in the absence of physical harm to its individual members.

292. The Court notes that the only explicit reference to "physical destruction" in Article II is found in subparagraph *(c)*, which prohibits "[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part". This provision, which concerns the *actus reus* of genocide, has been understood as referring to the death of the group's members (see paragraph 345 below). The absence of the term "physical" in the *chapeau* of Article II, however, further suggests that, for the purposes of genocidal intent, the intent "to destroy" the group conveys a broader meaning than the death of its members.

293. Article II of the Convention recognizes that destruction of the group "as such" may result from any of the five material acts set forth therein, whether occurring individually or in combination, when directed against at least a substantial part of the group. Thus, while the final text of the Convention excludes specific acts relating to "the destruction of historical, cultural and religious heritage" from the list of acts that must be established in order for genocide to occur (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 185-186, para. 344), measures such as serious bodily or mental harm or forcible transfer of children, which can severely impact the existence of the protected group and its ability to function as a group, were considered sufficiently grave to constitute material acts under Article II of the Convention, without involving the death or biological destruction of individual members. The Court accordingly considers that the destruction of the "group, as such", in whole or in part, as set out in the *chapeau* of Article II, refers to forms of destruction of the group in whole or in part that may result from the acts enumerated in Article II *(a)* to *(e)*.

294. Article I of the Convention obliges States parties to prevent and punish genocide, obligations which are further elaborated in other provisions of the Convention. Article III renders genocide as defined in Article II, as well as related acts, punishable.

295. The Court has recognized that a State may itself be held responsible for genocide or other acts set forth in Article III if such acts are committed by its organs or by persons or groups whose acts are attributable to it (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 119, para. 179). The Court has further noted that, although the Convention addresses criminal responsibility of individuals, Article I of the Convention, read together with Article III, imposes obligations on States separate from the obligations that the Convention requires States to place on individuals (*ibid.*, p. 117, para. 174). The question of individual criminal responsibility is in principle distinct from the question of State responsibility, and such duality of responsibility is "a constant feature of international law" (*ibid.*, p. 116, para. 173). The Court recalls that "State responsibility and individual criminal responsibility are governed by different legal régimes and pursue different aims" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 61, para. 129). The Court therefore reiterates that the obligations "arising from the terms of the Convention, and the responsibilities of States that would arise from breach of such obligations, are obligations and responsibilities under international law. They are not of a criminal nature" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 115, para. 170).

B. Relationship between international humanitarian law and the Genocide Convention

296. The claims before the Court raise questions regarding the relationship between international humanitarian law (*jus in bello*) and the Genocide Convention. Article I of the

Convention confirms that genocide is a crime under international law "whether committed in time of peace or in time of war". The Convention thus applies, by its express terms, in situations of armed conflict to which international humanitarian law also applies.

297. The Gambia emphasizes that genocide may be a means for achieving military objectives just as readily as military conflict may be a means for instigating a genocidal plan. Myanmar, in turn, recognizes that "genocide can be committed during counter-terrorism operations".

298. The Parties disagree, however, whether killings and other acts that are lawful under international humanitarian law may nevertheless fall within Article II of the Genocide Convention. With respect to the *actus reus* of genocide, The Gambia accepts that it is "in theory possible" that killing members of a protected group in a manner not prohibited by international humanitarian law during an armed conflict "may not" fall within Article II *(a)* of the Genocide Convention. It maintains, however, that killings of members who are not engaged in any hostile activity, and who are targeted because of their membership in the protected group, would fall within Article II *(a)*. In The Gambia's view, deliberately inflicting unnecessary and serious harm on civilians during alleged counter-terrorism operations would likewise be covered by Article II *(b)*.

299. Myanmar contends that deaths and injuries caused in an armed conflict or law enforcement action that are "legitimate" under international humanitarian law do not fall within Article II *(a)* or *(b)* of the Genocide Convention. In particular, it argues that these provisions do not apply to "legitimate killings or bodily harm caused to insurgents or terrorists" in an armed conflict or to collateral civilian harms, if the operations are exclusively directed at legitimate targets and the civilian casualties are not caused deliberately. With respect to genocidal intent, Myanmar submits that "[t]he existence of an armed conflict or counter-terrorism operation may provide a basis for allowing reasonable inferences that do not involve genocide".

300. Among the interveners, the DRC maintains that the decisive question with respect to whether acts occurring in an armed conflict may be genocidal is the presence or absence of genocidal intent:

> "If intent to destroy a group protected by the Convention as such is established, and this intent is manifested through acts set out in the subparagraphs of Article II, then that provision has indeed been violated . . . Theoretically, even the possibility of genocide being perpetrated through acts directed exclusively at combatants, in a manner that appears to be consistent with the *jus in bello*, cannot be excluded."

Belgium likewise submits that the possibility that acts prohibited by the Convention may be in conformity with international humanitarian law is irrelevant for the purpose of identifying genocidal intent. It contends that the Genocide Convention and international humanitarian law involve two separate legal régimes with different aims, follow two specific logics and are developed through distinct bodies of rules.

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301. The Court observes that in an armed conflict, as elsewhere, only acts committed with the specific intent to destroy the group in whole or in part can constitute genocide within the meaning of Article II of the Convention. The Court recalls that the Genocide Convention and international humanitarian law are two distinct bodies of rules, pursuing different aims, both of which are applicable in the context of armed conflict (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 68, para. 153). The Court has jurisdiction in this case to make a determination regarding breaches only of the Genocide Convention and not of international humanitarian law or any other body of international law. The Court is not prevented, however, from considering, in its reasoning, whether a violation of international humanitarian law has occurred, to the extent that this is relevant for the Court's determination of whether there has been a breach of an obligation under the Genocide Convention (*ibid.*, pp. 45-46, para. 85).

302. In its 2015 *Croatia* Judgment, the Court considered whether acts committed during the course of an armed conflict must be unlawful under international humanitarian law in order to constitute the *actus reus* of genocide (*I.C.J. Reports 2015 (I)*, p. 67, para. 150). The Court reasoned that

> "[t]here can be no doubt that, as a general rule, a particular act may be perfectly lawful under one body of legal rules and unlawful under another. Thus it cannot be excluded in principle that an act carried out during an armed conflict and lawful under international humanitarian law can at the same time constitute a violation by the State in question of some other international obligation incumbent upon it." (*Ibid.*, p. 138, para. 474.)

303. The text of Article II of the Convention does not require that the acts enumerated therein be unlawful pursuant to a distinct body of international law. The Court has observed, however, that "the rules of international humanitarian law might be relevant in order to decide whether the acts alleged by the Parties constitute genocide within the meaning of Article II of the Convention" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 68, para. 153). With respect to the *actus reus* of genocide, the Court has recognized, for example, that the question whether attacks are "exclusively directed at military targets" is relevant to the question whether any resulting civilian deaths may be intentional within the meaning of Article II *(a)* (*ibid.*, p. 138, para. 474; see paragraphs 287 above and 315 and 318 below).

304. With respect to genocidal intent, the Court likewise has considered that compliance or non-compliance with international humanitarian law, including whether attacks "caused casualties and damage far in excess of what was justified by military necessity", may be relevant in inferring the presence or absence of the specific intent to commit genocide (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 121, para. 413). On the other hand, the fact that members of a protected group could be lawfully targeted or incidentally harmed under international humanitarian law does not exclude the possibility that they may be killed or harmed with genocidal intent (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 125). In the 2007 *Bosnia* Judgment, for example, the Court considered irrelevant the contention that acts of deportation and expulsion could be justified under international humanitarian law, observing that "no such justification could be accepted in the face of proof of specific intent" to commit genocide (*I.C.J. Reports 2007 (I)*, pp. 181-182, para. 334).

305. Accordingly, the Court concludes that although compliance with another body of international law, including international humanitarian law, may inform the identification of intent

with respect to the *actus reus* of genocide, as well as genocidal intent, such compliance does not exclude conduct from the scope of the Genocide Convention.

V. OBLIGATION NOT TO COMMIT GENOCIDE

306. Having examined the evidentiary record and the applicable law, the Court will now consider The Gambia's claim that Myanmar breached its obligation not to commit genocide pursuant to Articles I and III *(a)* of the Convention.

307. The Court notes that, for the purpose of establishing State responsibility under the Genocide Convention, both Parties accept that the acts at issue were carried out primarily by Myanmar's security forces. It is undisputed that the conduct of Myanmar's security forces and other organs of the State is attributable to Myanmar under the law of State responsibility. The question of the duty to prevent acts of genocide by persons whose conduct is not attributable to Myanmar will be considered below (see paragraph 472).

A. The Rohingya as a protected group

308. Under Article II of the Genocide Convention, the prohibited acts are limited in scope to those directed against a "national, ethnical, racial or religious group, as such". The jurisprudence of the Court and of international criminal tribunals has established that qualification as a protected group is assessed by reference to a combination of objective and subjective criteria. The Court has considered positive characteristics of nationality, ethnic origin, race or religion as objective criteria (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 124, para. 193). As regards subjective criteria, self-identification as a national, ethnic, racial or religious group and the alleged perpetrators' stigmatization of the group are generally considered as relevant factors (*Rutaganda*, ICTR-96-3-T, Trial Chamber I, Judgement of 6 December 1999, para. 56; see also *Krstić*, IT-98-33-T, Trial Chamber, Judgement of 2 August 2001, paras. 557-559).

309. The Parties initially disagreed as to whether the Rohingya are a protected group for the purposes of Article II. During the oral proceedings, Myanmar, while maintaining that the Rohingya living in Myanmar are "culturally, ethnically and religiously part of the same group as the population living immediately across the border in Bangladesh", conceded that they constitute at least a "part" of a protected group for the purposes of the Genocide Convention.

310. In the Court's view, the Rohingya of Myanmar constitute a distinct ethnic group. Linguistic studies and historical evidence make clear that the Rohingya language is distinguishable from other languages spoken in Myanmar. The Rohingya are predominantly Muslim (see paragraph 68 above) and are identified as such by Myanmar. Moreover, the Rohingya have a distinct culture, with unique art forms, and social and religious institutions that are used for the settlement of disputes. The Rohingya population's common language and culture enable its members to "distinguish[] [themselves], as such" (*Kayishema and Ruzindana*, ICTR 95-1-T, Trial Chamber II, Judgement of 21 May 1999, para. 98). The Court also considers it significant that the Rohingya self-identify as an ethnic group (United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High

Commissioner for Human Rights", UN doc. A/HRC/32/18 (29 June 2016), para. 3). The evidentiary record demonstrates that the Rohingya have been stigmatized by Myanmar for decades (see paragraphs 134-168 above) and that Myanmar uses the term "Bengalis" to refer to the Rohingya population (see paragraph 67 above), supporting the proposition that Myanmar also considers them to be a distinct group. The Court thus finds that the Rohingya of Myanmar have a "particular group identity" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 125, para. 193) and, as an ethnic group, qualify as a protected group for the purposes of Article II.

B. *Actus reus* of genocide

311. As noted, the acts listed in Article II *(a)* to *(e)* of the Convention constitute the *actus reus* of genocide (see paragraph 286 above). The Gambia claims that acts within the meaning of Article II *(a)* to *(d)* of the Convention were committed by Myanmar's security forces against members of the Rohingya group, but does not assert that Myanmar has forcibly transferred children of the group to another group (Article II *(e)* of the Convention). The Court will thus consider in turn whether the acts that are established by the evidence fall within the *actus reus* under Article II *(a)* to *(d)*.

1. Article II *(a)*: killing of members of the group

312. The Parties do not dispute that for killings of members of the protected group to fall within Article II *(a)* of the Convention, they must be intentional (see 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 186; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 68-69, para. 156). They disagree, however, on whether a certain minimum number of victims is required.

313. The Gambia contends that there is no numerical threshold inherent in the *actus reus* set forth in Article II *(a)* or in any other subparagraph of Article II. It argues that questions of scale or numbers are relevant to the determination of genocidal intent, but not to the *actus reus*. Myanmar, for its part, maintains that each *actus reus* under Article II must be read in light of the specific intent set forth in the *chapeau*, and the acts thus "must be of a certain degree of gravity and assume a certain scale". Therefore, in Myanmar's view, killings can fall within Article II *(a)* only if they are part of a campaign committed on a scale that is capable of bringing about the physical or biological destruction of all or part of the group.

314. The Parties further dispute whether Myanmar committed the act of killing members of the protected group within the meaning of Article II *(a)* of the Convention. The Gambia asserts that at least 10,000 Rohingya were killed by Myanmar in the course of the 2017 clearance operations, which, it maintains, directly targeted Rohingya civilians rather than members of ARSA. Myanmar, in turn, claims that its security forces conducted counter-terrorism operations in compliance with its rules of engagement and that The Gambia has failed to prove that any individuals who were killed were not participants in ARSA violence or collateral casualties. It also contends that even if the Applicant's claim of 10,000 intentional killings of members of the protected group were established, this would be insufficient to physically destroy the population of Rohingya living in northern Rakhine State. Thus, the Respondent submits that the evidence does not establish that any killings fall within the meaning of Article II *(a)* of the Convention.

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315. The Court recalls that the words “killing” and “meurtre”, appearing in the English and French versions of Article II *(a)* of the Convention respectively, have the same meaning, referring to the act of intentionally killing members of the group (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 68-69, para. 156, citing the 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 186, and *Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, para. 642). In this regard, it observes that the expression “intentional killing” has been given the same meaning as “murder” within the definition of crimes against humanity in the jurisprudence of international criminal tribunals. In the Court’s view, a killing is intentional within the meaning of Article II *(a)* of the Convention where the perpetrator meant to cause the death of the victim or acted with knowledge that death was a likely consequence of the act or omission. This does not include negligence or gross negligence (*Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, paras. 448 and 542; *Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, paras. 572 and 642; *Krstić*, IT-98-33-T, Trial Chamber, Judgement of 2 August 2001, para. 543; Extraordinary Chambers in the Courts of Cambodia, Case 002/02, Trial Chamber, Judgement of 16 November 2018, paras. 635-651 and 796; see paragraph 287 above).

316. With respect to whether Article II *(a)* requires harm to be committed at a certain scale in order for the *actus reus* to be satisfied, the Court notes that the crime of genocide under the Convention requires that a perpetrator intend to destroy the protected group in whole or in part, not merely one or more individual members. Matters of scale with respect to victims, however, form part of the inquiry into the specific intent to destroy the group in whole or in part set forth in the *chapeau* of Article II, specifically when genocidal intent is inferred from circumstantial evidence (see paragraphs 374 and 427 below; see also *Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, para. 542). The Court therefore finds that these are considerations for the *mens rea* of genocide and not for the *actus reus*.

317. Regarding the other subparagraphs of Article II, the Court considers that, other than the distinctive language of Article II *(c)*, which the Court will address below (see paragraphs 344-349), the material elements under Article II do not, in and of themselves, require the demonstration of any quantitative impact on the group. There is no requirement of a minimum number of victims, so long as the acts are those set forth in one of the provisions of Article II and one or more victims are members of the protected group.

318. Turning to the circumstances of this case, the facts as previously determined by the Court establish that Myanmar’s security forces committed large-scale killings of members of the protected group during the course of the 2017 clearance operations (see paragraphs 251-253). The Court concludes that the killings included, *inter alia*, the direct targeting of civilians, including women and very young children, and killings with knives and burning of people in houses. They also included killing by widespread indiscriminate shooting. Such killings are intentional within the meaning of Article II *(a)*. Myanmar also concedes that its troops were involved in the killing of the ten captive Rohingya men at Inn Din, in violation of its rules of engagement (see paragraph 232 above).

319. The Court has already determined that the estimate of 10,000 Rohingya violently killed during the 2017 clearance operations is supported by the evidence (see paragraph 253). The Court is fully convinced that Myanmar’s security forces intentionally killed members of the protected group on a large scale in the course of the clearance operations, and that the *actus reus* set forth

in Article II *(a)* of the Convention is established. The Court is not called upon, for the purpose of establishing the *actus reus* of killing, to list the specific killings or to make a conclusive finding on the total number of victims (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 154, para. 276).

2. Article II *(b)*: causing serious bodily or mental harm to members of the group

320. Acts causing either serious bodily harm or serious mental harm to members of the protected group constitute the *actus reus* of genocide under Article II *(b)*. As with killings under Article II *(a)*, such acts must be intentional (see paragraph 287 above).

321. Invoking the jurisprudence of international criminal tribunals, The Gambia contends that "serious" bodily or mental harm must involve a "grave and long-term disadvantage to a person's ability to lead a normal and constructive life", though the harm caused need not be permanent or irremediable. Myanmar agrees that the word "serious" in Article II *(b)* creates a threshold of severity. The Parties also agree that rape and other acts of sexual violence, and the forcible transfer of members of a group are capable of falling within this provision, although their views diverge with respect to the circumstances under which such acts may do so.

322. The Gambia alleges that Myanmar's security forces caused serious bodily and mental harm to members of the Rohingya group. This includes the physical injuries suffered by those who survived acts such as shootings, burnings and sexual violence. It also includes the serious mental harm experienced by those who witnessed or escaped death and suffered sexual and other forms of violence. In the Applicant's view, the circumstances of the clearance operations, including the ransacking and burning of homes, the forced exodus to Bangladesh and the inability of Rohingya to return, has resulted in lasting mental harm for those now forced to live in refugee camps.

323. Myanmar, for its part, submits that The Gambia's evidence is not capable of proving that acts satisfying the *actus reus* of genocide under Article II *(b)* were committed or resulted from any use of excessive or unlawful force by Myanmar's security forces. The Respondent suggests that some injuries may have resulted from the activities of ARSA or involved "collateral damage" in the context of an armed conflict, and contests the precise number of deaths and injuries alleged by The Gambia.

324. The joint intervening States contend that the harm resulting from sexual and gender-based violence is "almost universally 'serious' by its nature", while the DRC emphasizes that rape and sexual violence "by definition" cause serious bodily or mental harm to victims.

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325. The Court observes that acts committed against members of the protected group fall within the scope of Article II *(b)* only if they result in physical or mental harm that is "serious". Such harm "need not be permanent and irremediable" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 167, para. 300, citing *Stakić*, IT-97-24-T, Trial Chamber II, Judgement of 31 July 2003, para. 516). Long-standing jurisprudence of international criminal tribunals establishes that serious bodily or mental harm must, however, involve "a grave and long-term disadvantage to a person's ability to lead a normal and constructive life", and requires proof of a result (*Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, para. 543; see also *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 738*; Krajišnik*, IT-00-39-T, Trial Chamber I, Judgement of 27 September 2006, para. 862; *Krstić*, IT-98-33-T, Trial Chamber, Judgement of 2 August 2001, para. 513). The seriousness of the harm in question is to be assessed on a case-by-case basis, through a holistic evaluation of the evidence pertaining to the case (*Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, paras. 201 and 210-211).

326. The Court recalls that rape and other forms of sexual and gender-based violence are "capable of constituting the *actus reus* of genocide within the meaning of Article II *(b)*" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 70, para. 158; see also 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 167, para. 300). Indeed, such acts constitute "one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 167, para. 300, citing *Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 731).

327. In the context of the situation in Srebrenica, serious bodily or mental harm was found to have been experienced by persons who were about to be executed, persons who were separated by forcible displacement from those who were executed, and survivors among them suffering the resulting loss (see 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 162, para. 290, citing *Krstić*, IT-98-33-T, Trial Chamber, Judgement of 2 August 2001, para. 543, and *Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, paras. 644-654). The ICTY accepted that "'threats of death' and knowledge of impending death" may result in serious mental harm and that "survivors of killing operations may suffer serious mental harm" (*Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, paras. 206-207). The 2007 *Bosnia* Judgment also found that massive mistreatment, beatings, rape and torture committed during the conflict caused serious bodily and mental harm as defined by Article II *(b)* of the Convention (*I.C.J. Reports 2007 (I)*, p. 175, para. 319). The Court has recognized that the psychological pain suffered by the relatives of persons who have disappeared in the context of an alleged genocide, as a result of the persistent refusal of the competent authorities to provide the information in their possession regarding the fate of the disappeared, is capable of causing serious mental harm within the meaning of Article II *(b)*, so long as the requirements of that provision are satisfied (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 70, para. 160, and pp. 108-109, para. 356; see also *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 756; *Popović et al.*, IT-05-88-T, Trial Chamber II, Judgement of 10 June 2010, paras. 844 and 846).

328. With respect to forcible displacement, the Court recalls that a proposal to include "measures intended to oblige members of a group to abandon their homes in order to escape the *threat* of subsequent ill-treatment" was not accepted as an element of the *actus reus* by the drafters

of the Convention (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 123, para. 190, citing UN doc. A/C.6/234; emphasis added). However, it is well established that while forcible transfer "does not of itself" constitute a material act of genocide, "depending on the circumstances of a given case, it may cause such serious bodily or mental harm as to constitute an act of genocide" (see *Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, para. 545; *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 739, and IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 209). Specifically, the particular circumstances of a forcible transfer, such as separation from and loss of family members, appalling transfer conditions, the destruction of homes and the inability to return home, can cause "a grave and long-term disadvantage to a person's ability to lead a normal and constructive life" (see paragraph 325 above), and thus constitute "serious mental harm" for the purposes of the *actus reus* of genocide (*Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, paras. 209-211; *Popović et al.*, IT-05-88-T, Trial Chamber II, Judgement of 10 June 2010, paras. 846-847; *Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, paras. 646 and 650-653; *Krstić*, IT-98-33-T, Trial Chamber, Judgement of 2 August 2001, para. 513).

329. The record before the Court establishes that acts of the Myanmar security forces inflicted serious physical injuries on members of the protected group, including injuries resulting from shooting, knife wounds and burning. Widespread acts of rape, including gang and mass rape, and other forms of sexual violence, often accompanied by beatings or mutilation, also resulted in serious physical harm (see paragraphs 254-256 and 260 above). In the view of the Court, the record establishes by fully conclusive evidence that the Myanmar security forces intentionally caused serious bodily injuries resulting in a grave and long-term disadvantage to the ability of members of the protected group to lead a normal and constructive life within the meaning of Article II *(b)* of the Convention.

330. A holistic assessment of the evidence also establishes that acts of the Myanmar security forces resulted in serious mental harm to members of the protected group. This includes the mental harm inflicted on persons prior to their deaths, the trauma of escaping death and of witnessing or knowing of the deaths of family members, the corresponding anguish of separation and loss, and the psychological suffering of relatives regarding family members whose circumstances were and remain unknown. For example, witnesses MN, NJ and NS all exhibited the psychological harm they continue to suffer from such losses. As PILPG found, "[o]f the 1,024 Rohingya interviewed, 20 percent were themselves physically injured in the attacks . . . and 80 percent witnessed the killing of a family member, friend, or personal acquaintance" (PILPG, Factual findings & legal analysis report, p. vi). PILPG further found that the killings and disappearances left survivors "with uncertainty about their future and fear about the fate of those they loved and [that they] suffer profound physical and psychological harm as a result" (*ibid.*, p. 74). These findings are supported by other evidence in the record.

331. Acts of rape and other forms of sexual violence, including gang rapes and sexual violence accompanied by beatings, mutilation, scarring or branding (see paragraphs 254-256 and 260 above), contributed to lasting mental harm to survivors, as well as to those who witnessed the acts (see paragraph 257 above). For example, in her affidavit, Witness NJ described the "mental pain,

including the loss of . . . dignity" inflicted on her by the soldiers who raped her (Affidavit of Witness NJ, para. 78). A report by Physicians for Human Rights on sexual and other violence experienced by the Rohingya community as a result of the clearance operations confirms that "[s]exual violence had a deep and long-lasting impact on the mental health of Rohingya survivors" (Physicians for Human Rights, "Sexual violence, trauma, and neglect: Observations of health care providers treating Rohingya survivors in refugee camps in Bangladesh" (October 2020), p. 23).

332. Numerous persons who survived the clearance operations witnessed the burning of homes and villages — sometimes with family members and other persons locked inside (see paragraph 273 above) — and over 700,000 members of the Rohingya group were forced to flee from northern Rakhine State to Bangladesh (see paragraph 262 above). Those making the journey experienced loss, separation and uncertainty regarding their own survival and that of their community. Although some witnesses reported being able to travel to Bangladesh without incident, for others the journey itself was traumatic and violent, including risks of rape and other attacks by security forces, drownings and other risks of death (see paragraphs 262-270 above). The record also establishes that the extensive destruction and bulldozing of villages and their replacement with other infrastructure (see paragraphs 271-282 above) has meant that, for more than nine years, most of those who survived the journey have been consigned to live in squalid and at times dangerous refugee camps, with no opportunity to return and no homes or livelihoods to return to. The above harms were widespread.

333. The Court recalls that, while forcible displacement does not in and of itself inflict serious mental harm for the purposes of the *actus reus* of genocide, the circumstances of such forcible displacement, taken together, can cause serious mental harm within the meaning of Article II *(b)* (see paragraph 328 above). Relevant circumstances have included violent separation from and loss of family members, the destruction of homes and the inability to return home, ongoing uncertainty regarding the fate of relatives and their whereabouts, "appalling conditions of the journey . . . by bus and on foot", and "post-transfer suffering" (*Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, paras. 209-211, confirming the approach taken by the Trial Chamber II, IT-05-88/2-T, Judgement of 12 December 2012, paras. 756-757; see also *Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, para. 5664). The Court considers that members of the protected group experienced such circumstances in this case.

334. With respect to the general intent required for Article II *(b)*, the Court considers, at a minimum, that the above violent acts were committed by the Myanmar security forces with knowledge that they were likely to result in serious mental harm to the Rohingya population. They thus constitute intentional acts within the meaning of Article II *(b)* (see paragraphs 287, 315 and 320 above). In the Court's view, taken together, the acts of the Myanmar security forces described above have resulted in a grave and long-term disadvantage to the ability of members of the Rohingya group to lead a normal and constructive life, amounting to serious mental harm within the meaning of Article II *(b)*.

335. With respect to the number of persons who suffered serious mental harm, the Court observes that the killing of approximately 10,000 Rohingya (see paragraph 253 above) inflicted

acute suffering on numerous surviving family members, including pain from loss and separation, from witnessing deaths and from uncertainty regarding the fate of family members whose whereabouts remain unknown. At least 1,834 acts of rape (see paragraph 258 above) caused severe suffering for the victims, as well as suffering for their family members and persons who witnessed the acts. Approximately 326,000 Rohingya had their homes burned (see paragraph 272 above), leaving them with no place to return to, and many personally experienced the burning of their homes and villages (see paragraph 273 above). Finally, while not all of the approximately 700,000 Rohingya who were forced to flee experienced extreme hardship during the journey to Bangladesh, the evidence establishes that many of them did (see paragraphs 262-270 above), and those who fled have not been allowed to return.

336. The Court does not consider that each of the above types of acts alone caused serious mental harm to every member of the Rohingya group who experienced them. Grave and long-term disadvantage to the ability to lead a normal and constructive life within the meaning of Article II *(b)* is determined pursuant to a holistic assessment of the evidence (see paragraph 325 above). Nevertheless, some of the acts inflicted on individual Rohingya were extreme enough to cause serious mental harm in and of themselves; for other members, serious mental harm resulted from a combination of acts. The Court therefore concludes that the 2017 clearance operations caused serious mental harm to a very significant number of members of the Rohingya group in northern Rakhine State.

337. The Court recalls that for the purpose of establishing the *actus reus* under Article II *(b)*, it need not set out the precise extent of the injuries suffered or make a conclusive finding on the total number of victims. The Court is fully convinced that the 2017 clearance operations caused serious bodily and mental harm to a very significant number of members of the protected group and that the *actus reus* set forth in Article II *(b)* is established.

3. Article II *(c)*: deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part

338. Article II *(c)* of the Genocide Convention concerns the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 176, para. 320). The Court has explained that this provision covers "methods of physical destruction, other than killing, whereby the perpetrator ultimately seeks the death of the members of the group" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 70, para. 161).

339. The Parties agree that the *actus reus* under Article II *(c)* does not require that physical destruction actually occur. Rather, in order to fall within Article II *(c)*, conditions of life need only be "*capable* of bringing about" the physical destruction of the group in whole or in part.

340. For the Applicant, such conditions of life include measures "imposed to make meaningful life impossible for the Rohingya — and eliminate the group". According to The Gambia, long-standing discrimination and deprivation of the Rohingya's basic needs, together with

widespread rape and other forms of sexual violence, the destruction of houses and livelihoods, and the forced mass exodus to Bangladesh resulting from the clearance operations have inflicted on the group conditions of life calculated to bring about its physical destruction in whole or in part. With respect to basic needs, The Gambia alleges that Myanmar for decades imposed on the Rohingya widespread and severe restrictions on movement, employment, access to food and healthcare, education, citizenship, and marriage and births, which resulted, *inter alia*, in severe acute malnutrition among the Rohingya. This includes, in the Applicant's view, the conditions of the internally displaced Rohingya, who since 2012 have been confined in internment camps and ghettos.

341. The Gambia maintains that the clearance operations compounded these conditions, including through rape and other sexual violence; systemic burning and bulldozing, which eliminated essential means of subsistence even for those who remained; and hardship during the journey to Bangladesh, when many died or were injured. The Applicant argues that sexual violence was perpetrated on a massive scale with the intended effect, at least in part, of weakening the social cohesion of the Rohingya community and contributing to the destruction of the Rohingya as a group.

342. For Myanmar, the words "[d]eliberately inflicting" together with "calculated" in Article II *(c)* require that the perpetrator has deliberately and intentionally imposed the conditions of life for the purpose of bringing about the destruction of the group, in whole or in part. The Respondent contends that this provision requires conduct at a scale or level of systematicity that the Court did not previously find satisfied in the 2015 *Croatia* Judgment with respect to sexual violence and denial of food supplies. Thus, according to Myanmar, conditions of life "could fall within Article II *(c)* only if *deliberately* imposed *on the group* for the *purpose* of bringing about the physical destruction of the group in whole or in part, and only if *capable* of bringing about this result" (emphasis in original).

343. In addition to contesting the basic facts alleged by the Applicant, Myanmar contends that The Gambia has failed to establish that any deliberate restrictions on food or deprivation of medical care were sufficiently systematic or general to satisfy Article II *(c)*. The Respondent further maintains that there is no evidence that the measures invoked by the Applicant sought, as their ultimate goal, the total or partial physical destruction of the group. Myanmar submits that, to the contrary, members of the protected group have readily been able to marry, procreate and earn a living in northern Rakhine State.

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344. The Court observes that subparagraph *(c)* is distinctive among the material elements set forth in Article II in several respects. First, the provision requires that measures be imposed upon at least a substantial part of "the group", rather than a single individual, and that the imposition of measures occur sufficiently consistently to constitute a "condition[] of life". Article II *(c)* thus incorporates a consideration of scale or systematicity with respect to the acts concerned.

345. Second, as noted, subparagraph *(c)* is the only provision in Article II that explicitly refers to the "physical destruction" of the group, in whole or in part (see paragraph 292 above), which has been understood as referring to the death of at least a substantial part of the group (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 71, para. 161; *Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 233). The *actus reus* set forth in Article II *(c)* is therefore analogous to that in Article II *(a)*, in that it is limited to measures capable of causing the death of members of the protected population, albeit over a period of time.

346. Third, subparagraph *(c)* provides that measures be "[d]eliberately" inflicted, as well as "calculated" to bring about the group's physical destruction, in whole or in part. The Court has recognized that the term "deliberately" forms the general mental element of the *actus reus* of Article II *(c)* (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 186; see paragraph 287 above). The term "calculated" could be understood as incorporating into Article II *(c)* an additional specific mental element of intent or purpose. Under this interpretation, conditions of life would have to be both deliberately inflicted and also intended to bring about the group's physical destruction in whole or in part. Such an interpretation, however, would establish a specific intent requirement for Article II *(c)* that largely replicates the specific genocidal intent already required by the *chapeau* ("intent to destroy, in whole or in part"), and render the word "calculated" in Article II *(c)* superfluous.

347. The Court considers that the term "calculated" in Article II *(c)* requires that the conditions of life imposed be objectively capable of bringing about destruction of the group, in whole or in part, through the slow death of members of the group. As the ICTY Trial Chamber explained in *Karadžić*, determining whether measures were "calculated to bring about" the physical destruction of the group requires focusing on the "objective probability of these conditions leading to the physical destruction" (*Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, paras. 546-548; see also *Karadžić*, IT-95-5/18-AR98*bis*.1, Appeals Chamber, Judgement of 11 July 2013, para. 40). Like the other material acts set forth in Article II, such measures nevertheless would not constitute genocide unless they were also committed with the genocidal intent required by the *chapeau*.

348. The Court further observes that while the *actus reus* under Article II *(c)* requires that the conditions inflicted be objectively capable over time of resulting in the physical destruction of the group in whole or in part, this physical destruction need not actually occur in order for the *actus reus* to be fulfilled (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 110, para. 364).

349. In sum, the material act set forth in Article II *(c)* prohibits a State from engaging in conduct that deliberately inflicts conditions of life that are objectively capable of causing the death, over time, of at least a substantial part of the protected group.

350. The Court has recognized that relevant conditions of life for the purposes of Article II *(c)* can include "deprivation of food, medical care, shelter or clothing, as well as lack of hygiene, systematic expulsion from homes, or exhaustion as a result of excessive work or physical exertion" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 70, para. 161, citing *Brđanin*, IT-99-36-T, Trial Chamber II, Judgement of 1 September 2004, para. 691). Rape and other acts of sexual violence, and forcible displacement, may fall within the scope of Article II *(c)* (*ibid.*, p. 71, para. 162, and p. 110,

para. 364; 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 123, para. 190; see also *Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 209; *Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber II, Judgement of 21 May 1999, para. 116).

351. In assessing the conditions of life relevant for this *actus reus* in the absence of direct evidence, the relevant inquiry is an "overall factual assessment", taking into account all the relevant conditions of life inflicted on all or a substantial part of the group (*Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 209; *Karadžić*, MICT-13-55-A, Appeals Chamber, Judgement of 20 March 2019, para. 704). The International Criminal Tribunal for Rwanda (ICTR) has similarly held that the "conditions of life envisaged" can include a range of measures, provided they "would lead to the destruction of the group in whole or in part" (*Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber II, Judgement of 21 May 1999, para. 116).

352. The threshold for establishing within the meaning of Article II *(c)* that conditions of life have been deliberately inflicted that are objectively capable of causing the death of all or a substantial part of the members of the protected group is demanding. In considering acts of rape and sexual violence, denial of food supplies and food shortages, alleged denial of medical supplies, systematic expulsion from homes and forced transfer, restrictions on movement and destruction of property, among other measures, the Court in 2015 did not find the requirements of Article II *(c)* satisfied (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 110-115, paras. 362-385; see also *Karadžić*, IT-95-5/18-T, Trial Chamber, Judgement of 24 March 2016, paras. 2586-2587; *Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 233). On the other hand, extreme deprivation has, in some circumstances, been found to fall within Article II *(c)* (see *Brđanin*, IT-99-36-T, Trial Chamber II, Judgement of 1 September 2004, para. 909).

353. In the present case, the evidence indicates that, for many years, numerous restrictions on the Rohingya population in northern Rakhine State, including with respect to access to citizenship and freedom of movement, prevented the Rohingya from being able to secure adequate food and medical care and to pursue livelihoods (see paragraphs 142 and 147-149 above). Restrictions on movement increased following the 2012 sectarian violence (FFM, Report of the detailed findings (2018), para. 509) and tightened further at the time of the 2016 and 2017 clearance operations, including with respect to access to humanitarian aid (see paragraph 150 above). The over 100,000 Rohingya who remained confined in IDP camps following the 2012 violence also were subject to severe limitations on their freedom of movement, overcrowded shelters and inadequate services (see paragraphs 151-152 above). As a result of these and other measures, the Rohingya population of northern Rakhine State, and particularly its children, faced serious malnutrition in 2017 (World Food Programme, "Food security assessment in the northern part of Rakhine State: Final report" (July 2017), p. 1).

354. Such measures, together with the events of the 2017 clearance operations, compounded the acute hardship and vulnerability of the protected group. The Court has recognized that many of the acts committed during the clearance operations were intentional and inflicted serious bodily or mental harm within the meaning of Article II *(b)*, and therefore establish the *actus reus* of genocide (see paragraph 337 above).

355. The requirement of Article II *(c)*, however, is not that the conditions of life must be capable of causing the death of one or more members of the group over time, but that they be capable of causing the death of at least a substantial part of the group over time. The Court is not convinced that the evidence sufficiently establishes that the restrictions on movement and deprivation of access to food and medical care described by the Applicant were objectively capable of bringing about the ultimate death of a substantial part of the members of the protected group in this manner. The Court further considers that the circumstances of the 2017 clearance operations themselves, which involved extreme violence over a concentrated period of time, did not impose conditions of life of the character contemplated by Article II *(c)*.

356. The Court accordingly concludes that the evidence before it does not conclusively establish the commission of the *actus reus* under Article II *(c)* of the Convention.

4. Article II *(d)*: imposing measures intended to prevent births within the group

357. The *actus reus* set forth in Article II *(d)* of the Convention includes a mental element that measures must be "intended" to prevent births within the group (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 121, para. 186).

358. The Parties disagree regarding the scale and effects of the acts necessary to fall within subparagraph *(d)*. In The Gambia's view, measures intended to prevent births need not be inflicted on all members of the group, nor must births be reduced by a particular rate or demographic decline be empirically demonstrated. The Applicant maintains that Myanmar "repeatedly characterized the growth rate of the Rohingya as an existential threat to the survival of the State's favoured national races" and imposed a number of measures intended to prevent births within the group within the meaning of Article II *(d)*. In its view, these include rape and other acts of sexual violence during the clearance operations, the imposition of obstacles to Islamic marriages and limitations on the number of children in Maungdaw Township, and denial of birth certificates to Rohingya children.

359. For Myanmar, Article II *(d)* requires both that the measures be systematically inflicted on the group, not merely on certain members, and that they result in a negative birth rate that threatens the existence of the group. It submits that there is no evidence that any measures were intended to prevent births within the meaning of Article II *(d)*. The Respondent maintains that the restrictions on childbirth under Regional Order 1/2005 were in force only in Maungdaw Township and did not apply exclusively to Muslims, and that there is no evidence that the order was "strictly enforced". Myanmar further argues that The Gambia has failed to establish an evidential nexus between any alleged incident of sexual violence or denial of birth certificates and the prevention of births.

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360. The Court observes that Article II *(d)* encompasses measures intended to bring about the failure of a group "to live and reproduce normally" (*Popović et al.*, IT-05-88-T, Trial Chamber II,

Judgement of 10 June 2010, para. 855). As with subparagraphs *(b)* and *(c)* of Article II, the Court has recognized that rape and other acts of sexual violence may fall within subparagraph *(d)*, provided that the requirements of that provision are fulfilled (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 72, para. 166). In addition, measures such as sexual mutilation, forced sterilization, forced birth control, separation of the sexes, prohibitions on marriage, and forced impregnation by persons who are not members of the protected group are capable of falling within the scope of Article II *(d)*, if they are imposed with the intent of preventing births within the group (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 507; *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 743).

361. International criminal tribunals have recognized that births may be prevented by both the physical and psychological impacts of measures such as those described above (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 508; *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 743). The impact on victims must also be considered in light of the social and cultural context (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 507). Sexual violence, for example, can hinder future births because of its physical consequences, as well as its impact on how the victims are perceived within their group.

362. Article II *(d)* requires an applicant to demonstrate that the measures imposed are intended to prevent births within the group (see paragraph 287 above) and are objectively capable of doing so. The language of subparagraph *(d)*, however, does not require that an applicant additionally establish that the measures were actually successful in reducing the birth rate of the group. While considerations of scale or an actual impact on the birth rate may be relevant to the determination of the mental element included in Article II *(d)*, namely whether a measure was intended to prevent births, they do not form distinct requirements under Article II *(d)* (see 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 117, para. 400; see also 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 192, para. 361).

363. The evidence before the Court establishes that through official government speeches and the Facebook military network, Myanmar authorities maintained over a lengthy period that "Bengali" population growth threatened to "swallow up" Buddhism and the nation (see paragraphs 157-160 and 164 above). From 2005 to 2018, Maungdaw Township, which contained the highest percentage of Rohingya of any township in the country — namely 93 per cent or nearly 500,000 Rohingya (see paragraph 69 above) — imposed Regional Order 1/2005, which required, *inter alia*, special marriage permission requirements for "Bengalis" (see paragraph 143 above). The order further provided that all persons with permission to marry "must limit the number of children" they had (see paragraph 144 above). Myanmar acknowledges that the order was intended to "*slow* the rate of growth of the population in Maungdaw Township", which was overwhelmingly Rohingya (emphasis in original). In this regard, the Court notes that the evidence does not indicate that the birth restrictions were actually applied to members of the non-Rohingya population. Witnesses also attested to the enforcement of the measures against the Rohingya population, including Witness NJ, who recounted that, in order to marry, she had to sign a document stating that she and her husband would not have more than two children (see paragraph 145 above). While evidence indicates that the policies did not succeed in restricting the Rohingya birth rate to two children in practice, such success is not required by Article II *(d)*.

364. Regional Order 1/2005 was adopted pursuant to a 1993 temporary regional order that explicitly focused on the "extremely high" population increase in Maungdaw Township and the fact that the "majority of residents" were Muslims, and imposed permission restrictions for "Islamic" marriages (see paragraph 143 above). The marriage and birth restrictions in Regional Order 1/2005 itself were officially described by the Government as "Processes for Controlling Bengali Population" (see paragraph 144 above). Myanmar accepts that the purpose of the measure was to slow the birthrate, and the evidence demonstrates its enforcement against members of the Rohingya group. Under these circumstances, the Court is convinced that the order was a coercive measure directed at the Rohingya group, which was intended, at the very least, to reduce births within the group, including at the time of the clearance operations.

365. The restrictions on births in Maungdaw Township were coupled with the long-standing denial of birth registration and issuance of birth certificates for Rohingya children in northern Rakhine State, as well as the difficulty of having Rohingya children included on household lists (see paragraph 147 above). Birth certificates establish the legal identity of children, and for Rohingya in Rakhine State, inclusion of children in the household list was the prerequisite for, among other things, the issuance of identity documents, access to education and permission to travel, and thus access to basic services. In the view of the Court, the denial of legal identity for Rohingya children, and the onerous and intrusive annual verification of the household lists in northern Rakhine State (FFM, Report of the detailed findings (2018), paras. 583-588), like the verifications for the restrictions on births, are indicative of an intent to deter the Rohingya from reproducing normally.

366. The Court further observes that the magnitude and character of the acts of sexual violence during the clearance operations support the conclusion that the acts were intended to physically and mentally impair the willingness and ability of the population to procreate. Gang rapes were widespread, including mass rapes involving multiple victims and perpetrators (see paragraph 254 above), with rape frequently accompanied by extreme brutality or murder (see paragraph 255 above). The Court observes that rape and other forms of sexual violence were primarily directed at women and girls of reproductive age, including, in some instances, pregnant women (*ibid.*). Young and unmarried women were targeted with extreme violence (*ibid.*), and girls as young as seven were raped (see paragraph 260 above). Sexual violence was also accompanied at times by biting, scarring and other mutilation, including of breasts and genitalia (see paragraph 256 above), contributing to the visibility, stigma and long-term impact of sexual violence on the survivors, and committed in front of husbands, other relatives or community members.

367. Acts of rape and other sexual violence caused lasting physical harm to reproductive functioning (see IIMM, Witness Statement No. IIMM0027999848, paras. 83-85 and 106-109; FFM, Report of the Detailed Findings (2018), para. 934). The focused expert medical assessment of the impact of sexual violence on the Rohingya refugee population undertaken by LAW found that survivors of sexual violence suffered long-term physical consequences, including permanent damage to genitalia, pain during intercourse and other forms of sexual dysfunction that negatively impacted

their ability to procreate (LAW, "'Every day, I remember they destroyed my life': Long-term physical and psychosocial consequences of genocidal sexual and gender-based violence the Myanmar military committed against the Rohingya in its 2017 'clearance operations'" (November 2023), p. 8 and Annex 1; see paragraph 257 above). Months after being raped, witnesses interviewed by the FFM continued to suffer from severe injuries that prevented them from having sexual intercourse with their husbands. The Court notes that United Nations and other healthcare providers in the refugee camps also detected evidence of forcible impregnation resulting from rapes (FFM, Report of the detailed findings (2018), paras. 934-936).

368. Survivors of sexual violence and their partners also experienced lasting psychological trauma, social ostracism and cultural stigma, which affected the possibility of marriage and procreation, particularly in light of the social structure and gender roles in the Rohingya community. IIMM Witness P2499 stated that

> "[b]eing raped was worse than being killed to me. To this day, I am still ashamed for being a rape victim. I get told things like, 'you were touched by *moghs*', 'you had a *mogh* penis inside you', or . . . 'this is why *moghs* raped you'. Those who shame me are people from my community" (IIMM, Witness Statement No. IIMM0027999848, para. 111).

Female survivors voiced concerns to the FFM that their husbands would leave them and that they would no longer be able to have children (FFM, Report of the detailed findings (2018), para. 934). Physicians for Human Rights also found that some survivors were reluctant to discuss or disclose sexual violence out of fear that they would not be able to get married or would be rejected by their husband (Physicians for Human Rights, "Sexual violence, trauma, and neglect: Observations of health care providers treating Rohingya survivors in refugee camps in Bangladesh" (October 2020), p. 14; see paragraph 331 above). The expert assessment conducted by LAW found that survivors suffered severe psychological injuries which affected their spousal relationships and psychological capacity to procreate, including severe ostracization and at times spousal abandonment for women and feelings of powerlessness and emasculation for men. Some survivors indicated that they had been reduced to a position of being perceived as racially different from the rest of the community and trapped in identities as rape survivors, while offspring of rape by the security forces were treated as "polluted" (LAW, "'Every day, I remember they destroyed my life': Long-term physical and psychosocial consequences of genocidal sexual and gender-based violence the Myanmar military committed against the Rohingya in its 2017 'clearance operations'" (November 2023), p. 8).

369. The Court observes that widespread sexual violence including the rape of underage girls and pregnant women, gang and mass rapes, and rapes in front of family members have been found to impact both the physical capacity of women to reproduce and the psychological procreative capacity of both sexes, and to constitute measures to prevent the reproduction of members of the group for purposes of the *actus reus* of genocide. With respect to intent, the Court considers that the likely effects of the widespread sexual violence against the Rohingya population would have been understood by the Myanmar security forces who perpetrated them, particularly in light of the cultural context, and that the acts taken must have been taken with the knowledge that these consequences were likely to occur (see paragraphs 287 and 315 above). The Court further notes that the separation of the sexes and killing of men in multiple villages during the clearance operations (see, for example,

paragraphs 192, 205, 219 and 232 above), as well as the brutal murder of infants (see, for example, paragraphs 194-195, 197, 208, 212, 222, 259 and 261 above), also support the inference that the Myanmar security forces acted with the intent to prevent births among the group.

370. The Court finds that, taken together, the restrictions on marriages and births on Rohingya in Maungdaw Township, where nearly 500,000 Rohingya resided, the denial of legal registration for Rohingya children and the commission of at least 1,834 acts of rape targeting the Rohingya population during the 2017 clearance operations, when viewed in the context of the Government's messages regarding uncontrolled Rohingya population growth, establish an intent to impact the capacity of members of the Rohingya community to reproduce normally and thus an intent to prevent births within the group.

371. The Court is therefore fully convinced that Myanmar imposed measures intended to prevent births within the group and that the *actus reus* of genocide within the meaning of Article II *(d)* of the Convention is established.

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372. In sum, the Court considers that the evidence conclusively establishes that the Myanmar security forces and other State organs committed acts falling within the *actus reus* set forth in Article II *(a)*, *(b)* and *(d)* of the Genocide Convention. The evidence does not, however, conclusively establish the commission of the *actus reus* set forth in Article II *(c)*.

C. *Mens rea* of genocide (genocidal intent)

373. Article II of the Genocide Convention provides that, in order to constitute genocide, the *actus reus* of genocide, discussed above, must be "committed with intent to destroy, in whole or in part, a [protected] group, as such". The Court will now examine the meaning of the phrase "in part" and the requirement that the acts be committed with intent to destroy the protected group.

1. Meaning of the term "in part" in Article II

374. Where allegations of genocide are based on the targeting of a part of the protected group, the intention to destroy must relate to at least a substantial part of that group (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 126, para. 198; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 65, para. 142; *Krstić*, IT-98-33-A, Appeals Chamber, Judgement of 19 April 2004, para. 8; *Kayishema and Ruzindana*, ICTR 95-1-T, Trial Chamber II, Judgement of 21 May 1999, para. 97). As the Court observed in the 2007 *Bosnia* Judgment, "since the object and purpose of the Convention as a whole is to prevent the intentional destruction of groups, the part targeted must be significant enough to have an impact on the group as a whole" (*I.C.J. Reports 2007 (I)*, p. 126, para. 198). The jurisprudence of the Court and of international criminal tribunals identifies three elements relevant to the assessment of whether the targeted part of the group is substantial and thus comes within the meaning of the Convention.

375. The first, quantitative, element concerns the numerical size of the targeted part of the group (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 126, para. 198; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 65, para. 142), which "should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group" (*Krstić*, IT-98-33-A, Appeals Chamber, Judgement of 19 April 2004, para. 12). Second, a geographic element, that is "the area of the perpetrators' activity and control, as well as the possible extent of their reach" (*ibid.*, para. 13; see also 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 126, para. 199; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 65, para. 142), should be considered. A third, qualitative, element, the "prominence" or "emblematic" nature of the targeted portion within the group, may also be relevant (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 127, para. 200; *Krstić*, IT-98-33-A, Appeals Chamber, Judgement of 19 April 2004, para. 12). These conditions are not exhaustive (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 127, para. 201), nor need all three conditions be met; however, the Court has emphasized that the quantitative criterion is "an essential starting point" (*ibid.*, para. 200) and must be given priority (*ibid.*, para. 201).

376. According to The Gambia, in assessing whether a substantial "part" of the Rohingya was targeted, the Court can rely on the number of people and villages that were attacked. The Gambia argues that while the "headline victims" are those Rohingya who were killed, consideration of the number of targeted people must also include those seriously harmed, including through forcible displacement. The Gambia also maintains, on the basis of the FFM's reports, that 18 per cent of villages in northern Rakhine State were totally destroyed, and a further 22 per cent of such villages were partially destroyed. It estimates that the combined population of these villages amounted to some 326,000 people. While in its arguments The Gambia focuses mainly on the numerical size of the targeted part of the group, it claims that this part is substantial also in light of the geographical and qualitative elements.

377. Myanmar criticizes The Gambia for failing to adequately identify the relevant part of the protected group according to the quantitative, geographic and qualitative elements. In particular, Myanmar argues that it is unclear on what basis The Gambia seeks to exclude Rohingya living in IDP camps in Sittwe Township from the targeted part of the group. Myanmar also takes issue with The Gambia for "present[ing] . . . a blizzard of statistics" concerning the numerical size of the targeted part of the group, characterizing this as an attempt by the Applicant to "artificially shrink the 'size of the targeted part of the protected group'" in order to strengthen its position when comparing the numbers of targeted persons to the number of victims.

378. During the oral proceedings, The Gambia clarified that it considered the part of the Rohingya population that was targeted for destruction to be the approximately 815,000 Rohingya living in northern Rakhine State prior to the clearance operations. Myanmar did not disagree that, if the targeted part of the Rohingya population was the population in northern Rakhine State, it would qualify as a substantial part of the protected group. On this basis, Myanmar maintained that the substantiality criterion had no further role to play in the *mens rea* analysis, with the relevant question then being whether there was an intent to destroy that part of the group "as such".

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379. The Court has found above that the *actus reus* of genocide is established under Article II *(a)*, *(b)* and *(d)* of the Genocide Convention (see paragraph 372). In light of this, for the purpose of ascertaining the numerical size of the targeted part of the protected group in order to assess whether it is significant enough in a quantitative sense, account must be taken of all members of that group who were targeted by any of the relevant material acts. The Court observes that at least some of these acts can be understood as targeting the entire Rohingya population in northern Rakhine State (see paragraphs 332-335 above). Thus, the Court finds that the targeted part of the protected group is the approximately 815,000 Rohingya who lived in northern Rakhine State prior to the 2017 clearance operations (see paragraph 69 above). The Court considers that this number is clearly significant both in absolute terms and in relation to the overall Rohingya population in Myanmar (see *ibid.*).

380. The Court concludes that, based on the numerical size of the group alone, the part of the Rohingya population targeted by Myanmar is substantial for the purposes of the Genocide Convention. Consequently, the Court does not consider it necessary to examine the geographic or qualitative elements in this case.

2. Establishing genocidal intent

381. As noted above, Article II of the Genocide Convention contains a specific mental element, namely the intent to destroy the protected group, as such, in whole or in part (see paragraph 286). The Gambia must therefore show that the material acts established above (see paragraphs 311-372) committed by Myanmar were accompanied by genocidal intent.

382. Invoking the Court's jurisprudence, The Gambia identifies three possible pathways to prove genocidal intent: (1) direct evidence of a general plan; (2) "particular circumstances"; and (3) a "pattern of conduct". Given that there is no direct evidence that Myanmar had a general genocidal plan, The Gambia focuses on the second and third pathways. In defining the second pathway, The Gambia suggests that the phrase "particular circumstances" implies the possibility of establishing genocidal intent "in respect of a single incident or place" — similar to the Court's findings in its 2007 *Bosnia* Judgment with respect to Srebrenica — or in respect of a smaller subset of locations. On this basis, The Gambia invites the Court to focus its analysis on three individual locations: the villages of Min Gyi, Chut Pyin and Maung Nu. Alternatively, The Gambia contends that genocidal intent can be established on the basis of a "wider 'pattern of conduct'" wherein widespread attacks were carried out in northern Rakhine State "according to a generally similar *modus operandi*". In this context, The Gambia relies on a "pattern of conduct" as evidenced by the indicators of genocidal intent identified by the FFM (see paragraph 391 below). The Gambia argues that, in this case, the evidence before the Court demonstrates the existence of both "particular circumstances" and a "pattern of conduct", thus establishing that genocidal intent is the only reasonable inference to be drawn from Myanmar's conduct.

383. Myanmar rejects The Gambia's interpretation of the Court's jurisprudence that genocidal intent may be inferred from "particular circumstances". It contends that, in the absence of direct evidence, a pattern of conduct is the sole basis from which genocidal intent may be inferred. With

respect to The Gambia's reliance on indicators of genocidal intent, Myanmar argues that the logic of proof by inference means that the existence of genocidal intent cannot be determined by predefined criteria.

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384. The Court and international criminal tribunals have recognized that genocidal intent may be established either through direct evidence or indirectly by relying on inferences drawn from circumstantial evidence (see 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 196-197, para. 373; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 65, para. 143; *Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 524; *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 34). In the absence of direct evidence of an intent to commit genocide, The Gambia must therefore rely on circumstantial evidence to establish that Myanmar acted with genocidal intent.

385. With respect to The Gambia's argument regarding "particular circumstances" (see paragraph 382 above), in the Court's view, that term, as used in paragraph 373 of the 2007 *Bosnia* Judgment, cannot be understood as a ground for inferring genocidal intent based on conduct carried out at only a small number of specific locations. Such an approach would conflict with the Court's finding that the part of the group that was targeted by Myanmar was substantial for the purposes of the Genocide Convention. It would not be appropriate for the Court to consider that the entire Rohingya population of northern Rakhine State was targeted by Myanmar's actions (see paragraph 379 above), while simultaneously inferring genocidal intent solely from evidence confined to a limited number of locations.

386. The Court now turns to Myanmar's argument that the inference of genocidal intent from circumstantial evidence is only possible through a pattern of conduct. In the 2015 *Croatia* Judgment, the Court defined a pattern of conduct as "a consistent series of acts carried out over a specific period of time" (*I.C.J. Reports 2015 (I)*, p. 151, para. 510). It follows from the often systematic nature of acts of genocide that allegations concerning a pattern of conduct are commonly put forward in disputes under the Genocide Convention, and the factors based on which such a pattern is identified frequently form the basis of the inquiry into genocidal intent.

387. The jurisprudence of the Court and of international criminal tribunals indicates, however, that the inquiry into genocidal intent is not confined to determining whether certain factors reveal a pattern of conduct from which such intent may be inferred. Rather, genocidal intent may be inferred from an array of different factors, without necessarily requiring a prior finding that a pattern of conduct is established (*Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 1161; *Gacumbitsi*, ICTR-01-64-T, Trial Chamber III, Judgement of 17 June 2004, paras. 252-253; *Gacumbitsi*, ICTR-01-64-A, Appeals Chamber, Judgement of 7 July 2006, para. 40; see also 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 122, para. 418). The Court further observes that the circumstantial evidence that it may consider in identifying the existence of genocidal intent is not limited to conduct that constitutes the material acts under Article II of the Genocide Convention (*Karadžić*, MICT-13-55-A, Appeals Chamber, Judgement of 20 March 2019, para. 728).

388. In *Tolimir*, the ICTY described the approach of inferring intent from "all of the evidence, taken together" as an approach that is most "in line with the fluid concept of intent" (IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 772; IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 247). The Court in the 2015 *Croatia* Judgment characterized the ICTY's reasoning in *Tolimir* as "in substance identical" to its own (*I.C.J. Reports 2015 (I)*, p. 67, para. 148). The Court will thus assess the evidence holistically in order to establish whether genocidal intent may be inferred from Myanmar's conduct.

389. In cases such as the present one, in which the Court draws inferences from circumstantial evidence, genocidal intent must be the only reasonable inference from the facts (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 122, para. 417; *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 34; *Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 524). The Court will consider below whether the evidence supports a reasonable inference that Myanmar's security forces acted with genocidal intent (see paragraphs 390-437 below) and whether this is the only reasonable inference that can be drawn from the totality of the facts (see paragraphs 438-467 below).

3. Factors relevant to establishing an inference of genocidal intent in the present case

390. The Gambia identifies a series of what it terms "indicators" of genocidal intent relevant to this case. The language of indicators may however suggest a fixed category of signs of genocidal intent, rather than a context-specific set of factors from which genocidal intent may be inferred. For this reason, the Court will use the term "factors" in the following discussion.

391. The Gambia identifies the following factors as indicative of genocidal intent in this case: (1) Myanmar's laws and policies, characterized as discriminatory; (2) Myanmar's anti-Rohingya hate speech and propaganda; (3) the "extreme brutality" of Myanmar's clearance operations; (4) sexual and gender-based violence; (5) the targeting of children; (6) Myanmar's destruction and concealment of evidence of crimes committed against the Rohingya; and (7) the impunity enjoyed by Myanmar's security forces (see FFM, Report of the detailed findings (2018), paras. 1419-1433). The Gambia also relies on a set of factors that was identified by the ICTR in the *Muvunyi* case:

> "*(a)* the general context; *(b)* the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others; *(c)* the scale of atrocities committed; *(d)* their general nature; *(e)* their execution in a region or a country; *(f)* the fact that the victims were deliberately and systematically chosen on account of their membership in a particular group; *(g)* the exclusion, in this regard, of members of other groups; *(h)* the political doctrine which gave rise to the acts referred to; *(i)* the repetition of destructive and discriminatory acts; and *(j)* the perpetration of acts which violate the very foundation of the group or are considered as such by their perpetrators" (ICTR-00-55A-T, Trial Chamber III, Judgement of 11 February 2010, para. 29).

392. Myanmar contends that The Gambia must first prove the existence of a pattern of conduct on the basis of four factors that the Court identified as "most important" in the 2015 *Croatia*

Judgment (see paragraph 393 below). Only then, in Myanmar's view, can the Court consider whether genocidal intent may be inferred from a pattern of conduct. Myanmar also argues that many of the factors that The Gambia points to as indicating genocidal intent, such as hate speech, are not relevant to establishing a pattern of conduct or are otherwise irrelevant in assessing the existence of a specific intent to commit genocide. Myanmar further contends that no such pattern of conduct is established.

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393. The Court recalls that, in the 2007 *Bosnia* Judgment and the 2015 *Croatia* Judgment, the Court's analysis of the existence of genocidal intent was informed to a large extent by prior findings of the ICTY (*I.C.J. Reports 2007 (I)*, p. 155, para. 277, and pp. 163-166, paras. 292-297; *I.C.J. Reports 2015 (I)*, p. 128, para. 440). In the *Croatia* case, Croatia proposed "a series of 17 factors which it believe[d], individually or taken together, could lead the Court to conclude that there was a systematic policy of targeting Croats with a view to their elimination from the regions concerned" (*I.C.J. Reports 2015 (I)*, p. 119, para. 408). The Court found that, of these factors,

> "the most important are those that concern the scale and allegedly systematic nature of the attacks, the fact that those attacks are said to have caused casualties and damage far in excess of what was justified by military necessity, the specific targeting of Croats and the nature, extent and degree of the injuries caused to the Croat population" (*ibid.*, p. 121, para. 413).

Based on these factors and the relevant factual findings of the ICTY, the Court was able to "establish the existence of a pattern of conduct that consisted, from August 1991, in widespread attacks by the JNA [Yugoslav People's Army] and Serb forces on localities with Croat populations in various regions of Croatia, according to a generally similar *modus operandi*" (*ibid.*, p. 122, para. 416).

394. The Court also considered two further factors proposed by Croatia to support the argument that Serbia acted with genocidal intent. These factors were "the context in which those acts were committed" and "the opportunity which the JNA and Serb forces had of destroying the Croat population" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 122, para. 418). The Court found that neither these factors nor "the series of 17 factors invoked by Croatia" supported Croatia's claim that the relevant acts were committed with genocidal intent (*ibid.*, pp. 125-126, paras. 429-430; p. 127, para. 437; and p. 128, para. 439) and thus concluded that such an intent was not the only reasonable inference that could be drawn from the pattern of conduct that Croatia relied upon (*ibid.*, p. 128, para. 440).

395. Reliance on factors of this type to determine genocidal intent in the absence of direct evidence is well established in the jurisprudence of international criminal tribunals. In *Tolimir*, for example, the ICTY Appeals Chamber stated that,

> "in the absence of direct evidence, genocidal intent may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group,

the repetition of destructive and discriminatory acts, or the existence of a plan or policy" (IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 246; see also *Karadžić*, IT-95-5/18-AR98*bis*.1, Appeals Chamber, Judgement of 11 July 2013, para. 57).

396. As the Court has observed above, drawing inferences from a pattern of conduct is not the only method to infer genocidal intent from circumstantial evidence (see paragraph 387). Nor does the 2015 *Croatia* Judgment suggest that the factors that the Court described as "the most important" in that case constitute an exhaustive or fixed list. Indeed, international criminal tribunals have relied on an array of different factors in inferring genocidal intent (see paragraphs 387, 391 and 395 above). In identifying the factors it considers relevant to this case, the Court will take into account the factual background as well as the jurisprudence of the Court and of international criminal tribunals.

397. Accordingly, the Court will base its assessment of the existence of genocidal intent in the present case on the following factors: *(a)* the general context, including the perpetration of other culpable acts systematically directed against the Rohingya; *(b)* the selective targeting of the Rohingya; *(c)* the perpetration of acts that violate the foundations of the Rohingya group; and *(d)* the systematic nature and the scale of Myanmar's actions.

(a) ***General context, including the perpetration of other culpable acts systematically directed against the group***

398. This Court and international criminal tribunals have recognized that inferences concerning the existence of genocidal intent may be drawn from the general context, including the perpetration of "other culpable acts" systematically directed against the same group (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 122, para. 419; *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 745; *Gacumbitsi*, ICTR-01-64-T, Trial Chamber III, Judgement of 17 June 2004, para. 252; see also *Simba*, ICTR-01-76-T, Trial Chamber I, Judgement of 13 December 2005, para. 413; *Rutaganda*, ICTR-96-3-A, Appeals Chamber, Judgement of 26 May 2003, para. 528). While international criminal tribunals have used the expression "other culpable acts" in connection with the criminal responsibility of individuals, the Court does not use the term "culpable" as a criminal legal qualification of the conduct in question. The expression is intended only to describe acts of a particularly serious nature.

399. There are four distinct elements of Myanmar's conduct that are particularly pertinent in this regard. They are (i) the long-standing legislative and other forms of discrimination against the Rohingya; (ii) the prevalence of anti-Rohingya hate speech; (iii) military operations targeting the Rohingya prior to 2017; and (iv) the forcible displacement of the Rohingya population during and after the 2017 clearance operations. The Court considers these elements to constitute both part of the relevant general context and other culpable acts that were systematically directed against the Rohingya. While the Court does not consider these elements individually to constitute evidence of Myanmar's genocidal intent, taken together, they are important aspects of the broader contextual framework of the case from which inferences concerning the existence of genocidal intent might be drawn. The Court will consider each element in turn.

(i) Legislative and other forms of discrimination against the Rohingya

400. The Court has already described the long-standing discrimination against the Rohingya population in Myanmar (see paragraphs 134-152). The Court recalls its finding that the 1982 Citizenship Law as implemented denied the Rohingya access to citizenship based on race and that the onerous verification requirements imposed by that law resulted in a denial of citizenship even to members of the Rohingya who would otherwise have been entitled to it (see paragraphs 137-138 above). The denationalization of Rohingya through the 1982 Citizenship Law has left approximately one million Rohingya stateless (see paragraph 140 above). The successive identification régimes that were introduced in Myanmar for the Rohingya carried with them a number of other restrictions on the Rohingya as a group, including restrictions on access to employment and other economic activities, such as fishing, and to higher education. Restrictions on freedom of movement also affected the Rohingya's access to, *inter alia*, food, essential healthcare and humanitarian aid (see paragraphs 148-150 above). These regulatory systems were discriminatory both by design and in their implementation, rendering the Rohingya marginalized and particularly vulnerable (see paragraphs 137-140 and 142 above).

401. Myanmar's imposition of policies aimed at restricting the rights of the Rohingya to marry and to have children (see paragraphs 143-146 above) is an important element of the general context. Regional Order 1/2005, in force in Maungdaw Township between 2005 and 2018, required prior permission for Islamic marriages and sought to limit the number of children born into those marriages, intending coercively to slow the rate of growth of the Rohingya population (see paragraphs 357-371 above).

(ii) Anti-Rohingya hate speech

402. The Court recalls its earlier findings on anti-Rohingya hate speech in Myanmar, focusing on a series of speeches made by Senior General Min Aung Hlaing during and after the clearance operations, and on the campaign disseminating hate speech on Facebook organized by the Tatmadaw (see paragraphs 153-168 above). For example, Senior General Hlaing reportedly stated, while the 2017 clearance operations were under way, that "[t]he Bengali problem was a longstanding one which has become an unfinished job despite the efforts of the previous governments to solve it" (see paragraph 157 above). According to Myanmar, this statement and other such passages have been "distorted" by being taken out of context by The Gambia. In the Court's view, however, the derogatory and discriminatory meaning of these statements is not altered substantially when read in their full context (see paragraphs 157-159 above).

403. The Court has described above the Facebook campaign organized by the Tatmadaw against the Rohingya (see paragraphs 161-168). The IIMM described the depiction of the Rohingya in the posts as that of a group posing "an existential threat to Myanmar through violence, terrorism or 'Islamisation'", as well as a "threat to Burmese racial purity" (see paragraph 164 above). The Court has found that the Myanmar military actively disseminated and promoted such speech in a systematic and co-ordinated way during the 2017 clearance operations (see paragraphs 162-163 above).

404. Utterances of hate speech may be relevant in assessing the genocidal intent of the State, especially in cases where the person disseminating hate speech is a high-ranking government official or where the dissemination of hate speech is organized by governmental authorities (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 524; *Kayishema and*

Ruzindana, ICTR-95-1-T, Trial Chamber II, Judgement of 21 May 1999, paras. 93 and 527; *Popović et al.*, IT-05-88-T, Trial Chamber II, Judgement of 10 June 2010, para. 1177). As the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (IRMCT) observed in *Karadžić*, "[u]tterances that fall short of expressly calling for a group's physical destruction might constitute evidence of genocidal intent but a perpetrator's statements must be understood and assessed in their proper context" (MICT-13-55-A, Appeals Chamber, Judgement of 20 March 2019, para. 745). In this regard, the Court notes the temporal overlap between the anti-Rohingya hate speech campaign and the clearance operations (see paragraphs 156-159 and 162 above). The Court recalls that the hate speech organized and disseminated by the Myanmar military in the lead-up to and during the clearance operations portrayed the Rohingya both as subhuman and as a violent threat, thus contributing to a climate conducive to targeting a group for destruction (see paragraph 167 above).

(iii) Previous military operations targeting the Rohingya

405. There had been military campaigns against the Rohingya before the 2017 clearance operations, which had caused large-scale displacement (see paragraph 73 above). The Tatmadaw conducted a registration operation in 1978 and a similar operation between 1991 and 1992, both of which were large-scale military campaigns that targeted the Rohingya and resulted in hundreds of thousands of Rohingya fleeing to Bangladesh. In both cases, the great majority of the displaced Rohingya population was ultimately repatriated to Myanmar.

406. In October 2016, the Myanmar military undertook clearance operations against the Rohingya following attacks by ARSA on police posts. The resulting violence caused approximately 87,000 Rohingya to flee to Bangladesh (see paragraph 175 above); those who fled have not since been repatriated. The Court considers that these military operations constitute other culpable acts systematically directed against the same group.

(iv) Forcible displacement of the Rohingya population

407. Forcible displacement cannot "*as such* be designated as genocide" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 123, para. 190 (emphasis in original)). This does not however preclude reliance on it as a potential basis for inferring genocidal intent (*Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 254). As the Court stated in the 2007 *Bosnia* Judgment, "it is clear that acts of 'ethnic cleansing' may occur in parallel to acts prohibited by Article II of the Convention, and may be significant as indicative of the presence of a specific intent (*dolus specialis*) inspiring those acts" (*I.C.J. Reports 2007 (I)*, p. 123, para. 190). Forcible displacement has been considered to fall within the category of "other culpable acts systematically directed against the same group" for the purpose of determining genocidal intent (*Krstić*, IT-98-33-A, Appeals Chamber, Judgement of 19 April 2004, para. 33).

408. International criminal tribunals have characterized forcible displacement as potentially constituting "additional means" by which to ensure the physical destruction of a group by "eliminating even the residual possibility" that the protected group in the area could reconstitute itself (*Krstić*, IT-98-33-A, Appeals Chamber, Judgement of 19 April 2004, para. 31). In *Blagojević and*

Jokić, the ICTY found that the manner in which the forcible transfer of Bosnian Muslim women, children and elderly persons from Srebrenica occurred indicated an intent to clear the enclave of its Bosnian Muslim population. The Trial Chamber observed that

> "[t]he manner in which the transfer was carried out — through force and coercion, by not registering those who were transferred, by burning the houses of some of the people, sending the clear message that they had nothing to return to, and significantly, through its targeting of literally the entire Bosnian Muslim population of Srebrenica, including the elderly and children — clearly indicates that it was a means to eradicate the Bosnian Muslim population from the territory where they had lived" (IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, para. 675).

The forcible displacement of the Rohingya from northern Rakhine State by Myanmar's security forces bears similar hallmarks.

409. The Court has described above the forcible displacement of the Rohingya in the context of the *actus reus* analysis (see paragraphs 328-330). The journey to Bangladesh was dangerous, with evidence also establishing incidents of Myanmar security forces attacking Rohingya attempting to escape the violence and raping women and girls as they fled to Bangladesh (see paragraphs 266-268, 270 and 332 above). The campaign of violence against the Rohingya during the 2017 clearance operations destroyed any semblance of community security, dispersing families and village populations in a chaotic manner. Moreover, the burning of houses in Rohingya villages, further discussed below (see paragraphs 413-415), signalled that the Rohingya had no place to return to, completing the strategy of purging the Rohingya population from the territory where they had lived (cf. *Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, para. 675).

(b) ***Selective targeting of the Rohingya***

410. In the 2015 *Croatia* Judgment, the Court considered the specific targeting of a group as an important factor in the process of establishing genocidal intent (*I.C.J. Reports 2015 (I)*, p. 121, para. 413). The ICTR has similarly identified "the systematic targeting of victims on account of their membership in a particular group" as one of the factors from which genocidal intent may be inferred (*Simba*, ICTR-01-76-T, Trial Chamber I, Judgement of 13 December 2005, para. 413). The selective targeting of the Rohingya was manifested in two distinct ways: (i) through the selective targeting of Rohingya villages and individuals during the clearance operations; and (ii) through the selective burning and razing of Rohingya villages during and after the clearance operations, combined with the construction of other infrastructure and the organized resettlement of non-Rohingya communities in areas where Rohingya had formerly lived.

(i) Selective targeting of Rohingya villages and individuals

411. Evidence before the Court indicates that, in numerous locations in northern Rakhine State, only Rohingya settlements were affected by the clearance operations, indicating selective targeting, while non-Rohingya areas in the same locations remained untouched (see paragraph 272 above and, for example, paragraph 198 (Min Gyi), paragraph 211 (Chut Pyin), paragraph 233 (Inn Din), paragraph 239 (Koe Tan Kauk and Chein Khar Li) and paragraph 247 (Myin Hlut)). The FFM

found that nearby Rakhine villages were generally left intact in at least 22 of the locations the FFM analysed (FFM, Report of the detailed findings (2018), paras. 972 and 1063). These operations were conducted in the region of Myanmar with the highest Rohingya population. The record also contains extensive evidence of direct and intentional targeting of Rohingya civilians, including women, children, the disabled and the elderly, as well as of executions of Rohingya men and boys (see paragraphs 250-253 and 318 above). For example, a video posted on the Facebook military network during the clearance operations showed a soldier explaining to a group of non-Rohingya civilians how the military would "clear the villages where those animals [the Rohingya] live". He stated: "We have marked the places. In order for them not to overflow into the ethnic villages, there will be a group blocking [the Rohingya]. There will be another group doing the clearing. They [the soldiers] will be doing the clearing systematically." (IIMM, "Anti-Rohingya hate speech on Facebook: Content and network analysis" (27 March 2024), para. 320; see also paragraph 165 above.) The selective targeting of the Rohingya is further evidenced by the testimony of a person self-identifying as a former Tatmadaw soldier who participated in the clearance operations:

> "They ordered [us] to do for clearance operation, for example, ordered to shoot and clear the villages. When (we are) sent along with police to enter the village, (we are ordered) to clear. Ordered to enter the village and clear like that. Clearance means, for example, surrounding the villages according to race." (Interview of Zaw Naing Tun (15 August 2020), p. 6.)

412. Myanmar claims that the reason for its selective targeting was its intention to conduct counter-terrorism operations against ARSA. This claim will be considered below (see paragraphs 444-446 and 451-453).

(ii) Burning and razing of Rohingya villages combined with the organized resettlement of non-Rohingya communities in formerly Rohingya areas

413. The Court has established above that approximately 392 villages — representing approximately 40 per cent of the 993 villages in the 3 townships of northern Rakhine State — were partially or totally destroyed during and after the 2017 clearance operations (see paragraph 272). Bulldozing and large-scale terrain clearance often followed the destruction of Rohingya villages; in turn rapid construction took place on the cleared sites, including of BGP bases and other security installations, new villages and houses, resettlement camps and other civilian infrastructure (see paragraphs 277-279 above).

414. Myanmar does not dispute that the burning took place, but it either denies that it was solely responsible for this or suggests that it cannot be known who burned the villages. The totality of the evidence indicates, however, that it was primarily Myanmar's security forces that burned the Rohingya villages during the clearance operations (see paragraphs 276 above and 551 below).

415. The burning and razing of the villages are relevant to the question of genocidal intent. First, the fact that it was only Rohingya villages that were destroyed supports the inference that the Rohingya were selectively targeted by Myanmar. Second, as the ICTY emphasized in *Blagojević*

and Jokić, "burning the houses of some of the people" "sen[t] the clear message that they had nothing to return to" (IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, para. 675). The intention to purge Rohingya from northern Rakhine State is also evidenced by Myanmar's co-ordinated policy of construction of new infrastructure and resettlement of non-Rohingya groups in formerly Rohingya areas (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 61).

(c) ***Perpetration of acts that violate the foundations of the Rohingya group***

416. The perpetration of acts that violate the foundations of the group has been considered relevant to inferring genocidal intent (*Muvunyi*, ICTR-00-55A-T, Trial Chamber III, Judgement of 11 February 2010, para. 29; see also *Kalimanzira*, ICTR-05-88-T, Trial Chamber III, Judgement of 22 June 2009, para. 731). This factor includes the examination of matters relating to "the nature, extent and degree of the injuries caused" to the protected population — also considered by the Court in the 2015 *Croatia* Judgment (*I.C.J. Reports 2015 (I)*, p. 121, para. 413). Under this category, the Court identifies two attributes of the conduct of Myanmar's security forces that warrant particular emphasis: (i) the extent and manner of the sexual violence committed against the Rohingya; and (ii) the targeting of children.

(i) Sexual violence

417. Sexual violence has, in some cases, been associated with genocidal intent, including in the ICTR's *Akayesu* judgment (ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998). The particular features of sexual violence against Tutsi women in that case included mutilation, women being raped several times, gang and mass rape, rape and sexual violence accompanied by ethnic hate speech, sexual violence in public places and in front of other members of the community, and sexual violence accompanied by threats to kill (*ibid.*, paras. 731-733). As the Trial Chamber observed in that case, sexual violence not only physically and mentally harms the victims, it can also be a step in the process of degrading and destroying a human group by causing the "destruction of the spirit, of the will to live, and of life itself" (*ibid.*, para. 732).

418. The Court has discussed the nature, extent and degree of the sexual violence that was committed against the Rohingya both as part of the established facts (see paragraphs 254-258 and 260 above) and in the context of its findings on *actus reus* (see paragraphs 326, 329, 350 and 370 above). It has observed that rape and other forms of sexual violence contributed to lasting mental harm suffered by the survivors, as well as by family members who witnessed such acts (see paragraphs 331 and 335 above). While the *actus reus* and the *mens rea* elements of genocide are analytically distinct, they are nevertheless linked. As the Court has stated, "[t]he determination of *actus reus* can require an inquiry into intent. In addition, the characterization of the acts and their mutual relationship can contribute to an inference of intent" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 62, para. 130; see also *Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 253).

419. The Gambia argues that the sexual violence in this case is comparable to that in *Akayesu*, pointing to the following common features: the raping of women while killing their children; rape accompanied by threats to kill; public and humiliating sexual violence designed to degrade the group as a whole; deliberate targeting of women and girls of reproductive age, including pregnant women; and scarring, such as distinctive bite marks that "brand" the survivors and rupture social bonds.

420. An estimated 1,834 individuals were raped during the clearance operations in 2017 (see paragraph 258 above). Mass or gang rapes occurred in at least ten village tracts across northern Rakhine State (see paragraph 254 above), including in, *inter alia*, Min Gyi, Kyein Chaung, Kyauk Pan Du, Nga Yant Chaung, Gu Dar Pyin and Chut Pyin (FFM, Report of the detailed findings (2018), para. 921, fn. 2055). The Court has observed the pervasive and systemic character of the sexual violence and that acts of sexual violence were often exacerbated by acts of physical brutality (see paragraph 255 above). Incidents of mutilation, scarring or branding accompanied sexual violence on some occasions (see paragraph 256 above). For these reasons, the Court considers that Myanmar's security forces committed sexual violence against members of the Rohingya population in a way that degraded the victims and their communities to an extreme degree.

(ii) Targeting of children

421. The Court has recognized that the forcible transfer of children within the meaning of Article II *(e)* of the Genocide Convention can have "consequences for the group's capacity to renew itself, and hence to ensure its long-term survival" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 63, para. 136). While the Applicant does not assert that there was a breach of Article II *(e)* in this case, similar considerations apply to the targeting of children as a potential factor supporting the inference of genocidal intent. As children are vital to the continued existence of any human group, acts targeting them will directly affect the resilience and ultimate survival of the group. Moreover, surviving children are likely to be gravely affected by their experience of being targeted, impairing their development and capacity to contribute to the group's survival and prosperity in the future.

422. There are credible estimates that at least 730 and up to 2,109 Rohingya children under the age of five died as a result of violence during the clearance operations (see paragraph 259 above). The killing of children was often carried out with extreme cruelty. Children were also the victims of sexual violence (see paragraph 260 above). The Court considers that it is difficult to explain the targeting of children on any basis other than their membership in the protected group.

(d) ***Systematic nature and scale of the relevant conduct***

(i) Systematic nature of the relevant conduct

423. The Court considered the systematic nature of the relevant conduct an important factor in its 2015 *Croatia* Judgment (*I.C.J. Reports 2015 (I)*, p. 121, para. 413). International criminal tribunals have also characterized the "systematic targeting" of the protected group as relevant to inferring genocidal intent (*Gacumbitsi*, ICTR-01-64-A, Appeals Chamber, Judgement of 7 July 2006, para. 41). Systematic actions involve planning and organization in order to direct operations

at a particular group and geographic area. They therefore suggest deliberation and purpose and, as such, may allow inferences of genocidal intent to be drawn, also taking into consideration other elements of the evidentiary record.

424. The Gambia alleges that systematic elements indicative of genocidal intent emerged across multiple locations during the clearance operations. Relying on its expert's oral testimony, The Gambia argues that "the various elements of the genocidal *modus operandi*" were present in at least 54 Rohingya villages. The Gambia's expert drew on the FFM's reports to describe a "consistent pattern of attacks" during the 2017 clearance operations, involving a number of elements, including: the encirclement of Rohingya villages; surprise attacks; attacks from multiple angles; lack of efforts to conduct a cordon and search operation; indiscriminate shooting at civilians; the segregation of men and boys; mass rape of women; executions "often [conducted] in a gruesome way"; shooting at fleeing refugees; burning houses or areas; and bulldozing houses and villages. According to the expert, this *modus operandi* was "indicative of an intentional, co-ordinated series of attacks directed against [the Rohingya] population". The Gambia's expert further described the Tatmadaw's *modus operandi* during the 2017 clearance operations as "systematic", asserting that the actions were "preplanned both at a macro and a micro level". In the expert's view, based on his assessment of the FFM's reports, it was "a military impossibility that that pattern of conduct consistently replicated across so many places by so many different units could have been merely coincidence".

425. Myanmar contends that a *modus operandi* of attacks does not itself establish a pattern of conduct. It argues that, even accepting The Gambia's evidence, no *modus operandi* can be established. Myanmar maintains that the assertion of The Gambia's expert that the "entire pattern replicates itself in over 54 documented instances" is incorrect. In particular, Myanmar argues that, even on the basis of the findings of the FFM reports, there is no single location where all the elements that were identified by The Gambia's expert were present: most of the elements were allegedly present in one location, the village of Min Gyi, but the "large majority" of locations "only ha[d] one or two elements allegedly present".

426. The evidence before the Court establishes that many of the elements of the *modus operandi* identified by The Gambia occurred in a large number of locations. There were incidents in numerous places of indiscriminate shooting and of Myanmar security forces shooting at fleeing Rohingya (see paragraphs 251 and 264 above). Widespread mass or gang rape of Rohingya occurred in many locations in northern Rakhine State (see paragraph 254 above). The record also establishes the burning of all or parts of 392 villages, most of which took place during the clearance operations, and the subsequent large-scale bulldozing of 78 villages (see paragraphs 271-282 above). For actions to be considered as systematic, it is not necessary for every identified element of a given conduct to be exhibited at each specific location. In its 2015 *Croatia* Judgment, the Court spoke of a "generally similar *modus operandi*" (*I.C.J. Reports 2015 (I)*, p. 122, para. 416). The Court thus considers that the conduct of Myanmar's security forces during the clearance operations can be considered as systematic.

(ii) Scale of the relevant conduct

427. The Court identified the scale of the attacks as a relevant factor in its assessment of the existence of genocidal intent in the 2015 *Croatia* Judgment (*I.C.J. Reports 2015 (I)*, p. 121, para. 413). In that case, the Court considered the scale of the destruction as follows:

> "Croatia put forward a figure of 12,500 Croat deaths, which is contested by Serbia. The Court notes that, even assuming that this figure is correct — an issue on which it will make no ruling — the number of victims alleged by Croatia is small in relation to the size of the targeted part of the group." (*Ibid.*, p. 127, para. 437.)

The "relative proportionate scale" of the actual or attempted destruction of the group has also been considered as "strong evidence to prove the necessary intent to destroy a group in whole or in part" by international criminal tribunals (*Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber II, Judgement of 21 May 1999, para. 93; see also *Simba*, ICTR-01-76-T, Trial Chamber I, Judgement of 13 December 2005, para. 413).

428. Accordingly, the apparently small scale of the Croatian deaths contributed to the Court's finding in the 2015 *Croatia* Judgment that there was no specific intent to destroy the protected group (*I.C.J. Reports 2015 (I)*, p. 127, para. 437, and p. 128, para. 440). In this case Myanmar maintains that the relative proportion of the number of victims excludes any genocidal intent on its part. Myanmar argues that, even if the Court accepts The Gambia's allegation of 10,000 deaths, this number is "small in relation to the size of the targeted part of the group". Myanmar compares the number of alleged fatalities to the population of approximately 1.4 million Rohingya in Myanmar at the time. It points out that 10,000 fatalities would constitute 0.7 per cent of the total Rohingya population, which is, according to Myanmar, slightly lower than the corresponding percentage in the *Croatia* case.

429. The Court observes that, while a high relative number of deaths may well be an important factor from which to infer genocidal intent, a comparatively lower percentage of deaths does not, by itself, necessarily preclude a finding of genocidal intent. Furthermore, the relevant number to be used as a basis of comparison is the size of the targeted group. As the Court has found above, the group that was targeted in this case was the Rohingya population of northern Rakhine State, numbering approximately 815,000 (see paragraph 379). Thus, the estimated 10,000 Rohingya that were killed (see paragraph 253 above) constituted 1.2 per cent of the targeted population.

430. Moreover, killing is not the only material act that is prohibited under the Convention. As the joint intervening States emphasize, focusing on deaths alone can "obscure how killings and other underlying acts can be waged together in a coordinated strategy aimed at destroying a protected group". The victims to be taken into account as part of an assessment of the scale of the destruction include not only those who were killed, but also all those who were subjected to any of the acts listed in Article II of the Genocide Convention (*Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber II, Judgement of 21 May 1999, para. 93). Therefore, the Court must also take account of the victims of Myanmar's acts under Article II *(b)* and *(d)* of the Genocide Convention, which increases the relative proportionate scale of the destruction of the protected group (see paragraphs 329, 335-336 and 370 above).

431. The Court now turns to Myanmar's argument that its "security forces had, and did not avail themselves of, opportunities to destroy the Bengali population". Myanmar maintains that the following facts are inconsistent with an intention to destroy the Rohingya population in northern Rakhine State as such: hundreds of thousands of members of this population are still living in towns and villages in Rakhine State; hundreds of thousands of members of this population are living in camps in Bangladesh; and some 120,000 Rohingya already living in IDP camps were unharmed. According to Myanmar, its security forces "time and time again eschewed numerous opportunities for . . . destruction while many [Rohingya] made their way to Bangladesh in huge numbers".

432. The Gambia responds that Myanmar's alleged restraint is irrelevant, since Rohingya living in the camps were not part of the group that was targeted during the clearance operations. The Gambia further adds that Myanmar is wrong to suggest that "specific examples of perpetrators refraining from killing members of the group" are sufficient to preclude an inference that Myanmar acted with genocidal intent.

433. The Court has previously considered the relevance of the opportunity available to the alleged perpetrators of genocide to the possibility of inferring genocidal intent (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 126-127, paras. 431-437). The IRMCT has also suggested that the fact that "more members of a targeted group could have been, for example, killed, but were not, may indicate a lack of the *dolus specialis* required to prove such intent" (*Karadžić*, MICT-13-55-A, Appeals Chamber, Judgement of 20 March 2019, para. 727; see also *Stakić*, IT-97-24-A, Appeals Chamber, Judgement of 22 March 2006, para. 42).

434. In the Court's view, a reasonable inference of genocidal intent does not depend on evidence that the perpetrators made every effort to maximize the level of harm that they caused to the protected group. In *Krstić*, the ICTY Appeals Chamber recognized that in cases where such destruction is incomplete, "this ineffectiveness alone does not preclude a finding of genocidal intent". The Appeals Chamber also observed that those committing genocide are often "[c]onstrained by the circumstances" and thus adopt a "method which would allow them to implement the genocidal design while minimizing the risk of retribution" (IT-98-33-A, Appeals Chamber, Judgement of 19 April 2004, para. 32). The *Krstić* Appeals Chamber considered the issue of the Serbs' sparing of Bosnian Muslim women and children in Srebrenica in these terms:

> "The decision not to kill the women or children may be explained by the Bosnian Serbs' sensitivity to public opinion. In contrast to the killing of the captured military men, such an action could not easily be kept secret, or disguised as a military operation, and so carried an increased risk of attracting international censure." (*Ibid.*, para. 31.)

435. In the context of this case, the Court observes that the claimed purpose of Myanmar's actions was to undertake counter-insurgency operations in response to ARSA attacks, which imposed geographic and other constraints on the opportunities that were available to Myanmar. In particular, Myanmar does not claim that ARSA attacks occurred in the IDP camps and therefore, by its own account, it had no basis to carry out counter-insurgency operations there. The Court notes that the part of the Rohingya population living in IDP camps is not included in the targeted part of the group

for establishing genocidal intent; therefore, Myanmar's opportunity to target them does not bear upon the Court's analysis. In any event, the Court observes that the total set of victims, and not just the victims of intentional killings, must be considered for the purposes of the assessment of the opportunity available to the perpetrator (see paragraph 430 above). In this case, the Court finds that the fact that Myanmar did not take every opportunity it had to destroy members of the Rohingya group does not preclude an inference of genocidal intent.

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436. The Court's examination of the above factors establishes that the context surrounding the 2017 clearance operations, including decades of discriminatory legislation and a military-sponsored hate speech campaign against the Rohingya, created an atmosphere that was conducive to the violence perpetrated during those clearance operations by Myanmar's security forces and formed the basis of Myanmar's intention to destroy part of the Rohingya group. The manner in which the forcible displacement of the Rohingya was conducted, together with the selective targeting of the Rohingya population for violence and the burning of their homes, which sent a clear message that they had nothing to return to, supports the inference of an intention to destroy the group. The evidence of brutal acts of sexual violence and the targeting of children for violence in Rohingya communities also supports an inference that there was a desire to destroy the foundations of the group. The systematic nature of these actions further indicates a reasonable inference that Myanmar acted with genocidal intent.

437. The Court recalls that, when drawing inferences concerning the existence of genocidal intent, it is necessary to assess "all of the evidence, taken together" (*Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 772; *Tolimir*, IT-05-88/2-A, Appeals Chamber, Judgement of 8 April 2015, para. 247). The Court concludes that all the evidence before it, taken together, supports a reasonable inference that Myanmar's security forces acted with genocidal intent.

4. "Only reasonable inference" test

438. The Court may only establish genocidal intent by inference from circumstantial evidence if it is the only reasonable inference that can be drawn from the evidence (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 196-197, para. 373; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 67, para. 148). The Court must now consider whether Myanmar's conduct can be explained by other, alternative, reasonable inferences.

439. The Gambia understands this test to mean that other "possible or plausible" inferences will only prevent a finding of genocidal intent if those inferences are reasonable. For The Gambia, intent to destroy the group may be the "only reasonable inference" even if the evidence demonstrates that there was forcible displacement, provided that the evidence also demonstrates that forcible displacement was carried out in circumstances calculated to physically destroy the group. Similarly, The Gambia argues that the Court may still find genocidal intent to be the only reasonable inference if genocide is an interim goal alongside ultimate military objectives.

440. Myanmar contends that genocidal intent must be the only inference that can reasonably be drawn from the acts in question. Myanmar characterizes The Gambia's approach as potentially turning the "only reasonable inference" test into a "one possible inference" test. Myanmar argues that, if any other intent may be reasonably inferred from the acts in question, then genocidal intent cannot be the "only reasonable inference". It recognizes that genocide can be committed in the context of counter-terrorism operations, as long as genocidal intent is the only inference that could reasonably be drawn from the evidence as a whole.

441. Intervening States emphasize different aspects of the "only reasonable inference" test. Ireland, for example, contends that the fact

> "[t]hat the pattern of conduct could *only point* to the existence of such intent is not to say that it could point to such *intent only* . . . [I]t is perfectly possible that a pattern of conduct, upon examination, could point to two separate intentions, only one of which is genocidal . . . The co-existence of two or more intents does not rule out, exclude or displace either intent." (Emphasis in original.)

Slovenia, for its part, argues that the object and purpose of the Convention would be undermined if the Court had to eliminate "every other conceivable inference", while the joint intervening States and the DRC highlight that the test applies only between alternative explanations that have been found to be reasonably supported by the evidence.

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442. The Court has explained that, "in order to infer the existence of *dolus specialis* from a pattern of conduct, it is necessary and sufficient that this is the only inference that could reasonably be drawn from the acts in question" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 67, para. 148). The "only reasonable inference" standard does not derive from the Genocide Convention itself but is a general test under international criminal law, applying whenever inferences are drawn from circumstantial evidence (*Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 34; *Stakić*, IT-97-24-A, Appeals Chamber, Judgement of 22 March 2006, para. 219; see also *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 18).

443. In this regard, both the Court and international criminal tribunals have recognized that genocidal intent may exist alongside other intentions, provided that such intentions are not incompatible with the existence of genocidal intent (see 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 123, para. 190). The only reasonable inference standard means that the inference drawn should be capable of explaining all of the evidence, taken together (see *Tolimir*, IT-05-88/2-T, Trial Chamber II, Judgement of 12 December 2012, para. 745). When some elements of the evidentiary record may allow additional intentions to be inferred, but the totality of the evidence can only be explained by the perpetrator's genocidal intent, the only reasonable inference standard is met.

5. Whether other inferences explain Myanmar's conduct

444. Myanmar argues that an inference of genocidal intent cannot reasonably be drawn from the evidence. It further maintains that it is not required to prove that any other intent could be reasonably inferred. Nevertheless, Myanmar claims that its actions during the clearance operations qualified as "counter-terrorism" measures "undertaken in order to counter violent terrorist attacks by ARSA and its supporters". It contends that this intention constitutes an alternative reasonable inference that precludes a finding of genocidal intent.

445. According to Myanmar, the clearance operations were temporally and geographically limited to those Rohingya villages where ARSA was present. Myanmar recognizes that if the civilian population of Rakhine State had been subjected to the treatment described in the FFM reports, "Myanmar's forces acted in a manner not compliant with [counter-insurgency] doctrine". However, in Myanmar's view, this is not enough to establish a genocidal intent.

446. The Gambia contends that the totality of the evidence precludes a reasonable inference that Myanmar's actions were intended as counter-terrorism operations. It identifies actions that were inconsistent with counter-terrorism, such as the indiscriminate shooting of civilians; instances of extreme brutality, including setting fire to people's homes while people were still inside them; rape, gang rape and sexual mutilation; attacks on young children; the razing of villages; and "egregious[]" violations of Myanmar's rules of engagement. Moreover, The Gambia argues that the clearance operations specifically targeted the Rohingya and their homes and not the ethnic Rakhine, despite the co-existing significant terrorist threat from other alleged terrorist organizations, such as the ethnic Rakhine Arakan Army (see paragraph 170 above).

447. Myanmar alludes to other possible reasonable inferences that it maintains could be drawn from the evidence before the Court, most prominently that of forcible displacement or "ethnic cleansing". While Myanmar denies that it intended to commit ethnic cleansing, it suggests that the Court could nevertheless find that this intention was a reasonable inference from the evidence, such that genocidal intent would not be the only reasonable inference. As to evidence allowing the alternative inference of an intention to forcibly displace the Rohingya, Myanmar argues, *inter alia*, that The Gambia's witnesses themselves stated that Myanmar's aim was to "force [them] out of the country".

448. The Gambia, for its part, argues that the forcible displacement of the Rohingya group was carried out in circumstances that support an inference of genocidal intent. The Gambia contends that there is a tension between Myanmar's argument that the movement of the Rohingya "was not the product of deliberate policy or intent to systematically displace the population" and its argument that the Court could nevertheless reasonably infer that Myanmar acted with an intent to forcibly displace the Rohingya population. The Gambia emphasizes that the fact that the security forces were shooting at fleeing refugees and killing children further precludes alternative inferences such as forcible displacement.

449. Myanmar also suggests, invoking the Court's finding in the 2015 *Croatia* Judgment, that a further possible alternative reasonable inference to be drawn from the evidence is an intention to

punish the civilian population. Myanmar notes that The Gambia's expert concluded in his written reports that Myanmar's actions "warrant the inference that the government's objective is not to defeat an insurgency, but to punish or destroy the civilian population in whole or in part".

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450. The Court recalls that The Gambia bears the burden of establishing the alleged breaches of the Genocide Convention. This entails establishing that genocidal intent is the only reasonable inference that can be drawn from the evidence. While Myanmar carries the burden of establishing the facts upon which it relies in support of its own contentions, it is not required to establish, to a fully conclusive standard, the existence of an alternative reasonable inference. Whether genocidal intent is the only reasonable inference to be drawn from the evidence is ultimately a matter for the Court's assessment on the basis of the evidence before it. In making that determination, the Court will consider the Parties' competing interpretations of the evidence, addressing possible alternative inferences.

451. The Court turns first to Myanmar's claim that the intent behind its actions was to carry out counter-insurgency operations. The Court observes at the outset that Myanmar's assessment of ARSA as a terrorist threat does not preclude the possibility that Myanmar acted with genocidal intent (cf. *Stakić*, IT-97-24-A, Appeals Chamber, Judgement of 22 March 2006, para. 226), a point that Myanmar acknowledges (see paragraph 297 above). The Court notes that the ICOE, established by Myanmar, defined clearance operations as "operations against insurgents or terrorists who have intruded into and attacked a designated area", and as "clear[ing] the area of weapons, mines, and terrorists with a view to restoring peace and stability in the affected areas" (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), p. 4).

452. The specific locations examined by the Court where Myanmar conducted clearance operations all correspond to areas where the evidence establishes that ARSA committed attacks, or where Myanmar contends that such attacks occurred (see paragraphs 181-183, 187, 202, 214-216, 226, 230, 234, 240, 242 and 245 above). Thus, there is a geographical and temporal correlation between ARSA attacks and the clearance operations that followed.

453. Many of the characteristics of the clearance operations, however, are inconsistent with an intent to carry out counter-insurgency operations. For example, there is no evidence before the Court that, in the conduct of the clearance operations, Myanmar distinguished between civilians and alleged ARSA fighters. Myanmar's military operation reports and Ministry of Defence records themselves do not distinguish between alleged fighters and civilians. The fact that "attacks are said to have caused casualties and damage far in excess of what was justified by military necessity" was considered relevant by the Court in the 2015 *Croatia* Judgment in examining the question of genocidal intent (*I.C.J. Reports 2015 (I)*, p. 121, para. 413). In the context of the present case, the Court views this factor as weighing against the inference that Myanmar's intent was to carry out

counter-insurgency operations (see paragraph 304 above). Further, the execution of Rohingya men and boys in some locations, the widespread sexual violence, including gang and mass rape, the targeting of children and babies, the methodical burning of villages and attacks on fleeing civilians are not consistent with an intent to conduct counter-insurgency operations. On this basis, the Court concludes that the intention of conducting genuine counter-insurgency operations does not constitute an alternative reasonable inference.

454. The Court now turns to Myanmar's suggestion that it is reasonable to infer from the evidence that Myanmar's intent in carrying out the clearance operations was the forcible displacement of the Rohingya. The Court, in accordance with the jurisprudence of international criminal tribunals, understands the forcible displacement of a group to mean displacement where the members of a group did not have a genuine choice to remain in the territory where they were present (*Blagojević and Jokić*, IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, para. 596). The Court recalls that, in the 2015 *Croatia* Judgment, it held that genocidal intent could not be inferred from the evidence in that case; rather, the acts committed were designed to force the population to leave, not to destroy it systematically (*I.C.J. Reports 2015 (I)*, pp. 126-127, para. 435).

455. The Court and international criminal tribunals have observed that forcible displacement and genocide may occur in parallel. In the 2007 *Bosnia* Judgment, the Court found that the killing of military-age men together with the forcible transfer of thousands of Bosnian Muslim women, children and the elderly constituted genocide in Srebrenica (*I.C.J. Reports 2007 (I)*, p. 165, para. 294). As the ICTY explained in *Blagojević and Jokić*:

> "The Trial Chamber has no doubt that all these acts constituted a single operation executed with the intent to destroy the Bosnian Muslim population of Srebrenica. The Trial Chamber finds that the Bosnian Serb forces not only knew that the combination of the killings of the men with the forcible transfer of the women, children and elderly, would inevitably result in the physical disappearance of the Bosnian Muslim population of Srebrenica, but clearly intended through these acts to physically destroy this group." (IT-02-60-T, Trial Chamber I, Section A, Judgement of 17 January 2005, para. 677; see also *Stakić*, IT-97-24-T, Trial Chamber II, Judgement of 31 July 2003, para. 557.)

456. The intent to commit forcible displacement and the intent to commit genocide may thus co-exist. The Court has observed above that the only reasonable inference standard is met even if some elements of the evidentiary record allow additional intentions to be inferred, as long as the totality of the evidence can be explained only by the perpetrator's genocidal intent (see paragraph 443). While, as Myanmar contends, a State accused of genocide is not required to incriminate itself by pleading other criminal acts, the question that the Court has to resolve is whether, on the totality of the evidence, Myanmar's actions can be reasonably explained by inferring that it acted with an intention to forcibly displace the Rohingya population.

457. In its prior application of the Genocide Convention, the Court has at times treated evidence of an intent to displace the population as supporting a conclusion that genocidal intent had

not been established. In the 2007 *Bosnia* Judgment, the Court emphasized that the respondent's aim of creating a larger Serb State "did not necessarily require the destruction of the Bosnian Muslims and other communities, but [rather] their expulsion", and that this aim was "capable of being achieved by the displacement of the population and by territory being acquired" (*I.C.J. Reports 2007 (I)*, p. 196, para. 372). In the 2015 *Croatia* Judgment, the Court found that there was evidence of an intent to forcibly displace the Croat population but not evidence of an intent to commit genocide (see *I.C.J. Reports 2015 (I)*, pp. 126-127, paras. 435-436, and pp. 148-150, paras. 504-507).

458. The Court observes that both earlier cases occurred in the context of a policy of ethnic cleansing (see 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 122-123, para. 190; 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 126-127, para. 435), and evidence before the Court established an affirmative practice of transfer and evacuation of the relevant population (see, for example, 2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 84, para. 223; p. 121, para. 414; and p. 127, para. 436; 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 181-182, para. 334). Similarly, the Trial Chamber in *Stakić* concluded that the defendant's aim in that case was the deportation of the group, but not its physical destruction. In making that assessment, the ICTY took into account the defendant's organization of transport to transfer the population, as well as his contemporaneous expression of a willingness for part of the population to return after the war (IT-97-24-T, Trial Chamber II, Judgement of 31 July 2003, paras. 403 and 553-557).

459. By contrast, in the present case, there is no evidence in the record of any effort or plan by the Myanmar Government to transfer or evacuate the Rohingya population, and Myanmar's actions also do not indicate such an intention. Indeed, in response to a question by a judge about the protection of the civilian population, Myanmar referred predominantly to examples of its military protecting ethnic Rakhine and Hindu civilians from ARSA and made no mention of offering protection to the Rohingya. While there is evidence that a number of fleeing Rohingya were allowed to pass into Bangladesh unharmed, the evidentiary record also contains many instances of Myanmar's security forces attacking and killing civilians, including children, both when they were fleeing from their villages during the clearance operations (see paragraph 264 above) and when they were travelling to Bangladesh (see paragraphs 266-268 above). In some instances, security forces ordered the Rohingya to remain in Myanmar or to return to their point of origin, despite their villages having been destroyed by burning (see paragraph 269 above).

460. The record indicates that Myanmar security forces attacked groups of fleeing Rohingya, including by firing on them and sinking or overturning boats they were in (see paragraphs 266-268 above). Myanmar had also planted landmines along certain roads and at some crossing points on the border with Bangladesh (see paragraph 267 above). Moreover, there is convincing evidence before the Court that security forces raped, tortured and killed women as they were fleeing to Bangladesh (see paragraphs 266-268 above). Médecins sans Frontières estimated that 13.4 per cent of violent deaths among the Rohingya occurred during the period between displacement from their village and arrival in Bangladesh (see paragraph 268 above). Security forces obstructed river crossings, and many Rohingya took arduous routes in order to avoid encountering security forces (see paragraphs 265 and 267 above).

461. The testimony on which Myanmar relies (see paragraph 447 above) does not support forcible displacement as an alternative reasonable inference either. While the statements of Witnesses MN and NJ that the security forces sought to force the Rohingya out of the country record what those witnesses understood at the time, the Court's assessment of alternative reasonable inferences of intent must be based on Myanmar's conduct as a whole. The same witnesses' accounts of what members of Myanmar's security forces did to them and to their families — the execution of Witness MN's father and eight-year-old nephew at Maung Nu (see paragraph 220 above); the killing of Witness NJ's child, her own rape, and the disappearance of her husband and father-in-law at Chut Pyin (see paragraphs 205-206 and 208 above) — are inconsistent with an intent to forcibly displace.

462. The Court thus considers that an intent to forcibly displace the population does not explain the totality of the evidence before the Court. A number of aspects of the clearance operations, including the brutal manner in which they were conducted, attacks by the security forces on the Rohingya as they fled to Bangladesh and the widespread attacks on young children, are not consistent with an intent to forcibly displace the population. For this reason, in the Court's view, an intent to forcibly displace the population does not constitute an alternative reasonable inference.

463. The Court finally turns to Myanmar's suggestion that an intention to punish the Rohingya population could constitute an alternative reasonable inference in this case (see paragraph 449 above). While Myanmar does not elaborate on what it means by an intent to punish or offer an interpretation of the evidence to support its contention, the question of whether punishment constitutes an alternative reasonable inference is "ultimately a matter for the Court's assessment" (see paragraph 450 above). The Court considers, in this regard, that Myanmar is suggesting that its security forces might have intended to punish the Rohingya civilian population in retaliation for the activities of ARSA.

464. The Court recalls that genocidal intent may co-exist with other intentions, as long as such intentions are not incompatible with the existence of genocidal intent (see paragraph 443 above). In the Court's view, genocidal intent is likely to be accompanied by an intent to punish, particularly in the context of collective punishment. Genocidal and punitive intentions may often be entwined in the sense that the destruction of a protected group is an extreme form of punishment, and the two intentions may not always be capable of meaningful separation for the purpose of drawing alternative inferences.

465. Myanmar relies on the Court's finding in the 2015 *Croatia* Judgment that Serbia's attack on the civilian population during the siege of Vukovar and its ill-treatment of Croatian prisoners in the Ovčara camp following the fall of Vukovar were intended to punish rather than to destroy the group (*I.C.J. Reports 2015 (I)*, pp. 125-126, paras. 429-430). The Court observes that this finding was based on a substantially distinct set of facts from those in the present case. In that case, the Court relied upon the prior determinations of the ICTY in the *Mrkšić et al.* case to conclude that the purpose of the attack on the city of Vukovar was to punish Croats in that location for Croatia's declaration of independence (*ibid.*, p. 125, para. 429). Moreover, the individual victims of mistreatment in that case were prisoners of war, who were "specifically identified and selected" by the Serb forces for punishment on the basis that "they were known, or were believed, to have been active in the Croatian forces in Vukovar, and thus in Serb eyes were war crimes suspects" (*Mrkšić et al.*, IT-95-13/1-T, Trial Chamber II, Judgement of 27 September 2007, para. 480). In that context, the ICTY concluded

that the mistreatment of the prisoners of war in Vukovar reflected "hatred and the desire to punish the enemy forces" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 125, para. 430, quoting *Mrkšić et al.*, IT-95-13/1-T, Trial Chamber II, Judgement of 27 September 2007, para. 535).

466. The Court considers that, in the present case, the scale and nature of Myanmar's actions and the methods it employed went well beyond what would be required to punish the population and are instead characteristic of an intent to destroy a substantial part of the group. Features of such intent include the large numbers of persons killed, injured or displaced and the widespread brutal attacks on women and children. In light of the reasons set out above, the Court finds that punishment of the Rohingya population does not constitute an alternative reasonable inference on the evidence before it.

467. Accordingly, the Court cannot conclude, from all the evidence taken together, that an intent to carry out counter-insurgency operations, an intent to forcibly displace or an intent to punish the Rohingya population are reasonable inferences to be drawn. In the Court's view, the only reasonable inference that can explain Myanmar's actions is an intention to destroy a substantial part of the protected group, namely the Rohingya population in northern Rakhine State.

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468. For the reasons above, the Court is fully convinced that Myanmar committed acts falling under Article II *(a)*, *(b)* and *(d)* of the Genocide Convention with an intent to destroy a substantial part of the Rohingya population of Myanmar.

D. Conclusion

469. The Court finds that Myanmar breached its obligations under Article I and Article III *(a)* of the Convention.

VI. Responsibility for breaches of other obligations under the Genocide Convention

470. In its final submissions, The Gambia requests the Court to find that Myanmar, in addition to committing genocide, is responsible for four breaches of obligations arising under the Convention: failure to prevent genocide, in violation of Article I; direct and public incitement of genocide, in violation of Article III *(c)*; failure to punish acts punishable under Article III, in violation of Articles I, IV and VI; and failure to enact necessary legislation, in violation of Article V (see paragraph 63 above). With respect to these alleged breaches, the Court recalls that claims of breach of the obligations to prevent and to punish genocide require "proof at a high level of certainty appropriate to the seriousness of the allegation" (see paragraph 80 above). The Court will address each of the above claims in turn.

A. Obligation to prevent genocide

471. The Gambia alleges that Myanmar failed to prevent genocide pursuant to Article I of the Convention. In paragraph (1) of its final submissions, The Gambia asks the Court to find that Myanmar is responsible for genocide "perpetrated by its security forces and individuals acting under their instruction, direction, or control" (see paragraph 63 above). In paragraph (2), however, with respect to the obligation to prevent genocide, The Gambia requests the Court to find only that Myanmar has failed to prevent acts of genocide "perpetrated by individuals alongside its security forces" (*ibid.*).

472. In the view of the Court, while paragraph (1) of the final submissions refers to conduct attributable to Myanmar, including that of "individuals acting under [its] instruction, direction, or control", the reference in paragraph (2) to acts perpetrated by "individuals alongside its security forces" shows that the claim regarding the duty to prevent only concerns acts committed by persons whose conduct is not attributable to Myanmar.

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473. In support of its claim, The Gambia contends that ethnic Rakhine individuals and other ethnic minorities assisted the Tatmadaw during the clearance operations. It argues that the Tatmadaw recruited, armed and trained ethnic Rakhine to serve as police and in militias during those operations. The Gambia further asserts that

> "genocidal acts indisputably occurred in the immediate vicinity where the Tatmadaw was deployed and Myanmar had . . . all the means necessary within its power to bring to an immediate end any genocidal act perpetrated by individuals, assuming those acts were not committed under its instructions, direction or effective control".

474. Myanmar submits that since The Gambia has not established that genocide has been committed, there can be no breach of the obligation to prevent genocide. With respect to the facts, the Respondent acknowledges that ethnic Rakhine and other civilians participated in the clearance operations. It confirms that following the 2016 events, government authorities publicly recruited "non-Bengali citizens to a new 'regional' force", though it denies having armed ethnic Rakhine groups or militia "for any nefarious purpose". The Respondent also attempts to attribute burnings both during and after the clearance operations to persons, including ethnic Rakhine and other civilians, not acting under its authority or control.

475. Among the interveners, the DRC contends that the duty to prevent applies to the entirety of the obligations under Article III, and that a State may incur responsibility for breach of the obligation to prevent irrespective of whether a violation of that Article has been established. The DRC emphasizes that the duty to prevent is an obligation of conduct and of due diligence, with an autonomous and distinct character from other obligations under the Convention. It further notes that

the Court has recognized that, because the obligation to prevent is an obligation of conduct, a State may not evade responsibility for its breach by claiming that genocide would have been committed regardless of whether or not it fulfilled the obligation to prevent (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 221, para. 430). The DRC states that the obligation to prevent follows the same logic as the prohibition on incitement to commit genocide, which is punishable even when genocide has not been committed. Conditioning the breach of the obligation to prevent on the prior establishment of a violation of Article III would likely lead to results that are manifestly absurd and unreasonable, and be contrary to the object and purpose of the Convention.

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476. The Court recalls that its interpretation of the scope of the obligation to prevent under Article I of the Genocide Convention does not purport to establish jurisprudence applicable to other international instruments setting forth an obligation to prevent certain acts (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 220, para. 429).

477. The prevention of genocide, together with its punishment, is the stated object and purpose of the Genocide Convention and constitutes the means by which States parties to the Convention seek, according to its preamble, "to liberate mankind from [this] odious scourge".

478. The Court recalls that the obligation to prevent genocide set out in Article I of the Convention

> "is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of 'due diligence', which calls for an assessment *in concreto*, is of critical importance." (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 221, para. 430.)

With respect to the circumstances giving rise to the obligation, the Court has explained that

> "a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (*dolus specialis*), it is under a duty to make such use of these means as the circumstances permit." (*Ibid.*, p. 222, para. 431.)

As a result, in the Court's view,

> "a State may be found to have violated its obligation to prevent even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was

about to be committed or was under way; for it to incur responsibility on this basis it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed" (*ibid.*, p. 223, para. 432).

479. The Court has recognized that the obligation to prevent under Article I applies to any act punishable under Article III of the Convention (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, pp. 221-222, para. 431). The Court observes in this regard that the assessment of a "serious risk" with respect to the obligation to prevent involves a determination on both the material and mental elements of genocide, as well as any other elements of the relevant provisions of Article III. In particular, absent a serious risk of the presence of genocidal intent, the obligation to prevent under Article I of the Convention does not arise.

480. The Court has held that if a State itself is found responsible for genocide, then that State has necessarily breached the obligation to prevent those same acts. As it explained, "logic dictates that a State cannot have satisfied an obligation to prevent genocide in which it actively participated" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 201, para. 382). Under such circumstances, there is no need for the Court to make a separate determination that the obligation to prevent those same acts pursuant to Article I of the Convention has been violated. The same reasoning applies to the responsibility of a State for the other offences enumerated in Article III of the Convention, to which the duty to prevent equally applies (*ibid.*).

481. In the present case, however, The Gambia contends that Myanmar failed to prevent genocide committed by persons acting alongside its security forces and not under its instruction, direction or control. This claim is not subsumed by the finding that Myanmar itself is responsible for committing genocide.

482. Evidence before the Court establishes that non-Rohingya civilians entered villages with the Myanmar security forces and participated alongside them in acts such as killings and burning houses, including at the locations specifically examined by the Court (see paragraphs 188, 203, 207, 227, 231, 235 and 241 above; Affidavit of Witness NJ, para. 46; FFM, Report of the detailed findings (2018), paras. 761, 777, 782, 797, 821, 822, 830, 837, 873, 874 and 920; PILPG, Factual findings & legal analysis report, pp. 30-31; Fortify Rights, "'They gave them long swords': Preparations for genocide and crimes against humanity against Rohingya Muslims in Rakhine State, Myanmar" (July 2018), pp. 55-57). Myanmar's ICOE also found that "local vigilantes" participated in the violence alongside the security forces during the clearance operations (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), pp. 4, 6 and 10; see paragraphs 126 above and 539 below).

483. The evidence does not clarify, however, whether such civilians were acting under Myanmar's command or control. The Court recalls that the conduct of non-State actors may be attributable to a State for the purposes of international responsibility if they were acting in accordance with a State's instructions or under its "effective control" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 208, para. 399, citing *Military and Paramilitary Activities in and against Nicaragua*

(Nicaragua v. *United States of America), I.C.J. Reports 1986*, p. 65, para. 115). Such effective control must be exercised, or instructions given, "in respect of each operation in which the alleged violations occurred, not generally in respect of the overall actions taken by the persons or groups of persons having committed the violations" (*ibid.*, p. 208, para. 400). Moreover, attribution to a State of conduct by actors that are neither *de jure* nor *de facto* organs of that State cannot be presumed (*ibid.*, p. 215, paras. 414-415).

484. Based on the record before it, the Court cannot conclude that all acts committed by non-Rohingya civilians during the clearance operations were taken in accordance with Myanmar's instructions or under its effective control, such that their conduct is attributable to the State. The Court therefore considers that at least some of the above acts of civilians during the clearance operations must be considered to be those of non-State actors whose conduct is not attributable to the Respondent.

485. In light of the evidence regarding the nature of the conduct of non-Rohingya civilians (see paragraph 482 above), the Court considers that the participation of such civilians in the clearance operations alongside the Myanmar security forces posed a serious risk of genocide of which the State should normally have been aware (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 223, para. 432). Myanmar does not contend that it was unaware of the participation of non-Rohingya civilians or that it lacked the capacity to take action to address it. The record contains no evidence, however, that Myanmar authorities made any attempt to discourage non-Rohingya civilians from participating in the attacks on the Rohingya or otherwise sought "to employ all means reasonably available to them so as to prevent genocide so far as possible" (*ibid.*, p. 221, para. 430). To the contrary, Myanmar acknowledges that it recruited some non-Rohingya civilians (see paragraph 474 above). Moreover, the Court has found that, prior to and during the clearance operations, Myanmar's military broadly spread hatred of the Rohingya through the Facebook military network (see paragraphs 164-167 above), and at least one video posted on that platform showed a soldier encouraging non-Rohingya residents to join the fight (see paragraph 165 above). Under the circumstances, the Court is convinced that Myanmar had means available to it that might have contributed to preventing acts likely to constitute genocide by persons acting alongside its security forces, and failed to avail itself of them (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 221, para. 430, and p. 225, para. 438).

486. Given the limited evidence before it on this question, the Court is not in a position to conclusively determine whether the non-Rohingya civilians participating in the clearance operations, whose conduct is not attributable to the State, themselves acted with genocidal intent. This finding does not, however, affect the conclusion that such civilians participated in the clearance operations where acts of genocide were committed by Myanmar's security forces and that the acts of civilians posed a serious risk of genocide.

487. In this regard, the Court recalls that the instant that a State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed, the due diligence obligation to prevent genocide under Article I of the Convention arises (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 222, para. 431). This duty is breached and the responsibility of a State is engaged when a State should normally have been aware of a serious risk that genocide would be committed and "manifestly failed to take all measures to prevent genocide which were within its

power" (*ibid.*, p. 221, para. 430; see paragraph 478 above). As the Court has emphasized, the obligation to prevent is not one of result; a State does not incur responsibility simply because its efforts do not succeed (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 221, para. 430). On the other hand, the obligation to prevent genocide does not allow a State that is in a position to act in the face of a serious risk of genocide to remain idle and gamble that the risk might not ultimately materialize. Like other obligations in the Convention with a preventive character, including the prohibition of incitement to commit genocide (Article III *(c)*) (see paragraph 496 below), the obligation to adopt legislation to give effect to the Convention (Article V) (see paragraphs 518 and 561 below) and the obligation to investigate acts of genocide under the duty to punish (see paragraph 514 below), international responsibility for breach of the duty to prevent genocide is not conditioned on a finding that genocide has occurred. Such an interpretation serves the protective humanizing and civilizing purpose of the Convention (see *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23).

488. In the present case, the Court concludes that Myanmar knew or should have known of a serious risk of acts of genocide being committed by non-Rohingya civilians alongside its security forces during the 2017 clearance operations, that it had the means to take action to prevent such acts and that it manifestly refrained from using them. Myanmar thus violated its obligation to prevent genocide pursuant to Article I of the Convention.

B. Direct and public incitement to commit genocide

489. The Court now turns to The Gambia's claims that Myanmar has directly and publicly incited genocide, in violation of Article III *(c)* of the Genocide Convention. In this regard, The Gambia contends that "senior officers of the Tatmadaw and the civilian government openly and explicitly exhorted the military and others in Rakhine State to commit genocide against the Rohingya".

490. As with the duty to prevent genocide, the Court has held that where a State has been found to be responsible for genocide pursuant to Article III *(a)*, it is unnecessary to determine whether it may also have incurred responsibility for direct and public incitement to commit genocide under Article III *(c)* with respect to those same acts (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 200, para. 380). The responsibility of the State under Article III *(c)* for incitement of its own agents or organs to commit genocide is established and absorbed by the finding that the State itself has committed genocide (*ibid.*). Thus, the Court need not separately address The Gambia's contention that members of the Tatmadaw and the civilian government "exhorted the military" to commit genocide.

491. The Court observes, however, that the prohibition of direct and public incitement to commit genocide under Article III *(c)* is not limited to incitement, by the State, of genocide committed by State agents or organs. The provision also prohibits incitement, by the State, of genocide committed by private actors, namely persons and entities whose conduct is not attributable to the State. Thus, the Court's finding that Myanmar itself committed genocide, in violation of

Article III *(a)*, does not address The Gambia's contention that Myanmar may have incited private actors to commit genocide. The Court accordingly will examine this question.

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492. The Parties offer somewhat differing views regarding what constitutes direct and public incitement to commit genocide. The Gambia maintains that a State is responsible for incitement if a State organ speaks, publishes or displays in public words that encourage or provoke the commission of genocide. It emphasizes that incitement may be implicit, and that the words must be considered in their context and as they would be understood by their intended audience. The Gambia submits that there is considerable overlap between hate speech and incitement, since incitement can be preceded or accompanied by hate speech, and hate speech affects how statements are likely to be received by the intended audience. The Applicant adds, however, that incitement always involves the additional requirement that the speech is understood by its intended audience as a call to violence or action against the targeted group.

493. With respect to the facts, The Gambia contends that Myanmar led a co-ordinated and prolonged hate campaign against the Rohingya, indoctrinated soldiers and the people of Myanmar to believe that the Rohingya posed an existential threat to the country, its racial purity and Buddhism generally, and incited violence and genocide against them. It submits that the climate of hatred left ethnic Rakhine civilians who joined the Tatmadaw's genocidal efforts susceptible to incitement to genocide. According to the Applicant, the examples of hate speech in the record would have been understood in context by their intended audience as calls to genocidal violence. The Gambia also maintains that Myanmar disseminated speech by private actors inciting genocide, particularly speech by prominent Buddhist monks, which is either attributable to Myanmar or which Myanmar is responsible for failing to suppress.

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494. For Myanmar, in order to constitute direct and public incitement, speech must contain a direct and unambiguous call to commit one of the acts referred to in Article II of the Convention, and must be based on precise and incontrovertible evidence. It maintains that statements found to constitute incitement by the ICTR explicitly advocated killing, often accompanied by a direct expression of genocidal intent. The Respondent additionally submits that incitement requires proof of a causal link between the incitement and the commission of acts of genocide.

495. Myanmar argues that messages referred to by The Gambia do not constitute direct and public incitement to genocide within the meaning of Article III *(c)*. For the Respondent, the examples of speech presented by The Gambia cannot be regarded as advocacy or encouragement of hate, even less a call to commit genocide. Nor has The Gambia established that the messages were delivered with genocidal intent or, in many cases, even identified the author. The Applicant has thus failed to

furnish "precise and incontrovertible evidence" of such speech on the part of the authorities. The Respondent further maintains that the statements of private actors, particularly certain Buddhist monks, cannot be attributable to the State, regardless of whether they constituted incitement to commit genocide.

* *

496. The Court observes that the prohibition on incitement to commit genocide has a preventative purpose (*Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 678, fn. 1614). It is well established that incitement can be committed irrespective of whether genocide itself takes place (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 119, para. 180; *Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 562). Thus, "the crime . . . is completed as soon as the discourse in question is uttered" (*Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 723; see also *Nzabonimana*, ICTR-98-44D-T, Trial Chamber III, Judgement and Sentence of 31 May 2012, para. 1752). Any other interpretation would deprive the prohibition of incitement to commit genocide of its preventative character.

497. A State is responsible for direct and public incitement to commit genocide pursuant to Article III *(c)* of the Genocide Convention when a person or organ whose conduct is attributable to the State communicates in public messages that directly prompt, encourage or provoke the commission of genocide (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, paras. 555-560). The mental element of incitement encompasses the intent to directly and publicly incite other actors to commit genocide and presupposes a genocidal intent on the part of the speaker (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 128-129, para. 441, and p. 152, para. 517; *Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 560; *Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 677).

498. The appeal must be public, in the sense that it is made available to an indeterminate group of persons. It must also be direct, in that it directly calls for the commission of one or more material acts with genocidal intent (*Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, paras. 692-693). In other words, it should "specifically provoke another to engage in" such acts (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 557). As the ICTR Appeals Chamber has explained,

> "there is a difference between hate speech in general (or inciting discrimination or violence) and direct and public incitement to commit genocide. Direct incitement to commit genocide assumes that the speech is a direct appeal to commit an act referred to in Article 2 . . . [i.e. genocide]; it has to be more than a mere vague or indirect suggestion." (*Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 692.)

499. The Court considers that incitement to commit genocide under the Convention does not require a call for killing or extermination. The speaker may seek to provoke the audience to commit any material act set forth in Article II with genocidal intent against the protected group. Nevertheless, the discourse must call on the audience to "take action" in this manner. Thus, a media article that

was "brimming with ethnic hatred but [that] did not call on readers to take action against the Tutsi population" was not held to constitute direct incitement (*Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 696, quoting *Nahimana et al.*, ICTR-99-52-T, Trial Chamber I, Judgement and Sentence of 3 December 2003, para. 1037).

500. Incitement may "be direct, and nonetheless implicit" (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 557). Messages may be delivered through euphemism or code. Interpretation of the message must take into account the particular context, including the language and culture, the identity of the audience and the political and community affiliations of the inciter (*Kalimanzira*, ICTR-05-88-T, Trial Chamber III, Judgement of 22 June 2009, para. 514; *Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, para. 698). The inquiry must consider how the speech would be understood by its intended audience, and whether the audience would have immediately grasped its implication (*Akayesu*, ICTR-96-4-T, Trial Chamber I, Judgement of 2 September 1998, para. 558; *Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, paras. 698 and 700). Thus, a speech containing no explicit appeal to commit genocide, or which appears ambiguous, can still constitute direct incitement; if, however, the message remains ambiguous when considered in context, it cannot constitute incitement (*Nahimana et al.*, ICTR-99-52-A, Appeals Chamber, Judgement of 28 November 2007, paras. 701 and 703).

501. In considering the evidence before it, the Court has found that the clearance operations were accompanied by speeches by Senior General Min Aung Hlaing fuelling hatred against the Rohingya, as well as widespread hate speech on official sites of the Myanmar military and the Facebook military network, among other sources (see paragraphs 155-168 above). For hate speech to constitute incitement, however, it must involve a call to commit genocide when viewed in context. The Gambia highlights in particular three pieces of evidence in this regard: speeches of Senior General Hlaing, as well as the video of a soldier addressing non-Rohingya civilians and a message calling on ethnic Rakhine to "sharpen" their knives, both posted on the Facebook military network. The Court will consider this and other evidence in the record.

502. With respect to the speeches delivered by Senior General Hlaing in September 2017 (see paragraphs 157-159 above), the Court recalls that these speeches were delivered in the midst or immediate aftermath of widespread violence against the Rohingya; their purpose was to raise funds for and honour the security forces conducting those operations; the speaker was the commander of those same security forces and he spoke, *inter alia*, of their "brilliant efforts" and of "solving" the "unfinished job" of the "Bengali problem". In the Court's view, these messages appear to have been directed primarily at the Myanmar security forces and other State agents and organs, rather than constituting an effort to directly incite genocide by civilians. Any question of incitement to commit genocide by State actors or organs themselves is absorbed by the Court's finding of genocide, as already noted (see paragraph 490). The Court accordingly considers that the speeches do not constitute direct calls to private actors to engage in genocide.

503. The Court has found that the Facebook military network reached a broad civilian audience (see paragraph 161 above) and that numerous posts on that network dehumanized the Rohingya,

portrayed them as violent and existential threats to the purity and existence of other ethnic groups and to Buddhism, and at times encouraged and legitimized violence against them (see paragraphs 156-168 above). The video posted during the clearance operations, for example, shows a soldier telling non-Rohingya civilians, "if you can carry a sword, then carry a sword . . . Carry whatever you can and bravely face these animals." (See paragraph 165 above.) Another message called on "Myanmar people" to "sharpen even the knives at home that you do not use" to protect themselves against an alleged Muslim plan for mass murder (see paragraph 166 above). Other posts proclaimed to Rohingya "you can get a six-foot pit [a grave]" and called for emulating India's alleged "shoot-to-kill policy" for "Bengalis" at the border (see paragraph 164 above). The message of hate was also received by the viewership. An official Tatmadaw post simply describing an alleged "Bengali" attack the day before the August 2017 ARSA attacks unleashed numerous calls for the Rohingya and/or Muslims to be killed, exterminated or permanently removed from Myanmar (see paragraph 168 above).

504. The Gambia additionally points to statements by Buddhist monks, politicians and others which, it contends, constituted incitement to commit genocide that was either attributable to Myanmar or that Myanmar failed to suppress (see FFM, Report of the detailed findings (2018), paras. 1303, 1315-1316, 1328 and 1423; Tin Aung Kyaw, "Buddhist monk Wirathu leads violent national campaign against Myanmar's Muslims", *Global Post* (21 June 2013)). In the view of the Court, the evidence in the record is not sufficient to conclusively establish that the acts of the monks and politicians are attributable to Myanmar for the purposes of The Gambia's claim regarding incitement. The responsibility of Myanmar to punish potential acts of incitement to commit genocide by private actors will be considered below (see paragraph 550).

505. In the view of the Court, the evidence establishes that the Facebook military network posts were made by persons and organs whose conduct is attributable to Myanmar (see paragraphs 162-163 above), that the posts were broadly and publicly disseminated to the civilian population and that the messages targeted the Rohingya as a group. A number of the messages sought to present the Rohingya as a violent threat, to be violently defended against. The Court considers that some of the Facebook military network messages sought to encourage the non-Rohingya population to engage in violence against the Rohingya as a group. The Court is not persuaded, however, that the evidence before it conclusively establishes that the posts, even when taken in context, were made with the specific intent to destroy the group in whole or in part or constituted a direct appeal for the commission of genocide, or that the intended audience would have understood the messages as such, as required by Article III *(c)*.

506. The Court is therefore not fully convinced that The Gambia has established that Myanmar violated its obligation under Article III *(c)* of the Convention by directly and publicly inciting genocide against the Rohingya by private actors. The Gambia's submission that Myanmar failed to investigate and punish acts of incitement will be addressed in the next section (see paragraph 550 below).

C. Obligation to punish acts enumerated in Article III

507. The Court now turns to The Gambia's claim that Myanmar has failed to punish acts prohibited under Article III of the Convention (see paragraph 63 above). The Gambia contends that Myanmar has failed to effectively investigate genocide or to identify, prosecute and punish persons reasonably suspected of engaging in acts of genocide, including members and commanders of the Tatmadaw. Myanmar, for its part, maintains that genocide did not occur and that The Gambia has not identified plausible or credible evidence sufficient to prompt an investigation for genocide. Thus, the duty to punish under the Convention does not arise.

508. The obligation to punish the crime of genocide is set out in Article I of the Genocide Convention, and Article III sets out the acts that "shall be punishable". The obligation is further elaborated in Articles IV, V and VI. Article IV provides that persons committing any of the acts enumerated in Article III "shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals". Article V obliges States parties to adopt "legislation to give effect to" the Convention and in particular "to provide effective penalties" for breaches of Article III, while Article VI provides that persons charged with violations of Article III "shall be tried by a competent tribunal" of the territorial State "or by such international penal tribunal as may have jurisdiction". This suite of duties together constitutes the obligation of States parties to punish genocide under the Convention. Collectively, their purpose is to enable proceedings to be brought against suspects and to achieve the object and purpose of the Convention by avoiding impunity for the perpetrators (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 451, para. 74).

509. The obligation to punish arises whenever any of the offences enumerated in Article III are perpetrated, and not exclusively when genocide itself has been committed. Furthermore, the obligation to punish extends to acts committed by private actors whose conduct is not attributable to the State and does not require a showing of genocidal intent on the part of the State. Nor is the duty to punish subsumed by a finding that a State has committed genocide. As the Court has noted, "[i]t is perfectly possible for a State to incur responsibility at once for an act of genocide . . . and for the breach by the State of its obligation to punish the perpetrator of the act: these are two distinct internationally wrongful acts" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 201, para. 383).

510. The Court will now consider the Parties' arguments regarding the applicable law concerning the duties to investigate (1) and to prosecute and punish (2), before examining the application of this law in the present case (3).

1. Duty to investigate

511. Both Parties accept that investigation is a logical prerequisite to the imposition of punishment under the Convention. The Gambia embraces the position of the Maldives, as intervener, that the duty to investigate arises as soon as there are reasonable grounds to believe that acts of genocide have been committed on a State's territory, and that such investigations must be carried out in good faith and must be prompt, effective and thorough, independent and impartial.

512. Myanmar stresses that the duty to investigate "cannot be triggered without the persons suspected" of acts of genocide "having been precisely identified", or unless the State receives information that is "sufficiently plausible and credible to suggest" that the *actus reus* and *mens rea* of genocide are established.

513. The Court observes that the Genocide Convention expressly provides that persons committing genocide "shall be" "charged", "tried" and "punished" with "effective penalties" (Articles IV, V and VI). The Convention thus imposes on States an obligation to prosecute and punish. The Court considers that, ordinarily, an investigation is a necessary prerequisite to the fulfilment of these obligations, particularly in light of the Convention's object and purpose of ensuring accountability for the crimes enumerated therein.

514. While the obligation to impose punishment on a perpetrator cannot arise unless a violation of Article III has been established (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, pp. 128-129, para. 441), in the Court's view, the obligation to investigate is necessarily antecedent to any determination of a violation. As the Court has observed, "it is precisely the purpose of an investigation to uncover the facts necessary to determine whether a criminal offence has been committed" (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment, I.C.J. Reports 2024 (I)*, p. 133, para. 103; see also *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 455, para. 91). Like the duty to adopt legislation under Article V of the Convention (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 109, para. 159; see paragraph 560 below), the duty to investigate may give rise to international responsibility under the Convention independent of any prior determination of a violation of Article III.

515. The Court considers that the obligation to investigate arises as soon as there are reasonable grounds to suspect that acts of genocide or other acts punishable under Article III of the Convention have been committed in a State's territorial jurisdiction (see *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment, I.C.J. Reports 2024 (I)*, p. 133, para. 103, and p. 166, para. 219; see also *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 454, para. 88). This includes an assessment of the presence of genocidal intent. The Court cannot accept Myanmar's contention that the obligation to investigate is not implicated until a State has received information "precisely identif[ying]" a suspect or "specifically inform[ing]" the State of the possibility of genocide. The obligation to investigate is one of due diligence. Once a State knows or should know that there are reasonable grounds to suspect that violations of Article III have been committed, "steps must be taken" to proceed with an effective investigation (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 454, para. 86).

516. The Court considers that investigations must be conducted in good faith, in a manner designed to achieve their purpose of identifying violations and bringing persons responsible to justice. Investigations must be prompt, thorough, effective, independent and impartial, and capable of grounding a fair trial.

2. Duty to prosecute and punish

517. Articles IV and VI of the Convention further oblige a State to prosecute and punish any individuals who may be responsible for committing acts proscribed by Article III within its territorial jurisdiction, if there is sufficient evidence to do so. The Gambia contends that failure by a State to prosecute and punish such acts constitutes a breach of the obligation to punish, regardless of any justification a State may offer. Myanmar counters that the absence of prosecutions or convictions does not necessarily entail a breach of the duty to punish.

518. The Court has recognized that national authorities have some discretion in determining whether prosecution is warranted. Such decisions, however, must be based on the available evidence and applicable legal rules, and taken in the same manner as in the case of other grave offences under the law of that State (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Judgment, I.C.J. Reports 2024 (I)*, p. 138, para. 118; *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 455, para. 90). Such discretion must also be exercised independently, impartially and in good faith, in a manner consistent with the obligation under the Convention to ensure that "persons guilty of genocide" "shall be" tried and punished (Articles IV, V and VI). This includes prosecuting "without delay" (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 460, para. 115). The requirement of a trial by a competent tribunal in Article VI also necessarily implies a proceeding that comports with fair trial guarantees, including independence and impartiality. The investigation, prosecution and trial must be sufficiently transparent for the integrity of the process to be assessed. Finally, as the Court has recognized in the context of Article V, one of the most effective ways of preventing criminal acts is to provide penalties and impose them effectively on those who commit the criminal acts (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 219, para. 426). It follows that, to be effective, penalties must be proportionate to the gravity of the crime of genocide and sufficient to prevent such acts in the future.

519. Myanmar emphasizes that the duty to punish genocide does not require punishment of crimes other than genocide, and that The Gambia must therefore "prove a failure to punish genocide" and not other crimes. It also maintains that the duty to punish does not require a State to prosecute and punish a crime specifically called "genocide" and that States parties may satisfy the obligation to punish under the Convention by relying on general provisions in their criminal law such as murder, grievous bodily harm or rape.

520. The Court observes that the obligation to investigate, prosecute and punish genocide applies only to acts falling within Articles II and III of the Convention. The Convention does not require investigations into other crimes. On the other hand, as the Court concludes with regard to the duty to adopt legislation (see paragraph 569 below), unless a crime provided for under a State's domestic criminal law encompasses genocidal intent as well as the other elements of the crime of genocide, its enforcement will not fulfil the obligation to punish genocide. Accordingly, prosecution and punishment of crimes that do not capture all the constituent elements of the offences enumerated in Article III do not satisfy the duty to punish under the Genocide Convention.

521. The Parties also differ with respect to whether the Convention obliges States parties to punish commanders for the acts of their subordinates. Myanmar argues that Article IV of the Convention addresses only "[p]ersons *committing* genocide or any of the other acts enumerated in Article III", and that this language does not include the responsibility of commanders who have not themselves "committed" genocide.

522. The Court observes that the principle of superior responsibility recognizes that superiors incur responsibility for offences committed by their subordinates if they knew, or should have known, that the subordinates committed, or were likely to commit, such acts, and if the superior failed to take the necessary and reasonable measures to prevent or punish those offences (see *Karemera and Ngirumpatse*, ICTR-98-44-A, Appeals Chamber, Judgement of 29 September 2014, para. 119; *Brđanin*, IT-99-36-T, Trial Chamber II, Judgement of 1 September 2004, para. 715). The Court further notes that Article IV of the Convention specifically provides that all persons committing any of the acts enumerated in Article III "shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals". The Commentary to the United Nations Secretariat's draft convention also noted that leaders bore "[t]he heaviest responsibility", as their "duty . . . is to abstain from organizing genocide personally and from provoking it and to prevent its commission by others" (United Nations, Secretary-General, "Draft Convention on the Crime of Genocide", UN doc. E/447 (26 June 1947), p. 35). The Court considers that the specific recognition of punishment of constitutional rulers and other high-level officials in Article IV, particularly when read in light of the Convention's object and purpose, encompasses the principle of superior responsibility.

523. Under Myanmar's Constitution, criminal responsibility for members of the military can generally be imposed only within the military justice system. The Gambia contends that this régime is non-transparent and under the direct command of Senior General Min Aung Hlaing, who was the Commander-in-Chief of all Myanmar's armed forces during the clearance operations, and his deputy, both of whom were accused by the FFM of genocide. According to The Gambia, impunity is thus "built into the legal framework". Myanmar, in turn, submits that the obligation to punish under the Convention cannot require a State to alter its constitutional arrangements or reform its justice system.

524. In this respect, the Court observes that the Genocide Convention does not mandate any particular domestic legal arrangements for a State party, so long as those arrangements do not preclude effective punishment as mandated by the Convention (see paragraph 563 below). A State cannot, however, invoke its domestic legal system to justify failure to comply with the Convention (*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France)*, *Judgment, I.C.J. Reports 2008*, p. 222, para. 124).

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525. In sum, the obligation to punish pursuant to Articles I, IV, V and VI of the Genocide Convention obliges a State party to effectively investigate, prosecute and punish persons, including commanders, having committed offences under Article III in a competent tribunal and to impose effective penalties commensurate with the severity of the crime, in a manner consistent with the considerations set forth above.

3. Application of the obligation to punish in the present case

526. The Court now turns to the question of Myanmar's compliance with the obligation to punish in this case. The Parties disagree as to whether the duty to investigate was engaged, whether Myanmar conducted adequate and effective investigations and prosecutions and imposed adequate punishment, and whether Myanmar obstructed investigations and destroyed evidence.

527. The Gambia submits that following the 2017 clearance operations, United Nations entities and a number of States voiced concerns that atrocities including genocide had taken place and called for investigations. The Gambia points in particular to the September 2018 report of the FFM, which recommended that "named senior generals of the Myanmar military should be investigated and prosecuted . . . for genocide", including Senior General Hlaing (FFM, Report of the detailed findings (2018), p. 1 and paras. 1553-1555). The Applicant also notes General Assembly resolution 73/264 of 22 December 2018, which expressed "grave concern at the findings of the [FFM] that there [was] sufficient information to warrant investigation and prosecution . . . for genocide", and called for "a full and independent investigation of the human rights violations and abuses committed, including against the Rohingya Muslims" (United Nations General Assembly, resolution 73/264, "Situation of human rights in Myanmar", adopted on 22 December 2018, UN doc. A/RES/73/264 (22 January 2019), paras. 1 and 3).

528. The Gambia submits that such calls engaged Myanmar's obligation to carry out effective investigations in good faith. It maintains that Myanmar instead diverted attention through the creation of several "sham" investigative commissions that neither identified any member of the Tatmadaw responsible for crimes against the Rohingya nor recommended prosecution of any military personnel, and that the few penalties imposed were inadequate. Adequate and effective investigations and prosecutions have therefore not taken place.

529. With respect to the alleged destruction of evidence, The Gambia points in particular to the military's disposal of the remains of Rohingya victims through means such as burning and burial in mass graves, as well as acts of bulldozing, clearance and reconstruction across large parts of the Maungdaw, Buthidaung and Rathedaung Townships. Additionally, The Gambia contends that Myanmar's failure to investigate and prosecute is evidenced by Myanmar's blocking of independent investigations.

530. Myanmar maintains that it has not received any sufficiently plausible or credible information establishing that acts constituting genocide have been committed with the intent to physically or biologically destroy the Rohingya group in whole or in part, or identifying specific individuals who may have committed such acts. The obligation to investigate and punish under the Convention accordingly has not been engaged. In any event, Myanmar notes that investigations have been conducted and prosecutions have occurred.

531. Myanmar does not dispute that its security forces burned, buried or otherwise disposed of the remains of dead Rohingya, though it contends that the casualties were ARSA terrorists, and

that "the burial of bodies without delay, including in mass graves, is not unusual" in a warm climate. As for the destruction of buildings, the Respondent asserts that The Gambia has not established that all damage and destruction of all buildings was caused deliberately by Myanmar's security forces and for the purpose of destroying evidence. As noted above, Myanmar also contends that it is not obliged under the Genocide Convention to co-operate with United Nations investigative bodies (see paragraph 129).

* *

532. The Court will first examine the facts relating to Myanmar's efforts to investigate, prosecute and punish allegations of crimes of genocide arising from the clearance operations. It will then consider The Gambia's allegations regarding the destruction of evidence and lack of co-operation with independent United Nations investigations.

533. The Court observes that Myanmar established various commissions in relation to the situation in Rakhine State, a number of which predated the 2017 clearance operations. For example, the Advisory Commission on Rakhine State was not mandated to investigate alleged crimes or make findings as to individual responsibility and issued its final report on 24 August 2017 (see paragraph 140 above). Although the final report called for an "independent and impartial investigation" given that the security forces had been accused of serious human rights violations (Final report of the Advisory Commission on Rakhine State (2017), p. 55, para. 71), the committee appointed to implement the recommendations did not have any investigative powers either. These mechanisms were thus not capable of fulfilling Myanmar's investigative obligation with respect to the 2017 clearance operations.

534. Regarding the entities that had an investigative mandate in relation to events surrounding the 2017 clearance operations, the Parties discuss the Inquiry Board established by the Tatmadaw, the ICOE (see paragraph 126 above) and the Criminal Investigation and Prosecution Body. The Court will consider each of these entities in turn.

535. The Tatmadaw Inquiry Board was established in October 2017 and composed exclusively of members of the military. It claimed to have conducted interviews with 3,217 villagers in 26 days. The Board's report issued in November 2017, one month after it was established, rejected all allegations of any deaths of innocent people, sexual violence or destruction of property, and concluded that the security forces "did not perform the use of excessive force" ("Information released by the Tatmadaw True News Information Team on the findings of the Investigation Team in connection with the performances of the security troops during the terrorist attacks in Maungtaw region, Rakhine State", *The Global New Light of Myanmar* (14 November 2017), para. 5). The Inquiry Board later issued a statement acknowledging the killing of ten men at Inn Din disclosed by Reuters journalists (see paragraph 232 above).

536. The ICOE was established on 30 July 2018 to "investigate allegations of human rights violations and related issues following the terrorist attacks by [ARSA] in Rakhine State with a view

to seeking accountability and formulating recommendations on steps to be taken to ensure peace and stability in Rakhine State" (see paragraph 126 above) (Republic of the Union of Myanmar, ICOE, "Mandate"; Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), p. 1). There is limited information before the Court regarding the mandate, methodology and scope of the investigation conducted by the ICOE, and its terms of reference were not entered into evidence.

537. The Executive Summary of the ICOE final report (see paragraph 539 below) indicated that the Commission had conducted over 1,300 witness interviews, including 29 members of the defence forces, 20 police officers and 1,017 residents of 13 locations, encompassing more than 60 villages in northern Rakhine State, where "major incidents" were said to have occurred (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), pp. 5 and 7). The Executive Summary stated that priority was given to obtaining statements from "Muslim and ethnic national witnesses", and that interviews paid particular attention to the "six most serious allegations": mass killing, rape, property destruction (arson), looting, torture and forced displacement (*ibid.*, p. 5). The Executive Summary gave no information, however, regarding the number of Muslim witnesses, which members of the security forces were interviewed, how witnesses were selected or the qualifications and methodology of the interviewers.

538. The Parties disagree regarding the independence and impartiality of the Commission's domestic members and its methods. The Commission comprised four members, two from Myanmar and two international experts, who served in their personal capacity with secretarial support from the Office of the President. The record indicates that ICOE field interviews were conducted in the presence of members of the security forces, although Myanmar contends that such forces merely provided security for the witnesses and ICOE members and did not disturb or threaten witnesses. The Government of Bangladesh granted permission for the ICOE to conduct interviews in Cox's Bazar, where the vast majority of the Rohingya survivors of the 2017 clearance operations are located, but the necessary logistics could not be organized before the Commission submitted its final report (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), pp. 7-8). During the oral proceedings, counsel for Myanmar emphasized that the work of the ICOE was "incomplete" and "a basis for further investigations", and that its conclusions were "preliminary non-established facts".

539. The ICOE issued a final report on 20 January 2020, of which only the Executive Summary was annexed to the written pleadings (see paragraph 126 above). The ICOE concluded that "war crimes, serious human rights violations, and violations of domestic law took place during the security operations between 25 August and 5 September 2017" and that there were "reasonable grounds to believe that members of Myanmar's security forces were involved" (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), p. 12). The Commission elaborated:

> "[A]ccording to statements collected by the ICOE, many civilians were killed by members of Myanmar's security forces, directly or collaterally during the security operations; and many village houses were burned down by members of the security forces and local vigilantes during and after the security operations. The ICOE has also found that members of Myanmar's security forces failed in several instances to prevent village destruction, and thus came to abet the demolition of property." (*Ibid.*, p. 10.)

The ICOE indicated that it had received "no credible statements on allegations of gang rape committed by Myanmar's security forces" and that all references to rape were "second-hand information" (*ibid.*, p. 6). The Commission found that individual members of the security forces and "vigilantes" used excessive force, but did not find evidence that the "killings or acts of displacement were committed pursuant to an intent or plan to destroy the Muslim . . . community in northern Rakhine State" (*ibid.*, pp. 9-10).

540. The ICOE observed that "there may be cases for which the perpetrators need to be investigated and brought to justice" (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), p. 10). According to Myanmar's first provisional measures report, the ICOE identified "139 cases of crimes", including 87 by "members of the ARSA and their collaborators", 29 by "local people" and 23 by the BGP (Myanmar's First report on the implementation of provisional measures, paras. 98-101). Myanmar emphasized, however, that "the investigation and prosecution of crimes is the role of authorities other than the ICOE".

541. The ICOE did not identify any members of Myanmar's military who might be responsible for crimes. It instead recommended that "Myanmar's Office of the Judge Advocate General must expeditiously conduct the necessary investigations and seek accountability for responsible military personnel throughout the Chain of Command" (Republic of the Union of Myanmar, ICOE, "Executive Summary" (21 January 2020), p. 12).

542. On 24 January 2020, Myanmar established a Criminal Investigation and Prosecution Body (hereinafter the "CIPB"), reportedly charged with undertaking "criminal investigations and prosecution of those suspected of committing crimes" during the conflict with ARSA in Rakhine State (Myanmar's First report on the implementation of provisional measures, para. 96). The CIPB is composed of civilian law enforcement and prosecution authorities and does not have jurisdiction over members of the Tatmadaw. The CIPB examined the cases identified by the ICOE. Of these, 2 of the 23 cases that concerned the BGP led to disciplinary sanctions of reduction in pensionable service; the others were either closed or suspended (Myanmar's Second report on the implementation of provisional measures, para. 48; Myanmar's Fourth report on the implementation of provisional measures, paras. 42-44).

543. Although Myanmar claims that the CIPB is "continuing its work", it acknowledges that since 2021, "no other prosecutions have been initiated" and no new convictions have occurred. Myanmar gives "several reasons why the work of this body is currently hindered", including "[t]he lack of evidence and formal complaints" and the security situation in Rakhine State.

544. The Court observes that none of the above measures involved investigation or prosecution of individual members of the Tatmadaw. With respect to prosecutions within the military justice system, following the Reuters report regarding Inn Din, four officers and three soldiers were convicted by court martial for the killing of ten alleged ARSA members. These individuals were sentenced to ten years imprisonment, but were all pardoned by Senior General Hlaing after serving eight months in prison. Following an Associated Press report documenting mass graves in

Gu Dar Pyin (see paragraph 228 above), two officers were sentenced to one year's imprisonment — one for breaching the rules of engagement, one for failure in supervisory duties — with a third officer receiving a one-year reduction in pensionable service for failure in supervisory duties. Three military personnel were convicted for events at Maung Nu: one officer received a reduction in pensionable service for negligence and two subordinates were convicted to one and two years' imprisonment with hard labour, respectively, for theft and criminal use of force against women.

545. The Court recalls that the FFM was established by the United Nations specifically to establish the facts and circumstances of alleged abuses by the Myanmar security forces, particularly in Rakhine State, "with a view to ensuring full accountability for perpetrators and justice for victims" (see paragraph 101 above). The FFM's September 2018 report contained extensive information regarding the conduct of the clearance operations across northern Rakhine State and found sufficient information to warrant initiation of proceedings for genocide, including with respect to named individuals (FFM, Report of the detailed findings (2018), paras. 1 and 1555). The Court therefore considers that at least as of that date, Myanmar had both reasonable grounds to suspect that genocide may have been committed in its territory and sufficient evidence to commence an investigation. Its duty to investigate offences under the Convention was therefore engaged. The Court considers that, at that point, it was incumbent upon Myanmar to conduct a prompt, effective, thorough, independent and impartial investigation, with a view to ensuring the identification, prosecution and punishment of all persons responsible for acts of genocide.

546. It is clear from the record that Myanmar did not take such action, despite having the capacity to do so. For example, Myanmar authorities promptly exhumed the mass graves of Hindu civilians attacked on 25 August 2017 at Kha Maung Seik, one month after the killings occurred (see paragraph 177 above; FFM, Report of the detailed findings (2018), para. 1059).

547. Myanmar acknowledges that the ICOE investigation was incomplete and preliminary (see paragraph 538 above). The ICOE also found some evidence consistent with that before the Court regarding the conduct of the 2017 clearance operations (see paragraph 539 above). This information should have prompted further investigations, and prosecutions as appropriate, of persons potentially responsible for acts punishable under the Genocide Convention. The record establishes, however, that the CIPB's subsequent investigations and prosecutions of the BGP have been very limited, with minimal penalties imposed, and that the CIPB had no jurisdiction to investigate the military (see paragraphs 542-543 above). In addition, the record does not establish that any further efforts were made to interview Rohingya survivors of the 2017 clearance operations in Bangladesh, or that any further investigations were pursued regarding the conduct of the BGP.

548. With respect to criminal proceedings involving the military, the Court considers that Myanmar has not genuinely investigated, or, if warranted, prosecuted its soldiers and commanders and punished them with penalties that could be considered commensurate with the crime of genocide. Despite the recommendation of the ICOE that Myanmar "must expeditiously conduct the necessary

investigations and seek accountability for responsible military personnel throughout the Chain of Command" (see paragraph 541 above), the evidence establishes that there has been no systematic investigation into any crimes committed by the Myanmar military during the 2017 events, including any investigation into the role of the military command. Myanmar has pointed to court martial proceedings regarding three locations, each of which involved a limited number of defendants, none of whom served sentences of more than a year. The Respondent's immediate reaction to Reuters' exposure of the killings at Inn Din was to arrest and prosecute the journalists, who were jailed for more than twice as long as the perpetrators (see paragraph 544 above; FFM, Detailed findings (2019), para. 232; "Key facts about Reuters reporters Wa Lone and Kyaw Soe Oo", *Reuters* (7 May 2019)). With respect to allegations of rape and other forms of sexual violence during the clearance operations, the IIMM similarly concluded that "no credible investigations" have occurred (IIMM, "Efforts to investigate and punish sexual and gender-based crimes committed against Rohingya: Evidence analysis" (27 March 2024), paras. 100-102).

549. The Court further observes that, although the ICOE stated that it had investigated the presence of genocidal intent (see paragraph 539 above), Myanmar did not criminalize genocide in any form until 2021 (see paragraphs 562 and 569 below). There was thus no offence of genocide under Myanmar's domestic law for the ICOE to investigate. Moreover, there were no further investigations into the acts punishable under the Convention after that date. Myanmar has not identified, charged, prosecuted or punished any individual — whether military or civilian — for any of the offences set forth in Article III of the Convention, including direct and public incitement to commit genocide. To the contrary, Myanmar continues to maintain that it is unaware of any plausible or credible evidence that would warrant investigation into genocide (see paragraph 530 above). Based on the evidence before the Court, there appears to have been no progress in any investigations or prosecutions by the CIPB or otherwise relating to the 2017 clearance operations since 2021. While the security situation in northern Rakhine State may have hindered further on-site investigations, this does not explain why Myanmar has not been able to interview its own military personnel or Rohingya survivors in Bangladesh.

550. With respect to the punishment of direct and public incitement to commit genocide, while the Court found insufficient evidence in the record to determine that Myanmar itself is responsible for inciting private actors to commit genocide (see paragraph 506 above), the obligation to investigate acts of incitement is engaged once a State knows or should know that there is a reasonable basis for suspecting that a violation of Article III *(c)* of the Convention may have occurred (see paragraph 515 above). The Court considers that the record contains sufficient information to establish such a reasonable basis, thus engaging Myanmar's duty, at a minimum, to investigate potential acts of incitement by both State and non-State actors. Although Myanmar contends that some penalties have been imposed on certain Buddhist monks and entities relating to "political" activities, this does not establish that Myanmar has met its obligation to investigate, prosecute and punish acts of direct and public incitement to commit genocide.

551. Turning to The Gambia's allegations regarding the destruction of evidence, the evidence in the record establishes that security forces engaged in widespread burning or otherwise disposed of bodies during the clearance operations (see, for example, paragraphs 222 and 228-229 above; Affidavit of Witness MS, paras. 28-30). These practices were confirmed by Myanmar's written

witness testimony. The Court has also found that Myanmar was primarily responsible for the burning of several hundred Rohingya villages during and after the clearance operations, as well as for the subsequent bulldozing, clearing of and construction on sites where genocide was committed (see paragraphs 271-282 above). At least seven Rohingya villages that were destroyed during the 2017 clearance operations have been replaced by BGP battalion bases (see paragraph 279 above). The IIMM concluded that such activity has "permanently concealed much evidence of what occurred during the 2017 clearance operations" (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 59). As the IIMM emphasized,

> "[t]hese actions have eliminated forensic evidence such as mass graves, burned structures, victims' remains and personal effects that could demonstrate patterns of persecution, methods of killing, and the identities of victims and perpetrators. Such destruction may also eradicate ballistic, blast pattern and weapons evidence, as well as documentation showing property ownership, victim targeting, or links between military leadership and field operations." (*Ibid.*; see also paragraph 281 above.)

552. Contrary to Myanmar's contention (see paragraph 531 above), it is not necessary for the Court to determine that all fires were set by the Myanmar security forces (see paragraphs 271 and 276 above) or that all of these acts occurred at sites where clearance operations took place. Moreover, in the view of the Court, it is irrelevant whether these actions were intentionally carried out for the purposes of destruction of evidence, so long as they objectively achieved that effect. Once Myanmar had reasonable grounds to suspect that genocide may have occurred — a point that the Court has found arose no later than September 2018 — government authorities had a responsibility to ensure the preservation of evidence in order to allow a thorough and effective investigation to be conducted. The Court considers that Myanmar engaged in extensive destruction of evidence by burning or otherwise disposing of bodies, burning and bulldozing sites where clearance operations took place and erecting new infrastructure, thus materially obstructing the ability of Myanmar or any other entity to effectively investigate the 2017 events.

553. With respect to Myanmar's co-operation with United Nations investigative entities, the Court observes that Article VI of the Convention places an obligation on Myanmar either to itself conduct adequate and effective investigations, prosecutions and punishments, or to co-operate with such international penal tribunal as may have jurisdiction (2007 *Bosnia* Judgment, *Judgment, I.C.J. Reports 2007 (I)*, p. 227, para. 443). In the present case, Myanmar has done neither. In the Court's view, Myanmar created obstacles to effective investigation and prosecution by either a competent domestic or international tribunal. It also limited the evidence available to this Court, through its destruction of evidence, denial of access to United Nations investigative entities and failure itself to adequately investigate the possibility of genocide during the clearance operations.

554. In light of all the above, the Court considers that Myanmar has failed to investigate and, if warranted, to prosecute and punish persons, including commanders, committing offences under Article III in a competent tribunal, and to impose effective penalties commensurate with the severity

of the crime. It therefore concludes that Myanmar has failed to punish genocide under Articles I, IV and VI of the Genocide Convention.

D. Obligation to enact necessary legislation

555. Article V of the Convention requires parties to "enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III". The Gambia requests the Court to adjudge and declare that Myanmar is in breach of this obligation.

556. The Gambia submits that Myanmar's Penal Code had no provisions on the crime of genocide until 2021, when Myanmar introduced an offence of genocide under Sections 311A and 311B. The Applicant also contends that the 2021 amendment fails to satisfy the requirements of Article V because it does not apply to members of the Tatmadaw and because, under the Myanmar Constitution, military personnel may be pardoned or potentially protected from prosecution. In addition, The Gambia notes that the new law defines the *actus reus* of genocide as including only measures intended to prevent births within the group that are "not in accordance with any existing laws". This restriction, according to The Gambia, insulates measures, such as those introduced to restrict births in the Rohingya community, from prosecution.

557. Myanmar, on the other hand, maintains that The Gambia's claim regarding legislation improperly asks the Court to intrude into the sphere of constitutional autonomy by examining the implementation of a treaty in a State's domestic law. The Respondent also denies that its legislation is inconsistent with the Genocide Convention. In its view, Article V affords States broad legislative discretion and does not oblige States parties to enact the text of the Convention into their domestic law or to create a domestic criminal offence of "genocide". Thus, a State may discharge its obligations under Article V by relying on its ordinary criminal laws.

558. With respect to the 2021 amendment, Myanmar submits that the new crime and the penalties thereunder apply to members of the military. As for pardons, Myanmar points out that it is not the only country in which the Head of State or Commander-in-Chief has the power to issue pardons. The Respondent also maintains that the domestic laws of other States parties define genocide more narrowly than the Convention and that, in any event, its measures regarding births are not contrary to the Convention. The enactment of the 2021 provisions therefore cured, and rendered moot, any claims regarding the pre-2021 legislation.

559. The Maldives, as intervener, submits that the legislation enacted by a State party pursuant to Article V must allow for the prosecution of all acts committed in that State's territory that are punishable under the Convention and ensure that all potential perpetrators of acts of genocide committed in that same territory can be prosecuted, in accordance with Article IV, with the imposition of effective penalties.

* *

560. It is well established that "the provisions requiring States to punish acts of genocide . . . are necessarily linked to the obligation (in Article V) for each State party to enact legislation for the purpose of giving effect to the provisions of the Convention" (2015 *Croatia* Judgment, *I.C.J. Reports 2015 (I)*, p. 50, para. 96). As the Court has recognized, a State's adoption of legislation enacting a criminal offence that is mandated by a treaty usually precedes the performance of the obligation to prosecute (*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 455, para. 91, and p. 461, para. 119). The adoption of legislation necessary to give effect to the obligations under the Convention is therefore an essential prerequisite to the obligation to investigate, prosecute and punish acts of genocide and to provide effective penalties for those responsible.

561. The Court recalls that Article V is "plainly" among the provisions of the Convention that "impose obligations on States in respect of which they may, in the event of breach, incur responsibility" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 109, para. 159). It is an autonomous obligation, which gives rise to international responsibility irrespective of any finding of a violation of Article III. A State that fails to adopt adequate domestic measures to prevent and punish genocide also breaches the broader duties to prevent and punish genocide set forth in Article I (*ibid.*, p. 219, para. 426).

562. Prior to 2021, Myanmar had no legislation specifically criminalizing genocide. The Court will, accordingly, first consider whether Myanmar could nevertheless fulfil the obligation to enact the necessary legislation set forth in Article V through reliance on its general domestic criminal law, such as provisions addressing murder, assault or rape.

563. The Court observes that Article V does not require contracting parties to adopt legislation that mirrors the wording of Articles II and III of the Convention. Nevertheless, Article V obliges States parties to enact legislation "necessary . . . to give effect to the provisions" of the Convention, including "to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III". Article III of the Convention further provides that the acts thereunder "shall be punishable". These provisions require a State to give full legislative effect to the acts prohibited under Articles II and III of the Convention.

564. As previously noted, the specific intent to destroy the group, as such, in whole or in part is the defining element that distinguishes genocide from other crimes, including those involving mass harm (see paragraph 288). The Convention defines and penalizes a crime, not just against individuals, but against a group "as such", thereby criminalizing a qualitatively distinct wrong of international concern. The Court observes in this regard that the ICTR refused to refer a prosecution for genocide to a State whose domestic law lacked a specific crime of genocide, noting that the legal values protected by the "ordinary crime" of homicide and those protected by genocide are different, in that "[t]he penalization of genocide protects specifically defined groups" (*Bagaragaza*, ICTR-05-86-AR11*bis*, Appeals Chamber, Decision on Rule 11*bis* Appeal, 30 August 2006, paras. 14 and 17).

565. Domestic criminal law provisions may encompass aspects of the material elements of genocide set forth in Article II; the offence of murder, for example, includes intentional killing.

Absent the additional requirement of genocidal intent, however, such provisions do not capture the specific concern of the crime of genocide with the protection of groups. The Court further observes that ordinary criminal legislation may not capture the full range of the material acts encompassed by Article II of the Convention, such as the deliberate infliction of conditions of life calculated to bring about the physical destruction of the group or measures intended to prevent births within the group. The offences set forth in Article III *(b)* to *(e)* of the Convention may also not be reflected in a State's domestic criminal law, such as direct and public incitement to commit genocide. Finally, the penalties imposed for genocide pursuant to Article V must reflect the extreme gravity of this offence.

566. The Respondent submits that 57 States (including Myanmar) have not enacted specific legislation prohibiting genocide, and that this constitutes subsequent State practice within the meaning of Article 31, paragraph (3) *(b)*, of the Vienna Convention on the Law of Treaties. The Court observes, however, that only 35 of the States referenced by Myanmar are parties to the Genocide Convention, and that the other 118 States parties have criminalized genocide. The fact that some States parties may not have enacted such legislation does not constitute subsequent State practice within the meaning of Article 31, paragraph (3) *(b)*, of the Vienna Convention or exonerate Myanmar of its obligation to legislate.

567. The negotiating history indicates that the position advanced by Myanmar was not accepted by the drafters of the Convention. During the debates of the *Ad Hoc* Committee on Genocide, some States noted that "the facts constituting genocide are already dealt with by domestic criminal laws (murder, etc.)" (Report of the *Ad Hoc* Committee on Genocide, UN doc. E/794 (24 May 1948), p. 27; see also p. 28). In response, two States observed that the introduction into national legislation of specific laws for the suppression and prevention of genocide was "an elementary condition" for the suppression of the crime of genocide (*ibid.*, p. 28). A proposal to include the terms "as may be necessary" to the requirement to enact legislation was similarly withdrawn, following opposition by several States on the grounds that the text "weakened the compulsory nature of the Article by making it possible for any State wishing to evade the obligation to take the legislative measures provided for in the Article, to declare that it did not consider them necessary" (*Ad Hoc* Committee on Genocide, Summary record of the 19th meeting, UN doc. E/AC.25/SR.19 (27 April 1948), p. 6). This view was reinforced in the Sixth Committee of the General Assembly, where several States noted that Article V obligated States to introduce the definition of genocide and the penalties envisaged for it into their own penal codes (United Nations General Assembly, Sixth Committee, 3rd Session, 93rd meeting, UN doc. A/C.6/SR.93 (6 November 1948), p. 325).

568. The Court further observes that other treaties that mandate the domestic incorporation of particular criminal offences have been interpreted to require adoption of legislation prohibiting the relevant crime in all its elements. These include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (United Nations, Committee against Torture, General Comment No. 2: Implementation of article 2 by States Parties, UN doc. CAT/C/GC/2 (24 January 2008), para. 8) and the International Convention for the Protection of All Persons from Enforced Disappearances of 20 December 2006 (see United Nations, Committee on Enforced Disappearances, Concluding observations on the additional information submitted by Spain under article 29 (4) of the Convention, adopted on 22 September 2021, UN doc. CED/C/ESP/OAI/1 (4 November 2021), para. 6). As the Committee against Torture has

observed, defining torture as a distinct crime promotes the Convention's aim by emphasizing "the special gravity of the crime", while serious discrepancies between the Convention definition and domestic law create the potential for impunity (United Nations, Committee against Torture, General Comment No. 2: Implementation of article 2 by States Parties, UN doc. CAT/C/GC/2 (24 January 2008), paras. 9 and 11). Similar concerns are present here.

569. A central purpose of the Genocide Convention is to recognize genocide as a particularly grave and distinct crime, and to secure accountability for its breach. The Court considers that the ordinary meaning of Article V, understood in light of the Convention's context, object and purpose, and taking into account the negotiating history, requires that States parties adopt legislation criminalizing genocide as a distinct offence which encompasses all the elements of Articles II and III of the Convention. This includes, in particular, incorporating the element of genocidal intent. In the Court's view, failure to enact legislation that prohibits acts of genocide as set forth in these Articles, or adopting legislation that addresses only some of those acts or applies only to some individuals, breaches Article V of the Genocide Convention. Genocide cannot be punished merely through the sanction of murder, rape or other crimes, which do not comprise all the elements of genocide. Prior to the enactment of the 2021 amendment to Myanmar's criminal code, therefore, Myanmar was in breach of its obligation to enact necessary legislation under Article V.

570. The Court now turns to the question whether Myanmar's enactment of legislation in 2021 satisfied its obligation under Article V. Section 311A of the Penal Code enacts a crime qualified as "genocide", which is defined in terms of the five material acts under Article II of the Convention, together "with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Myanmar's Fourth report on the implementation of provisional measures, Annex 3). The provision is articulated in terms generally comparable to the definition in Article II of the Genocide Convention. Section 311B of the Penal Code imposes the death penalty and a fine for acts of genocide involving killing of members of the group, and life imprisonment and a fine for acts of genocide involving the other material acts (*ibid.*).

571. Although The Gambia argued that the new legislation does not apply to members of the Myanmar military, the Respondent indicated to the satisfaction of the Court that the crime of genocide in Section 311A applies to members of the military by virtue of Sections 3 *(e)*, 71-72 and 128-129 of the Defence Services Act 1959. While the Commander-in-Chief's power to grant pardons under the Myanmar Constitution could be exercised in a manner contrary to the duty to punish under the Convention, the Court is of the view that the existence of that possibility, in itself, does not breach the duty to enact legislation.

572. The Court considers, however, that a material disparity arises between the new law and Article II *(d)* of the Convention. Section 311A defines this *actus reus* of genocide as applying to whoever "[i]mposes measures, *not in accordance with any existing laws*, intended to prevent births within the group" (Myanmar's Fourth report on the implementation of provisional measures, Annex 3 (emphasis added)). This limitation allows Myanmar to impose the very measures which Article II *(d)* prohibits and creates the possibility that conduct classified as genocide under the Convention escapes punishment under Myanmar's domestic law.

573. The Court further observes that the duty to enact legislation obliges a State to give effect to the entirety of Articles II and III, as noted above. Section 311A of the Penal Code addresses only the crime of genocide itself; it does not, on its face, implement the provisions of Article III *(b)* to *(e)* of the Convention, including, for example, conspiracy and the prohibition of direct and public incitement to commit genocide. Although in some national jurisdictions the application of general criminal provisions on offences ancillary to a domestic crime of genocide may be sufficient to meet a State's obligations under Article III *(b)* to *(e)* of the Genocide Convention — provided they encompass all the elements of those offences — no evidence before the Court suggests that Myanmar's domestic legislation is in conformity with these provisions of Article III.

574. The Court considers that the above characteristics of Section 311A of the Penal Code fail to meet Myanmar's obligations under Article V to enact "the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III". Myanmar is therefore in breach of the obligation to adopt necessary legislation under Article V of the Genocide Convention.

VII. LEGAL CONSEQUENCES AND REMEDIES

575. Having concluded that Myanmar has breached obligations under the Genocide Convention, it is for the Court now to determine, in light of The Gambia's final submissions, what consequences flow from these internationally wrongful acts that give rise to Myanmar's international responsibility.

576. The Gambia submits that, as a State party to the Genocide Convention, it is entitled to seek from the Court a declaration that Myanmar has violated its obligations under the Convention, and to request cessation of these violations, assurances and guarantees of non-repetition, and reparation. Myanmar challenges both the jurisdiction of the Court to order reparation and The Gambia's standing to request remedies beyond declaratory relief and an order to cease alleged ongoing violations of the Convention. The Court will first address the preliminary questions of jurisdiction (Section A) and standing (Section B) raised by Myanmar.

A. Jurisdiction to order reparation

577. Myanmar argues that jurisdiction under Article IX of the Genocide Convention does not encompass claims for reparation in a case where genocide is alleged to have been committed by a State party against its own population. It submits that such a situation does not involve inter-State responsibility, to which the Court's jurisdiction is limited, and that such remedies are not recognized in customary international law. In Myanmar's view, the fact that the drafters of the Convention considered and rejected a provision that would have expressly provided for redress determined by the United Nations for victims of genocide committed by their own government indicates that such redress is not otherwise available under the Genocide Convention (United Nations,

Secretary-General, "Draft Convention on the Crime of Genocide", UN doc. E/447 (26 June 1947), pp. 47-49). It further maintains that the Court's 2022 Judgment on preliminary objections (see paragraph 17 above) established only the existence of jurisdiction, not its scope, and poses no *res judicata* bar to the Court's consideration of this challenge.

578. The Gambia counters that the 2022 Judgment establishing jurisdiction necessarily extends to the remedies sought and has the force of *res judicata*. The Gambia emphasizes that the 2022 Judgment did not exclude from the merits phase any claims contained in the Application, including its claims for remedies. Reparation for injury resulting from a breach of an international obligation, it maintains, falls squarely within the concept of Myanmar's "responsibility" under international law, which the Court is called upon to decide. The Applicant further argues that the absence of an explicit provision on reparation in the Convention cannot be read as excluding such an obligation. According to The Gambia, the obligation to make reparation in favour of victims of genocide, irrespective of their nationality, is well established as a matter of customary international law.

* *

579. Article IX of the Convention confers jurisdiction on the Court over disputes between contracting parties relating to the "interpretation, application or fulfilment" of the Convention, "including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III". As the Court confirmed in the 2007 *Bosnia* Judgment, where jurisdiction is founded on Article IX of the Convention, the Court may determine not only whether a party breached its obligations under the Convention, but also the legal consequences that would flow from such breaches under the rules on the responsibility of States for internationally wrongful acts (*I.C.J. Reports 2007 (I)*, p. 105, para. 149; see also *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 485, para. 48).

580. The Court recalls that its 2022 Judgment on preliminary objections confirmed that it had jurisdiction, on the basis of Article IX of the Convention, to entertain the Application filed by The Gambia. In that Application, The Gambia requested the Court to adjudge and declare that Myanmar, *inter alia*, must perform the obligation of reparation in the interest of the victims of genocide and provide assurances and guarantees of non-repetition (Application of The Gambia, para. 112). Accordingly, the Court considers that its jurisdiction encompasses all aspects of The Gambia's final submissions, including its claims for remedies.

B. The Gambia's standing to request remedies

581. The Court now turns to the question whether The Gambia has standing to claim remedies for Myanmar's violations of the Genocide Convention. At the outset, the Court notes that the Parties agree that the Applicant may seek declaratory relief and an order of cessation (see paragraph 576 above). Myanmar challenges only the legal basis for The Gambia's claims for reparation and guarantees of non-repetition, arguing that only injured States may claim these remedies.

582. The Parties disagree as to whether the entitlement of a State to invoke responsibility for violations of obligations *erga omnes partes* also entails a right to seek assurances and guarantees of non-repetition, as well as reparation on behalf of beneficiaries of the breached obligation. They point to Article 48, paragraph 2, of the ILC Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter the "ILC Articles on State Responsibility"), which addresses a State's invocation of responsibility for violations of obligations *erga omnes* as follows:

> "Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
>
> *(a)* cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
>
> *(b)* performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached." (ILC, Responsibility of States for Internationally Wrongful Acts, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two.)

583. Myanmar maintains that Article 48, paragraph 2, does not reflect customary international law but is an example of progressive development of international law. With respect to reparations, it further argues that individuals are not entitled to reparation under international law outside special treaty régimes and that no such provision exists under the Genocide Convention. Accordingly, Myanmar contends that even if Article 48, paragraph 2, were to reflect customary international law, The Gambia cannot claim reparation where the ultimate beneficiaries themselves lack such entitlement under the Convention. Finally, the Respondent submits that The Gambia has not demonstrated that it is acting in the interest of the beneficiaries.

584. The Gambia counters that the ability to seek assurances and guarantees of non-repetition, as well as performance of the obligation of reparation, is reflected in Article 48, paragraph 2, and logically follows from the entitlement of States to invoke responsibility for breaches of obligations *erga omnes partes.* It maintains that this principle reflects customary international law and is acknowledged in the Court's Advisory Opinion on the *Obligations of States in respect of Climate Change* of 23 July 2025. The Gambia notes that assurances and guarantees of non-repetition have been defined by the ILC as an obligation of the responsible State, and can be claimed by a non-injured State. The Applicant also denies that it is precluded from seeking performance of the obligation of reparation on the ground that the beneficiaries cannot themselves claim reparation. According to The Gambia, a State with an interest in compliance with the primary obligation necessarily has an interest in seeking assurances and guarantees of non-repetition and ensuring performance of the secondary obligation of reparation in favour of the legal subjects concerned. Finally, The Gambia submits that it is acting both in its own interest and in that of the Rohingya victims of Myanmar's alleged acts of genocide, for whose sole and direct benefit the requested measures are sought.

* *

585. The Court stated in its 2022 Judgment on preliminary objections that

> "any State party to the Genocide Convention may invoke the responsibility of another State party, including through the institution of proceedings before the Court, with a view to determining the alleged failure to comply with its obligations *erga omnes partes* under the Convention and to bringing that failure to an end" (*I.C.J. Reports 2022 (II)*, p. 517, para. 112).

586. The Court explained that this entitlement derives from the common interest of all States parties to the Convention in ensuring compliance by each State party with its obligations thereunder (2022 Judgment on preliminary objections, *I.C.J. Reports 2022 (II)*, p. 516, para. 109). Thus, the Court recognized the existence of a legal interest of any State party in compliance by all other States parties with obligations *erga omnes partes*. States holding such a legal interest may bring claims against a State in breach of a collective obligation, even if they are not themselves injured.

587. With respect to the question of remedies, the Court has clarified that the position of non-injured and injured States differs:

> "While a non-injured State may pursue a claim against a State in breach of a collective obligation, it may not claim reparation for itself. Rather, it may only make a claim for cessation of the wrongful act and assurances and guarantees of non-repetition, as well as for the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached." (*Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 443.)

The Court thus recognized that States seeking to protect obligations *erga omnes partes* may request assurances and guarantees of non-repetition, as well as the performance of the obligation of reparation, "in the interest of . . . the beneficiaries of the obligation breached".

588. In this regard, with respect to reparation, the Court notes that it has long been established that where obligations involve the protection of human rights, the individuals concerned should be regarded as the ultimate beneficiaries (see ILC Articles on State Responsibility, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 95, paragraph 3 of the commentary on Article 33). The Court has previously recognized the responsibility of States to provide reparation for damage caused to all natural and legal persons. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court stated that

> "Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction." (*Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 153.)

The Court similarly recognized an obligation to provide full reparation for damage caused "to all natural or legal persons" in its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (*I.C.J. Reports 2024 (III)*, p. 846, para. 269).

589. While the Genocide Convention protects certain groups, like other human rights treaties, individuals are also beneficiaries of the protected right — in this case, not to be subject to genocide. As the Court has affirmed, the Genocide Convention "was manifestly adopted for a purely humanitarian and civilizing purpose", and "its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality" (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23). The Court accordingly considers that remedies in the interest of the protected group and the individual victims of genocide serve the object and purpose of the Convention and advance the collective interest of the States parties. Indeed, to allow the harm inflicted on a protected group by acts of genocide to go unaddressed would undermine the raison d'être of the Convention. The Gambia accordingly may seek the performance of the obligation of reparation, in the interest of the beneficiaries of the obligation breached, consistent with its standing to secure compliance with obligations *erga omnes partes*.

590. In the Court's view, therefore, in light of its legal interest in protecting the rights enshrined in the Genocide Convention, The Gambia is entitled to invoke Myanmar's obligation to offer assurances and guarantees of non-repetition, and to make reparation in the interest of the Rohingya, as a group and as individuals, who were harmed by acts in violation of the Genocide Convention for which Myanmar is responsible.

C. Appropriate remedies

591. Having concluded that it has jurisdiction to entertain The Gambia's claim for remedies and that The Gambia is entitled to make such requests, the Court now turns to the remedies sought. In its final submissions, The Gambia requests the Court to order Myanmar to cease ongoing internationally wrongful acts, to provide assurances and guarantees of non-repetition, and to provide reparation for the victims of genocide and other punishable acts, including restitution and compensation (see paragraph 63 above). The Court will address each of these requests in turn.

1. Cessation

592. A State responsible for an internationally wrongful act is under an obligation to cease that act if it is continuing and the obligation breached remains in force. Both Parties accept that cessation is an appropriate remedy when responsibility is invoked by a State seeking to secure the compliance of another State with its obligations *erga omnes partes*. In such circumstances, "[t]he common interest in compliance with the relevant obligations under the Convention . . . implies the entitlement of each State party to the Convention to make a claim concerning the cessation of an alleged breach by another State party" (*Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Judgment, I.C.J. Reports 2012 (II)*, p. 450, para. 69).

593. In its final submissions, The Gambia submits that Myanmar must cease any internationally wrongful act under Articles I, III *(c)*, IV, V and VI of the Convention (see paragraph 63 above). In particular, the Applicant requests that the Court order the Respondent to

> "(i) take immediate and effective steps to suppress and prevent any direct and public incitement to commit genocide;
>
> (ii) take immediate and effective steps to enact specific and complete genocide criminal legislation applicable to all individuals, addressing all the prohibited acts under Article III of the Convention and providing for adequate and severe penalties;
>
> (iii) take immediate and effective steps to submit to trial before an independent and effective tribunal, including before an international penal tribunal, those members of its armed forces, police and other security forces or any other persons within its jurisdiction who are suspected on probable grounds of having committed acts of genocide referred to in paragraphs 1 and 2 and punishable under Article III".

594. Myanmar denies that it is in breach of any of its obligations under the Genocide Convention. It therefore maintains that there cannot be any question of cessation of a violation.

* *

595. Cessation may be ordered only in respect of breaches of Myanmar's obligations under the Convention that are continuing. With respect to The Gambia's request for cessation regarding direct and public incitement to commit genocide, the Court observes that its finding of genocide is limited to the period around the 2017 clearance operations and that Myanmar's violation of the prohibition on incitement is subsumed in that finding of genocide. Since neither the genocide nor the related incitement has been found to be ongoing, the Court cannot order cessation in this regard. The Court observes that this finding is made only with respect to the cessation of breaches of obligations found by the Court. It does not impact the Respondent's continuing duty as a State party to the Convention to perform its obligations to prevent and punish acts of direct and public incitement to commit genocide pursuant to Articles I and III of the Genocide Convention.

596. Myanmar's failure to enact legislation to give full effect to its obligations under the Convention and its failure to investigate, prosecute and punish persons who committed acts punishable under Article III of the Convention constitute ongoing breaches of the Genocide Convention (see 2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 235, para. 465, and p. 238, para. 471 (6); see also *mutatis mutandis*, *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal)*, *Judgment, I.C.J. Reports 2012 (II)*, p. 461, paras. 119-121; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, *Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 133, para. 390). The Court therefore considers it appropriate to order the cessation of these continuing breaches. Myanmar is accordingly obliged to enact legislation

giving full effect to its obligations under the Genocide Convention, and to take immediate and effective steps to investigate all persons reasonably suspected of having committed acts prohibited by Article III of the Convention in connection with the 2017 clearance operations, and, if warranted, to prosecute and punish them.

2. Assurances and guarantees of non-repetition

597. The Gambia maintains that assurances and guarantees of non-repetition are appropriate remedies under Article 48, paragraph 2 *(a)*, of the ILC Articles on State Responsibility when a State is seeking to enforce obligations *erga omnes partes* (see paragraph 584 above) and that the circumstances before the Court warrant such measures. In this regard, The Gambia notes, *inter alia*, the gravity of the obligations at issue and the severity of the breach, Myanmar's refusal to acknowledge the facts or its responsibility, its lack of co-operation with United Nations investigative mechanisms and destruction of evidence, and its ongoing refusal to recognize the Rohingya as such, as well as the overthrow, during the proceedings, of the constitutional order by the military junta responsible for the clearance operations.

598. The Applicant asks the Court to order Myanmar to offer assurances and guarantees of non-repetition by "providing full and equal citizenship to all members of the Rohingya group who are present in Myanmar or have been displaced due to the events for which Myanmar bears responsibility under the Convention" (see paragraph 63 above). It notes that it would welcome any additional assurance and guarantee of non-repetition that the Court deems appropriate, and highlights that the United Nations General Assembly has considered that "[e]nsuring effective civilian control of military and security forces" is an appropriate guarantee of non-repetition for a State responsible for gross violations of international human rights law (United Nations General Assembly, resolution 60/147, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious Violations of International Humanitarian Law", adopted on 16 December 2005, UN doc. A/RES/60/147 (21 March 2006) (hereinafter "Basic Principles and Guidelines"), para. 23).

599. As noted above, Myanmar maintains that Article 48, paragraph 2 *(a)*, of the ILC Articles on State Responsibility does not reflect customary international law (see paragraph 583). It further argues that, in any event, breaches of obligations under the Genocide Convention do not automatically constitute special circumstances warranting assurances and guarantees of non-repetition and that no such circumstances are present here. In this regard, Myanmar highlights its compliance with the Court's Order on provisional measures and its conduct throughout the proceedings. Myanmar also contends that the particular measures requested by The Gambia are not "appropriate" within the meaning of Article 30 *(b)* of the ILC Articles on State Responsibility and would go beyond what is required to avoid repetition of any alleged breach.

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600. The Court recalls that The Gambia, in light of its legal interest in protecting the rights enshrined in the Genocide Convention, is entitled to invoke Myanmar's obligation to offer assurances

and guarantees of non-repetition (see paragraphs 587 and 590 above). In this regard, the Court has recognized that "in appropriate circumstances, a responsible State could be required to offer appropriate assurances and guarantees of non-repetition" (*Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 448; *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 267, para. 150). These remedies may involve "preventive measures to be taken by the responsible State designed to avoid the repetition of the breach" (see ILC Articles on State Responsibility, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 90, paragraph 12 of the commentary on Article 30). The obligation to offer appropriate assurances and guarantees of non-repetition generally depends on the nature of the obligation breached, the gravity of the wrongful act and the risk of repetition.

601. With respect to the nature of the obligation breached and the gravity of the wrongful act, the Court observes that obligations under the Genocide Convention are *erga omnes partes* and that the prohibition of genocide has a peremptory character under international law (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 111, para. 161). In the present case, it is the State itself that has been found responsible for genocide. The Court considers that violations of the Genocide Convention are of exceptional gravity and that, in the present case, they also arose in a context of long-standing and deeply entrenched hostility towards the Rohingya as a group.

602. Turning to the likelihood of repetition, the Court considers particularly important the fact that Myanmar has failed to investigate and, if warranted, prosecute and punish persons suspected of having committed acts prohibited by Article III of the Convention, has provided no remedies to the victims, including the large number who remain refugees in Bangladesh and who in Myanmar remain subject to continuing and structural exclusion, and continues to deny that the harms at issue — which the Court has found result from violations of the Genocide Convention — ever occurred. Moreover, Myanmar has not presented to the Court concrete measures aimed specifically at recognizing and ensuring the right of the Rohingya to exist as a protected group under the Genocide Convention, as the Court previously underscored in its Order of 23 January 2020 indicating provisional measures (*I.C.J. Reports 2020*, p. 27, para. 73). This situation is in contrast to that in *LaGrand*, where the respondent State acknowledged and apologized for the breach, and presented the Court with measures that it was undertaking in order to secure compliance (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 513, para. 124). The likelihood of repetition also differs from that in the 2007 *Bosnia* Judgment (*I.C.J. Reports 2007 (I)*, p. 235, para. 466). The Court considers that, in view of the circumstances before it, it is appropriate to require Myanmar to provide assurances and guarantees of non-repetition, and that Myanmar is under an obligation to prevent similar violations from occurring in the future.

603. The Court turns to the question of what guarantees are appropriate. The Gambia requests that Myanmar be ordered to provide full and equal citizenship to all members of the Rohingya group. The Court has concluded that denial of citizenship for the Rohingya has been central to the overall pattern of discrimination and vulnerability that it has identified (see, for example, paragraphs 142 and 147-149 above) and, as such, is a consideration in the determination of genocidal intent (see paragraphs 400-401 above). The Court considers, however, that ordering the provision of citizenship for all members of the Rohingya group is beyond the scope of appropriate assurances and guarantees of non-repetition for acts of genocide in the circumstances before it.

604. The Court observes that other remedies ordered by the Court in the present case, including the measures of cessation requiring Myanmar to enact legislation giving full effect to its obligations under the Convention and to pursue genuine and effective investigations and prosecutions and impose effective penalties (see paragraph 596 above), and the restitution measure to ensure the protection of the Rohingya against discrimination and persecution, including with respect to access to citizenship (see paragraphs 615-616 below), also constitute appropriate guarantees of non-repetition. The Court considers, however, that, beyond these measures, Myanmar is under an obligation to prevent similar violations from occurring in the future. In this regard, additional appropriate guarantees may include, *inter alia*, legal and institutional reform to ensure compliance with relevant international human rights law, international humanitarian law and international criminal law obligations, including adequate avenues for redress; training of security forces personnel in these obligations; and ensuring effective civilian control of the security forces (Basic Principles and Guidelines, para. 23). The Court considers that beyond the other measures ordered by it, the choice of additional means must be left to Myanmar.

3. Reparation

605. With respect to the question of reparation, The Gambia submits that, as a consequence of Myanmar's responsibility for violations of the Genocide Convention, Myanmar is obliged to provide full reparation to all Rohingya victims of its punishable acts. The Gambia maintains that full reparation, including restitution and compensation, is indispensable to effectively repairing the trauma suffered both individually and collectively by surviving Rohingya.

606. The Court has already determined that a request for reparation falls within the scope of its jurisdiction under Article IX of the Convention and that The Gambia has standing to request the performance of Myanmar's obligation of reparation in the interest of the Rohingya (see paragraph 590). The Court will now analyse whether such a request should be granted and, if so, what form it should take.

607. The Court recalls that it is well established in international law that "the breach of an engagement involves an obligation to make reparation in an adequate form" (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21) and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47; see also Article 31 of the ILC Articles on State Responsibility). To the extent that restitution proves to be materially impossible, reparation may take "the form of compensation or satisfaction, or even both" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, pp. 103-104, para. 273; see also *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 26, para. 31). Thus, full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination (*Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 450; Article 34 of the ILC Articles on State Responsibility).

608. For a request for reparation to be granted, the Court must ascertain whether, and to what extent, there is "a sufficiently direct and certain causal nexus between the wrongful act . . . and the injury suffered by the Applicant, consisting of all damage of any type, material or moral" (2007 *Bosnia* Judgment, *I.C.J. Reports 2007 (I)*, p. 234, para. 462). Therefore, reparation requires that a

causal relationship be established between the wrongful act of a State and particular damage suffered by the injured State, group or individuals (see *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 449). The Court has found that the internationally wrongful acts for which Myanmar has been found responsible resulted in injury to the Rohingya, as a group and as individuals, and that this injury was caused by Myanmar. The Court thus finds that Myanmar has an obligation to make reparation.

609. The Court recalls that because reparation constitutes a remedy for a harm suffered, States seeking to enforce a common interest in compliance with obligations *erga omnes* or *erga omnes partes*, such as The Gambia, are in a different situation than a directly injured or a specially affected State claiming reparation. While a non-injured or non-affected State may pursue a claim against another State for breach of a collective obligation, it may not claim reparation for itself. Rather, it may only "make a claim for . . . the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached" (*Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 443; see Article 48, paragraph 2 *(b)*, of the ILC Articles on State Responsibility; see also paragraphs 586-587 above). As noted, the Court has recognized that the obligation to provide full reparation may extend beyond the obligation to provide reparation to injured States to encompass individuals harmed by a State's wrongful acts, including those subject to the State's own jurisdiction (see *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, p. 846, para. 269; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 152; see paragraph 588 above).

610. As a result, in the Court's view, while The Gambia cannot seek reparation for itself, it may make a claim for the performance of the obligation of full reparation, including restitution, compensation and satisfaction, by Myanmar, in the interest of the Rohingya, as a group and as individual victims, who are the beneficiaries of the obligation breached (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 137, para. 408; see paragraph 590 above). Reparation should be proportional to the gravity of the violations and the harm suffered. The Gambia accordingly may seek, and Myanmar is obliged to provide, adequate, effective and prompt reparation for the harms suffered by the Rohingya population as a group and as individuals as a result of Myanmar's wrongful acts. The Court thus turns to the question of what measures of reparation may be appropriate.

(a) ***Restitution***

611. The Gambia submits that reparation should primarily take the form of restitution, and that Myanmar should be ordered to compensate and satisfy the harm, loss and injury suffered by the Rohingya only to the extent that it is not capable of redress by full restitution. It requests the following measures by way of restitution:

> "(1) allow the safe and dignified return to their place of residence of displaced members of the Rohingya group, whether they are displaced within Myanmar or abroad;
>
> (2) return to the Rohingya their individual and collective property, including their land, houses, places of worship and communal life, fields, livestock and crops, or replace them in kind;

(3) allow and facilitate the safe and dignified reunification of families;

(4) provide for the rehabilitation of the physically or mentally injured members of the Rohingya group; such rehabilitation must include adequate medical and psychological care as well as legal and social services;

(5) facilitate the search for the disappeared and assist in the recovery, identification and reburial of the bodies of those killed in accordance with the expressed or presumed wishes of the victims and in accordance with the cultural and religious practices of the Rohingya;

(6) ensure the protection of the Rohingya against discrimination and persecution;

(7) ensure the right of the Rohingya to identify as such;

(8) ensure the liberty and freedom of movement of the Rohingya within Myanmar and remove any restriction on their place of residence; and

(9) remove any restriction or discrimination on the employment or access to livelihoods of the Rohingya." (See paragraph 63 above.)

612. Myanmar maintains that these and other remedies are not relevant to breaches of the Genocide Convention.

* *

613. Restitution involves the re-establishment of the situation that existed before the wrongful act was committed (*Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). As the Court noted in its Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, in light of the large-scale displacement of a population and dispossession of their property, appropriate restitution may include allowing the displaced population to return to their original place of residence, and the return of land, other immovable property and seized assets (*I.C.J. Reports 2024 (III)*, p. 846, para. 270; see also paragraph 588 above).

614. The Court has found that the internationally wrongful acts for which Myanmar has been found responsible resulted in injury to the Rohingya as a group and as individuals and that this injury was caused by Myanmar. The Court recalls that the harms to the Rohingya that resulted from the Respondent's wrongful acts include numerous killings (see paragraphs 250-253 above), including of persons whose fate or whereabouts remains unknown to family members, as well as the large-scale displacement of the Rohingya population to Bangladesh, extensive burning and destruction of homes and other movable and immovable property, and large-scale sexual and other violence against the Rohingya population (see paragraphs 320-337 and 366-371 above).

615. In light of these harms, which resulted from the Respondent's breach of its obligations under the Genocide Convention, and considering the arguments of the Parties and the entirety of the

evidence before the Court, the Court determines that the following measures of restitution by Myanmar are appropriate in this case:

(1) allow and facilitate the safe, voluntary and dignified return to their place of residence and reunification of families for the Rohingya who were displaced as a result of the Respondent's wrongful acts, whether they were displaced within Myanmar or abroad;

(2) return or replace in kind all individual and collective property of the Rohingya that has been lost or damaged as a result of the Respondent's wrongful acts;

(3) facilitate the search for the disappeared and assist in the recovery, identification and reburial with dignity, in accordance with Rohingya traditions, of the bodies of the Rohingya who were killed as a result of the Respondent's wrongful acts;

(4) provide for the physical and psychological rehabilitation of the Rohingya who were physically or mentally injured as a result of the Respondent's wrongful acts;

(5) ensure the protection of the Rohingya from discrimination and persecution.

616. The Court considers these measures necessary to adequately redress the harms suffered by the protected group. The first three measures seek to redress killings and disappearances inflicted on the Rohingya and the displacement of persons, including through the destruction of their property. The fourth measure regarding physical and psychological rehabilitation is also appropriate in light of the large-scale serious bodily and mental harm inflicted on the protected group, including as a result of rape and other forms of sexual violence. Finally, the Court considers that it is necessary to ensure protection of the Rohingya in Myanmar from persecution and discrimination, including protection from discrimination in accessing citizenship and with respect to freedom of movement. This measure also constitutes a form of assurances and guarantees of non-repetition (see paragraph 604 above).

617. The Gambia requests the additional specific measures of ensuring the right of the Rohingya to identify as such, ensuring the liberty and freedom of movement of the Rohingya within Myanmar, and removing any restriction or discrimination on employment or access to livelihoods. The Court considers that to the extent that these measures directly address the harms resulting from the Respondent's wrongful acts and provide appropriate assurances and guarantees of non-repetition, notably with respect to protection from discrimination and persecution, they are encompassed by the measures indicated above.

(b) ***Compensation and full reparation***

618. As a further measure of reparation, The Gambia requests the Court to adjudge and declare that, as a consequence of its responsibility for violations of the Convention, Myanmar "shall . . . compensate, and provide any additional forms of reparation, for any harm, loss or injury suffered by the Rohingya victims that is not capable of full reparation by restitution" (see paragraph 63 above). The Gambia submits that, at this stage, the Court is called upon to pronounce only on the principle of compensation, while the quantum and mechanisms for distribution to victims would be determined at a subsequent phase, should the Parties fail to agree. During the oral proceedings, The Gambia also

suggested that the Court could order Myanmar to transmit to it, within a reasonable time frame, details of the restitution and compensation measures it intends to take or has taken, so as to ensure its fulfilment of the obligation of reparation at a later stage of the proceedings.

619. With respect to compensation, Myanmar reiterated its objection to The Gambia's standing to seek reparation, including compensation, in the interest of the beneficiaries. It also contended that allowing a State to demand that reparation be made directly to the beneficiaries of the obligation "would raise further questions of to whom and how compensation payments [c]ould be distributed".

620. The Court recalls that, like restitution, compensation is a form of reparation. Compensable losses, which correspond to financially assessable damage, are those suffered not only by an injured State but also by the beneficiaries of the obligation breached. Indeed, the Court has observed that any reparation is intended, as far as possible, to benefit all those who suffered injury resulting from internationally wrongful acts (see *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012 (I)*, p. 344, para. 57; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment, I.C.J. Reports 2022 (I)*, p. 137, para. 408). Thus, when restitution is materially impossible, a State may have an obligation to compensate natural or legal persons or populations that have suffered material damage (*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III*), p. 847, para. 271; see paragraph 607 above).

621. The Court has already determined that The Gambia may seek performance of the obligation to provide compensation, as a form of reparation, in the interest of the injured Rohingya group and its members (see paragraph 610). The Gambia seeks compensation to the extent that fulfilling the measures of restitution ordered by the Court above may prove materially impossible. Like the measures of restitution themselves, the compensation sought by The Gambia is not in its own interest, but in the common interest of States parties to the Convention, and is intended to secure full reparation in the interest of the beneficiaries of the obligation breached. In the Court's view, the Rohingya are entitled to adequate compensation for the injury caused by the violations of Myanmar that have been determined by the Court, in so far as such damage is not made good by restitution. Accordingly, in the circumstances of the present case, the Court concludes that, to the extent that full reparation by restitution is materially impossible, the Respondent is obliged to provide adequate compensation, in accordance with the applicable rules of international law, to all of the Rohingya, individually and as a group, having suffered any form of material damage as a result of Myanmar's wrongful acts, in an amount adequate to fully repair the injuries caused.

622. The Court is not requested, at this stage of the proceedings, to indicate the specific amount of compensation or the modalities pursuant to which such compensation must be made to the injured Rohingya. Moreover, the amount of compensation must be determined in light of the adoption by the Respondent of the measures of restitution which the Court has deemed to be appropriate in this case (see paragraph 615 above).

623. In its final submissions, The Gambia requests that "failing agreement between the Parties on the amount of compensation and any additional forms of reparation . . . the question will be

decided by the Court in a subsequent phase of the proceedings in this case" (see paragraph 63 above). Myanmar maintains that The Gambia cannot seek reparation in the present case (see paragraph 619 above).

624. The Court has already determined that The Gambia is entitled to seek Myanmar's compliance with its obligation to provide reparation, including compensation, in the interest of the Rohingya group and its members, for whose direct benefit the measures of reparation are sought (see paragraphs 590, 610 and 621). This entitlement derives from The Gambia's legal interest in protecting the rights enshrined in the Convention, without requiring a mandate to represent the protected group or the individual victims (*ibid.*). In the present case, the Court has determined that measures of restitution are appropriate (see paragraph 615 above). Were the Court unable to determine compensation where restitution proves impossible or insufficient, the entitlement to seek reparation would, in practice, fail to give full effect to the principle that reparation must, so far as possible, wipe out the consequences of the internationally wrongful act (see paragraph 607 above). Accordingly, the Court sees no obstacle to proceeding to a determination of compensation or other appropriate reparation in the present case.

625. Under these circumstances, the Court considers that the question of the amount and modalities of compensation or other appropriate reparation should be determined in a subsequent phase of the proceedings. To that end, Myanmar shall, within a period of two years of the delivery of the present Judgment, transmit to the Court a report setting out the measures of restitution that it has adopted and, to the extent that full reparation by restitution is materially impossible, specifying the amount and modalities of compensation. Thereafter, and after ascertaining the views of the Parties, the Court will make such orders as may be required for the further conduct of the proceedings, with a view to determining the nature, form and amount of compensation or other appropriate reparation in a manner consistent with the interests of the protected group and its members. It is recalled that in the phase of the proceedings devoted to reparation, neither Party may call into question such findings in the present Judgment as have become *res judicata* (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 257, para. 260, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 143, para. 284).

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626. Genocide "shocks the conscience of mankind . . . and is contrary to moral law and to the spirit and aims of the United Nations" (United Nations General Assembly, resolution 96 (I), "The Crime of Genocide", adopted on 11 December 1946, UN doc. A/RES/96 (I); *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23). Therefore, all States parties to the Convention have a common interest to ensure, in view of their shared values, "the accomplishment of those high purposes which are the *raison d'être* of the Convention" (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23).

VIII. MYANMAR'S COMPLIANCE WITH THE COURT'S ORDER INDICATING PROVISIONAL MEASURES

627. In its seventh final submission, The Gambia requested the Court to adjudge and declare that

> "[t]he Republic of the Union of Myanmar has failed to fully and adequately implement the Provisional Measures Order and must:
>
> *(a)* by way of restitution as referred to in paragraph (6) *(b)* (i) above, make good any bodily or mental injury, including death, suffered by members of the Rohingya group, or any material injury caused to their property, as a result of Myanmar's violations of paragraph 86 (1), (2) or (3) of the Order;
>
> *(b)* compensate, and provide any additional forms of reparation, for any harm, loss or injury referred to in paragraph (7) *(a)* above that is not capable of full reparation by restitution".

628. In its Order of 23 January 2020, the Court indicated four provisional measures, the fourth of which required Myanmar to periodically submit reports to the Court on the implementation of the first three measures (see paragraph 8 above). The Court's orders on provisional measures under Article 41 of its Statute "have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109).

629. The Gambia alleges that Myanmar has breached the Order of 23 January 2020 in respect of the first three measures. The Court will consider these measures in turn.

A. First provisional measure

630. In its first provisional measure, the Court ordered Myanmar to "take all measures within its power to prevent the commission of all acts within the scope of Article II of the Convention".

631. The Gambia contends that members of the Rohingya group have been killed or injured as a result of Myanmar's military activities in northern Rakhine State since the date of the Court's Order. The Gambia highlights atrocities against Rohingya in the context of police killings, landmine incidents and armed conflict, forced conscription, significant discrimination and the burning of a World Food Programme warehouse in June 2024. The Gambia points outs that the United Nations Special Rapporteur on the situation of human rights in Myanmar recorded at least 33 Rohingya civilians killed and 39 others injured "as a result of the conflict" in the year following the Court's Order (United Nations Human Rights Council, "Report of the Special Rapporteur on the situation of human rights in Myanmar", UN doc. A/HRC/46/56 (29 September 2021), Annex III, "The situation of human rights in Myanmar in 2020 and up to the coup d'état", paras. 31 and 34).

632. Myanmar disputes these allegations, arguing that The Gambia's claims have, *inter alia*, failed to precisely articulate the material elements of responsibility for the violation of the provisional measures and failed to substantiate the claims with evidence. In particular, Myanmar points to its own official records, which state that Rohingya deaths between May to November 2020 were caused by the Arakan Army rather than Myanmar's security forces. Official documents also record that there were two incidents between the Tatmadaw and ARSA in February and March 2021 respectively, but

the number of casualties remained to be investigated (Myanmar's Second report on the implementation of provisional measures, Appendix 1).

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633. The Court is unable to find that, on the evidence, the acts alleged by The Gambia occurring after the Order of 23 January 2020 fall within the scope of the *actus reus* of Article II. Unlike the evidence before the Court regarding the clearance operations in 2017, the reports that The Gambia relies on do not provide sufficient details of the events during which Rohingya were killed or seriously injured, the location where those events took place or the perpetrators responsible for those acts, and the Court has been unable to corroborate these incidents with other evidence in the record. Moreover, the evidentiary record does not support an assertion that Myanmar's acts after 23 January 2020 were carried out with genocidal intent or that Myanmar failed to take measures within its power to prevent the commission of such acts after the Order. The Court finds therefore that Myanmar has not breached its obligations in respect of the first provisional measure.

B. Second provisional measure

634. In its second provisional measure, the Court ordered Myanmar to "ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence", did not commit acts described in Article II of the Convention or any acts of "conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide", which are prohibited by Article III of the Convention.

635. The Gambia maintains that, since 23 January 2020, Myanmar's military has continued to engage in anti-Rohingya propaganda that "could amount to conspiracy or incitement to commit genocide". In this context, The Gambia refers to Facebook's removal of a large number of accounts during 2020 and 2021 that were linked to the members of the Tatmadaw (see The Gambia's Observations on Myanmar's Second report on the implementation of provisional measures (7 December 2020), paras. 20-23; The Gambia's Observations on Myanmar's Third report on the implementation of provisional measures (16 August 2021), para. 30; The Gambia's Observations on Myanmar's Fourth report on the implementation of provisional measures (7 December 2021), paras. 35-36). The Gambia also argues that Myanmar engaged in the dissemination of anti-Rohingya propaganda through pamphlets and other media platforms.

636. According to Myanmar, the acts alleged by The Gambia do not fall within the personal or the subject-matter scope of the Genocide Convention, and, in any event, the evidence cited by The Gambia to support the allegations is insufficient.

* *

637. The Court recalls that the evidence has not conclusively established that Myanmar's Facebook military network messages were made with the specific intent to destroy the group in whole or in part (see paragraph 505 above). While the materials disseminated by Myanmar since 23 January 2020 may have fuelled religious tension and contempt towards the Rohingya group, the Court is not persuaded that the evidence shows that the dissemination occurred with a specific intent to destroy the group in whole or in part, or that it constituted a direct appeal for the commission of genocide and that the intended audience would have understood the messages as such. The Court therefore finds that Myanmar has not breached its obligations in respect of the second provisional measure.

C. Third provisional measure

638. In its third provisional measure, the Court ordered Myanmar to "take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention".

639. The Gambia accepts that most of the burning and destruction of Rohingya villages occurred in 2017 and 2018, before the obligation under the Court's Order took effect. Nevertheless, according to The Gambia, in the period following 23 January 2020, Myanmar destroyed Rohingya villages, including with bulldozers, and, in some instances, built BGP facilities on top of those areas, in breach of Myanmar's obligations under the Order of 23 January 2020. The Gambia argues that Myanmar cannot be understood to have complied in good faith with the Order given the combination of its alleged destruction of evidence and its denial of access to such evidence by international monitoring mechanisms.

640. Myanmar rejects these allegations and claims that there are no incidents of destruction of evidence that would fall within the scope of the Court's Order. It points to statements by local authorities that such incidents did not occur. Myanmar highlights a Presidential Directive of 2020 titled "Preservation of evidence and property in areas of northern Rakhine State", which prohibited State officials from destroying property that may provide evidence of genocide (Myanmar's First report on the implementation of provisional measures, paras. 89 and 91). Myanmar also points to Rathedaung Township's issuance of a local order in January 2022 that prohibited residents from occupying property formerly inhabited by persons displaced by what it described as the "ARSA terrorist attacks" in 2016 and 2017 (Myanmar's Fifth report on the implementation of provisional measures, paras. 72-73). Myanmar claims that there have been no complaints concerning the confiscation of lands formerly inhabited by displaced Rohingya (Myanmar's Eighth report on the implementation of provisional measures, para. 53).

* *

641. The Court recalls its findings concerning the destruction of evidence by Myanmar in the context of Myanmar's compliance with its duty to punish (see paragraphs 551-552 above). The Court further recalls that in September 2025 the IIMM published a public summary of a report on Myanmar's destruction and dispossession of Rohingya land and property (see paragraph 279 above).

The IIMM documented that construction of the No. 7 BGP battalion base on land where Done Paik and Ree Dar villages once stood continued until 21 April 2021, and documented construction of the No. 9 BGP battalion base in Myin Hlut village as of 2021 (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), paras. 24, 32 and 53). The Court also notes that the United Nations High Commissioner for Human Rights reported that in May 2020 the Tatmadaw "burned large swathes of Buthidaung township where between five and more than a dozen Rohingya villages once stood" (United Nations Human Rights Council, "Situation of human rights of Rohingya Muslims and other minorities in Myanmar: Report of the United Nations High Commissioner for Human Rights", UN doc. A/HRC/45/5 (3 September 2020), para. 29). Those conclusions were primarily based on witness testimony verified and corroborated by satellite imagery and government reports.

642. In the Court's view, the report of the IIMM provides convincing evidence that Myanmar completed the construction of at least one government base in 2021 on the sites of former Rohingya villages in Maungdaw Township, where clearance operations were conducted in 2017 (IIMM, "The destruction and dispossession of Rohingya land and property during the 2017 clearance operations — public summary" (29 September 2025), para. 24; see also para. 32). Similarly, the report of the United Nations High Commissioner for Human Rights offers convincing evidence that the remnants of at least five Rohingya villages in Buthidaung Township were burned and destroyed in May 2020. The Court finds that, through these acts, Myanmar breached its obligation under the Court's third provisional measure to take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Genocide Convention.

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643. The Court notes that, under the fourth provisional measure, Myanmar is obliged to submit six-monthly reports to the Court on all measures taken to give effect to the Order, until a final decision on the case is rendered by the Court (see paragraph 8 above). Myanmar has complied with this obligation, duly submitting thirteen reports. As the present Judgment qualifies as a final decision for the purposes of the fourth provisional measure, Myanmar is no longer required to submit such reports to the Court.

D. Remedies

644. In addition to claiming declaratory relief, The Gambia has also claimed reparation for Myanmar's breach of the Court's Order "[t]o the extent that reparation has not already been made for these injuries through the measures of restitution and compensation". The Gambia sought to reserve the precise determination of the reparation owed by Myanmar for a subsequent phase of the proceedings.

645. In the 2007 *Bosnia* Judgment, the Court considered that "for purposes of reparation, the Respondent's non-compliance with the provisional measures ordered is an aspect of, or merges with, its breaches of the substantive obligations of prevention and punishment laid upon it by the Convention" (*I.C.J. Reports 2007 (I)*, p. 236, para. 469). As a result, the Court awarded declaratory

relief in that case but did not find it appropriate to grant Bosnia and Herzegovina's request for an order for symbolic compensation. The Court notes that its order that Myanmar cease the continuing breach of the obligation to punish is necessarily applicable in the context of Myanmar's breach of its obligation under the Court's third provisional measure. For these reasons, the Court finds declaratory relief to be an appropriate remedy in the present case, and that no further form of remedy is required.

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646. For these reasons,

THE COURT,

(1) By nine votes to six,

Finds that the Republic of the Union of Myanmar has committed genocide against the Rohingya group in northern Rakhine State, in violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide;

IN FAVOUR: *President* Iwasawa; *Judges* Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judge* ad hoc Pillay;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Nolte; *Judge* ad hoc Kress;

(2) By nine votes to six,

Finds that the Republic of the Union of Myanmar has violated its obligation, under the Convention on the Prevention and Punishment of the Crime of Genocide, to prevent the commission of genocide by individuals alongside its security forces;

IN FAVOUR: *President* Iwasawa; *Judges* Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judge* ad hoc Pillay;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Nolte; *Judge* ad hoc Kress;

(3) By fourteen votes to one,

Finds that the Republic of the Union of Myanmar has not directly and publicly incited the commission of genocide against the Rohingya group by private persons in northern Rakhine State in violation of its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide;

IN FAVOUR: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi; *Judges* ad hoc Pillay, Kress;

AGAINST: *Judge* Hmoud;

(4) By eleven votes to four,

Finds that the Republic of the Union of Myanmar has violated its obligation to punish genocide and other acts enumerated under Article III of the Convention on the Prevention and Punishment of the Crime of Genocide;

IN FAVOUR: *President* Iwasawa; *Judges* Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judges* ad hoc Pillay, Kress;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue;

(5) By fourteen votes to one,

Finds that the Republic of the Union of Myanmar has violated its obligation under the Convention on the Prevention and Punishment of the Crime of Genocide to enact the necessary legislation to give effect to the provisions of the Convention;

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

AGAINST: *Judge* Xue;

(6) By fourteen votes to one,

Decides that the Republic of the Union of Myanmar must cease any ongoing violation of its obligations under Article V of the Convention on the Prevention and Punishment of the Crime of Genocide by enacting legislation giving full effect to its obligations under the Convention;

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

AGAINST: *Judge* Xue;

(7) By thirteen votes to two,

Decides that the Republic of the Union of Myanmar must take immediate and effective steps to investigate all persons reasonably suspected of having committed acts contrary to Article III of the Convention on the Prevention and Punishment of the Crime of Genocide in relation to the 2017 clearance operations and, if warranted, to prosecute and punish them;

IN FAVOUR: *President* Iwasawa; *Judges* Tomka, Xue, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judges* ad hoc Pillay, Kress;

AGAINST: *Vice-President* Sebutinde; *Judge* Abraham;

(8) By nine votes to six,

Decides that the Republic of the Union of Myanmar must provide assurances and guarantees of non-repetition of the violations of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide and prevent similar violations from occurring in the future;

IN FAVOUR: *President* Iwasawa; *Judges* Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judge* ad hoc Pillay;

AGAINST: *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Nolte; *Judge* ad hoc Kress;

(9) By ten votes to five,

Decides that the Republic of the Union of Myanmar is under an obligation to adopt the measures of restitution defined in paragraph 615 of the present Judgment;

IN FAVOUR: *President* Iwasawa; *Judges* Tomka, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judge* ad hoc Pillay;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Xue, Nolte; *Judge* ad hoc Kress;

(10) By ten votes to five,

Decides that the Republic of the Union of Myanmar is under an obligation to compensate the Rohingya group and its members for the damage caused by the violation of its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in so far as such damage is not made good by restitution;

IN FAVOUR: *President* Iwasawa; *Judges* Tomka, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judge* ad hoc Pillay;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Xue, Nolte; *Judge* ad hoc Kress;

(11) By ten votes to five,

Decides that the question of the amount and modalities of compensation or other reparation due to the Rohingya group and its members shall be settled by the Court, and that, to this end, the Republic of the Union of Myanmar shall, within a period of two years of the delivery of the present Judgment, transmit to the Court the report described in paragraph 625; and *reserves* for this purpose the subsequent procedure in the case;

IN FAVOUR: *Judges* Tomka, Abraham, Charlesworth, Brant, Gómez Robledo, Cleveland, Tladi, Hmoud; *Judges* ad hoc Pillay, Kress;

AGAINST: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Xue, Nolte, Aurescu;

(12) By eleven votes to four,

Finds that the Republic of the Union of Myanmar has violated its obligation under paragraph 86 (3) of the Order of 23 January 2020 indicating provisional measures to take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;

IN FAVOUR: *President* Iwasawa; *Judges* Tomka, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi, Hmoud; *Judges* ad hoc Pillay, Kress;

AGAINST: *Vice-President* Sebutinde; *Judges* Abraham, Xue, Nolte;

(13) Unanimously,

Rejects all other submissions of the Republic of The Gambia.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of November, two thousand and twenty-six, in fourteen copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of The Gambia, the Government of the Republic of the Union of Myanmar, and the Governments of the Kingdom of Belgium, Canada, the Democratic Republic of the Congo, the Kingdom of Denmark, the French Republic, the Federal Republic of Germany, Ireland, the Republic of Maldives, the Kingdom of the Netherlands, the Republic of Slovenia and the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) IWASAWA Yuji,
President.

(Signed) Santiago VILLALPANDO,
Registrar.

President IWASAWA appends a separate opinion to the Judgment of the Court; Vice-President SEBUTINDE appends a dissenting opinion to the Judgment of the Court; Vice-President SEBUTINDE, Judges TOMKA, ABRAHAM, XUE, NOLTE and Judge *ad hoc* KRESS append a joint dissenting opinion to the Judgment of the Court; Judges TOMKA and ABRAHAM append separate opinions to the Judgment of the Court; Judges XUE and NOLTE append dissenting opinions to the Judgment of the Court; Judge CHARLESWORTH appends a separate opinion to the Judgment of the Court; Judge BRANT appends a declaration to the Judgment of the Court; Judge BRANT and Judge *ad hoc* PILLAY append a joint declaration to the Judgment of the Court; Judge GÓMEZ ROBLEDO appends a separate opinion to the Judgment of the Court; Judge CLEVELAND appends a declaration to the Judgment of the Court; Judge CLEVELAND and Judge *ad hoc* KRESS append a joint separate opinion to the Judgment of the Court; Judge AURESCU appends a separate opinion to the Judgment of the Court; Judge TLADI appends a declaration to the Judgment of the Court; Judge HMOUD appends a separate opinion to the Judgment of the Court; Judge *ad hoc* KRESS appends a separate opinion, partly concurring and partly dissenting, to the Judgment of the Court.

(Initialled) I.Y.

(Initialled) S.V.