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## CENTRE FOR PEACE AND JUSTICE

### Ensuring Rohingya victim participation and community engagement in international justice processes

Briefing paper, September 2020

#### Key messages:

- Previous cases demonstrate that victim participation and community engagement have substantive implications on the effectiveness of international justice processes. These are needed to support the various mechanisms currently in place to address the Rohingya issue.
- Camp-level government officials, humanitarian agencies, and justice-focused international civil society each have a role to play in supporting victim participation and community engagement.
- Three areas in which victim participation and community engagement can be supported by these actors are: 1) logistical support, 2) awareness-raising, and 3) support for individual victims and victims' groups.

#### Introduction

Multiple international justice and accountability processes are underway in response to alleged crimes under international law committed by Myanmar against the Rohingya, a predominantly Muslim ethnic minority group from Rakhine State in western Myanmar. In October 2019, the Gambia filed a complaint with the International Court of Justice (ICJ) alleging that Myanmar violated the Genocide Convention, and in November 2019 the International Criminal Court (ICC) authorized its prosecutor to investigate crimes against the Rohingya including deportation.

Also in November 2019, a criminal complaint was filed in Argentina against high ranking officials in Myanmar, by Burmese Rohingya Organization UK on the basis of universal jurisdiction (UJ).<sup>1</sup> Meanwhile, the Independent Investigative Mechanism for Myanmar (IIMM) has been established to follow up on the previous work of the UN Fact Finding Mission (FFM) and collect evidence in preparation for the prosecution of perpetrators in national, regional or international courts. Though widely viewed as insufficient, steps toward domestic accountability have also been initiated in Myanmar, notably the Independent Commission of Enquiry (ICOE).

In contrast to certain other justice processes in response to mass atrocities, in which the initial wheels of justice have turned slowly,<sup>2</sup> international mechanisms in the Myanmar case seem to be proceeding at a faster pace, responding to crimes committed over just the past several years, which are allegedly ongoing. This fast pace means that government, civil society, and justice actors must take action to ensure that Rohingya people themselves are made aware and kept informed about the processes as they progress. **Eagerly waiting for justice, camp residents say they currently lack access to clear and regularly updated information about the various processes.**

Though political mobilization is restricted in the camps, refugees have nonetheless found ways to vocalize their demands for justice, such as by organizing a nascent civil society that engages in advocacy, documentation, and other activities.<sup>3</sup> They hope for justice to come swiftly and produce conditions that enable them to go home, such as the restoration of citizenship and guarantees of equal rights and security. But they need more access to clear information about the potential and limitations of international justice mechanisms to bring these goals to fruition.<sup>5</sup>

<sup>1</sup> See <https://burmacampaign.org.uk/media/Complaint-File.pdf>

<sup>2</sup> For example, the Khmer Rouge tribunal was established in 1997, 24 years after Cambodia began committing crimes against its people.

<sup>3</sup> Simon Lewis, Poppy MacPherson, and Ruma Paul (2019). "In Rohingya camps, a political awakening faces a backlash." Reuters, April 23. <https://www.reuters.com/article/us-myanmar-rohingya-politics-insight/in-rohingya-camps-a-political-awakening-faces-a-backlash-idUSKCN1S000D>

<sup>4</sup> Ahmed, Kaamil (2018). "IN Bangladesh, a Rohingya strike highlights growing refugee activism." The New Humanitarian, November 27.

<https://www.thenewhumanitarian.org/news-feature/2018/11/27/bangladesh-rohingya-strike-highlights-growing-refugee-activism>

<sup>5</sup> Hölzl, Verena (2020). "Three years after Rohingya exodus, mismatched expectations of justice." The New Humanitarian, August 24. <https://www.thenewhumanitarian.org/news-feature/2020/08/24/Bangladesh-Myanmar-Rohingya-international-justice>



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### *The right to remedy and reparations*

Raising awareness and sharing information with the camp population is important, and not only as a matter of principle.<sup>6</sup> Under international human rights law, victims have rights to effective **remedies** and **reparations**. Remedies are usually procedural, including the right to an investigation and a prosecution. The right of victims and their families to play an active part in an investigation, and their right to know the truth about all the facts surrounding a serious violation of human rights are critical elements of the right to a remedy.<sup>7</sup>

On the other hand, reparations refer to the obligation to provide **restitution** (being put back in the place the victim was in before the violation), **compensation** (usually monetary, for the damage suffered), **rehabilitation** (medical and/or psychological support), **satisfaction** (which can be a range of things, like public apologies and/or memorials) and **guarantees of non-repetition** (including institutional reform, appropriate training of government officials, and awareness raising about human rights in the media).<sup>8</sup>

### *Toward Rohingya victim participation and community engagement*

**Meaningful victim participation and community engagement improves the likelihood of an effective international justice process for the Rohingya.** Well-informed, supported and vocal victims' groups play a critical role in building international visibility, making investigators aware of specific incidents as well as contextual nuances, and in supporting and protecting individual witnesses and victims who testify in court. Robust community and civil society participation keeps attention on the need for justice and engenders societal awareness about the dangers of impunity.

The success of international justice is a matter of national interest to Bangladesh as well as to the international community at large. As such, **victim participation and community engagement should be regarded as essential components of the quest for justice.** It is important for government, humanitarian and civil society actors to consider the

correlations between participation, engagement, and outcomes.

### *Overview of this paper*

**This briefing paper describes ways in which stakeholders working at the Cox's Bazar and camp levels can ensure that best practices are in place for engaging the broader Rohingya community, as well as individual victims, witnesses, and victims' groups.** After a cursory discussion on the utility and pitfalls of victim and community engagement navigated in two other justice processes (the Khmer Rouge Tribunal and the International Criminal Tribunal for the former Yugoslavia), three ambits for victim participation and community engagement are explored.

First, **camp-level logistical support** needs are discussed to highlight ways in which authorities in all camps can be prepared to support investigators, victims, witnesses, and the broader affected community as needed. Next, the need for **widespread awareness raising, information sharing and civic education in the camps** is examined. Finally, the paper considers the roles that different stakeholders should play in the **engagement, security, protection and psychosocial support of individual victims and witnesses** who may be asked to testify, particularly before the ICC.

## LEARNING FROM OTHER CONTEXTS

### *Khmer Rouge Tribunal*

Formally known as the Extraordinary Chambers in the Courts of Cambodia (ECCC), a joint national-international institution that was situated in Phnom Penh, the tribunal launched in 2003, 24 years after the fall of the Khmer Rouge regime in 1979. It ran for 11 years and cost \$300 million, and resulted in the convictions of five defendants.

Commentators disagree over the overall success or failure of the ECCC. Some supporters claim that, among other things, it has been an "... exemplar of public outreach and access."<sup>9</sup> Others argue that – while the ECCC fell short of achieving some goals of international justice, it succeeded in answering

<sup>6</sup> "Victim" here is used in its technical, legal sense.

<sup>7</sup> International Commission of Jurists (2018). The Right to a Remedy and Reparations for Gross Human Rights Violations: A Practitioner's Guide. <https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/>

<sup>8</sup> [International](#) Commission of Jurists (2018)

<sup>9</sup> Fawthrop, Tom (2018). Despite the Controversy, the Khmer Rouge Tribunal is a success. The Interpreter, 19 January. <https://www.lowyinstitute.org/the-interpreter/despite-controversy-khmer-rouge-tribunal-success>



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victims' demands for justice while increasingly public awareness and acknowledgment of the crimes committed, and point to surveys showing sustained high levels of public support throughout the process.<sup>10</sup> Still others criticize the small number of convictions and interference by the Cambodian government, in which several former Khmer Rouge members hold positions of high authority. This has prompted reflection on the ongoing challenges of impunity that affect not only Cambodia but many Asian countries, where few international justice processes have been initiated. Given the ECCC's length and cost, there has been much debate about whether the ends justified the means.<sup>11</sup>

However, these grievances notwithstanding, Cambodian and international civil society have played a critical role in shaping a public narrative and national conversation toward truth-telling and reconciliation.<sup>12</sup> Victims' groups and affected community members continue to advocate for financial as well as symbolic reparations.<sup>13</sup>

### *International Criminal Tribunal for the former Yugoslavia (ICTY)*

The ICTY ran from 1993 to 2017 in response to war crimes committed in the Balkans in the 1990s. The tribunal convicted 90 people and was the first war crimes court created by the UN. The ICTY was ultimately regarded as setting precedents for accountability in international humanitarian law.<sup>14</sup> Studies have found that affected communities were pleased with the process, particularly the ICTY's finding of genocide and the punishment of numerous perpetrators. The ICTY resulted in a sense that justice had indeed been served.

Nearly 5,000 witnesses testified with the support of the ICTY's Victims and Witnesses Section (VWS).

The VWS identified ways in which testifying can be both cathartic and harmful, and in a small number of cases found that witnesses faced threats or endangerment after doing so. In response, the VWS pioneered approaches to witness safety, security, and post-traumatic psychosocial support that have been emulated in other tribunals.<sup>15</sup>

Lessons learnt during the lengthy ICTY have been documented by researchers and are applicable to those working to support Rohingya victims. ICTY researchers recommend the implementation of standard post-testimony and follow-up programs for witnesses regarding security, emotional, and physical well-being. Witness support structures, trauma treatment, and gender-sensitive approaches should be developed early on in the proceedings to ensure adequate care, with staff members based in the field as needed. Regular updates should be disseminated to the wider community on important developments. ICTY judges have also acknowledged the right of victims to pursue reparations.<sup>16 17</sup>

### *Applying lessons from other contexts*

As the limitations and potentials of international justice and accountability proceedings come into focus, it is plausible that camp residents' enthusiasm and support for the processes could shift over time.

For instance, none of the currently active mechanisms is capable of directly creating an avenue for restoration of Rohingya citizenship in Myanmar – one of Rohingyas' key demands. Most recently, the ICJ's ruling on provisional measures ordered Myanmar to halt any genocidal acts, but refugees in the camps were disappointed when no tangible changes seemed to result.<sup>18</sup> The UN Security Council is technically obligated to intervene if a state fails to uphold an ICJ

<sup>10</sup> Orentlicher, Diane (2020). "Worth the effort?": Assessing the Khmer Rouge Tribunal. *Journal of International Criminal Justice*, forthcoming.  
[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3519236](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3519236)

<sup>11</sup> Mydans, Seth (2017). "11 years, \$300 million, and 3 Convictions. Was the Khmer Rouge Tribunal worth it?" *The New York Times*, April 10.  
<https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html>

<sup>12</sup> International Center for Transitional Justice (2014). "After guilty verdicts in Khmer Rouge Tribunal, broader struggle for accountability continues in Cambodia." August 21.  
<https://www.ictj.org/news/verdict-khmer-rouge-tribunal-struggle-accountability-cambodia>

<sup>13</sup> Williams, Timothy, Julie Bernath, Boravin Tann and Somaly Kum. 2018. *Justice and reconciliation for the victims of the*

*Khmer Rouge? Victim participation in Cambodia's transitional justice process.* Marburg: Centre for Conflict Studies; Phnom Penh: Centre for the Study of Humanitarian Law; Bern: swisspeace.  
[www.uni-marburg.de/cambodia-victimhood](http://www.uni-marburg.de/cambodia-victimhood)

<sup>14</sup> See [www.icty.org](http://www.icty.org) for information about the ICTY.

<sup>15</sup> See ICTY (2016). *Echoes of Testimonies: A pilot study into the long-term impact of bearing witness before the ICTY.*  
[https://www.icty.org/x/file/About/Registry/Witnesses/Echoes-Exec-Summary\\_EN.pdf](https://www.icty.org/x/file/About/Registry/Witnesses/Echoes-Exec-Summary_EN.pdf)

<sup>16</sup> ICTY (2016)

<sup>17</sup> ICTY (2000). "The judges of the ICTY acknowledge the right of victims of crimes committed in the former Yugoslavia to seek compensation." Press release, September 14.  
<https://www.icty.org/en/press/judges-icty-acknowledge-right-victims-crimes-committed-former-yugoslavia-seek-compensation>

<sup>18</sup> Hölzl (2020)



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ruling, but in its history has never done so.<sup>19</sup> As such potential pitfalls become clear, **refugees must be empowered to decide for themselves how strongly they want to engage with and support the mechanisms.**

### LOGISTICAL SUPPORT

As justice mechanisms churn forward, there will be an ongoing need to share information and updates across the refugee camps of Cox's Bazar, Bangladesh, where in 2017, 710,000 Rohingya joined tens of thousands of others who had arrived in earlier waves of forced displacement.<sup>20</sup> Reaching such a large population will require a substantial logistical effort. Victim and community outreach is directly undertaken by some courts for specific tasks, notably by the Victim Participation and Reparation Section of the ICC, which in 2019 engaged with camp residents to successfully petition the judge to mandate a full investigation.<sup>21,22</sup> But there is currently no coordination framework in the camps through which refugees receive regular updates about international justice as a whole.

#### *The need for a coordinated outreach mechanism*

The close support of camp authorities and government is needed to create an outreach mechanism, and **a clear plan of action is needed to ensure that information is disseminated throughout all 34 camps in which Rohingya currently shelter.** A “justice hub” could be established in each camp, with programmatic support from justice-focused civil society groups. These hubs would be community-friendly spaces equipped with

audio-visual equipment, bulletin boards, and other platforms for justice updates and general information to be shared and trainings held. Scheduling can be arranged so that men and women have separate hours during which to access the hubs.

Ensuring that 1 million displaced people have access to accurate information is not an easy task, but previous successes in which the camp population mobilized *en masse* (such as the 2017 cholera vaccination campaign spearheaded by the Government of Bangladesh and humanitarian partners) show that it is indeed possible to engage the entire camp population with sufficient will in place.<sup>23</sup>

The support of donors is also needed: international justice is of immeasurable importance to Rohingya camp residents, and financial support for awareness-raising about justice will be seen as an act of good faith responsive to the requests of refugees, who have expressed frustration about their lack of inclusion in the planning of camp activities.<sup>24</sup>

#### *Upholding victims' right to private and protected physical space*

In addition to the need for coordinated outreach activities, **physical spaces are needed in which awareness-raising activities can be conducted, and which guarantee private, secure, secret, and soundproof environment for victims and witnesses to meet with investigators.** When victims feel protected and dignified, and have access to safe spaces, they will be more willing to continue participating. This is particularly true for victims of sexual and gender-based violence and women, who

<sup>19</sup> In the UN Charter, Article 94(2) on the Statutes of the Court states that, “If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

(<https://legal.un.org/repository/art94.shtml#:~:text=2.give%20effect%20to%20the%20judgment.%E2%80%9D>)

However, since the court's inception, the Security Council has never used its powers in the case of noncompliance with the court's orders. For more information see Security Council Report (2016). “In Hindsight: The Security Council and the International Court of Justice.” 28 December.

<https://www.securitycouncilreport.org/monthly-forecast/2017-01/in-hindsight-the-security-council-and-the-international-court-of-justice.php>

<sup>20</sup> See Refugee Response in Bangladesh (2020), “Operation Portal: Refugee Situations.” United Nations High Commissioner on Refugees, May 31.

[https://data2.unhcr.org/en/situations/myanmar\\_refugees](https://data2.unhcr.org/en/situations/myanmar_refugees)

<sup>21</sup> <https://www.icc-cpi.int/about/victims#:~:text=The%20VPRS%20is%20the%20section,a%20conviction%20of%20the%20accused>

<sup>22</sup> ICC (2019). “Bangladesh/Myanmar situation: How victims can submit their views to ICC judges.” August 16. <https://www.icc-cpi.int/Pages/item.aspx?name=190816-bangladesh-myanmar-vprs>

<sup>23</sup> Over 700,000 recently arrived Rohingya received a cholera vaccine, the second-largest cholera vaccination campaign in history. Undertaken by the World Health Organization and Bangladesh's Ministry of Health and Family Welfare, See Al Jazeera (2017). “Over 700,000 Rohingya vaccinated for cholera to prevent epidemic.” November 7. <https://www.aljazeera.com/videos/2017/11/07/over-700000-rohingya-vaccinated-for-cholera-to-prevent-epidemic/>

<sup>24</sup> Amnesty International (2020). *Let Us Speak For Our Rights: Human Rights Situation of Rohingya Refugees in Bangladesh*. <https://www.amnesty.org/download/Documents/ASA1328842020ENGLISH.PDF>



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require additional privacy according to Rohingya cultural norms.

During pre-investigative phases, ICC outreach personnel visited the camps to meet with victims' groups, and were supported by government authorities, who made sure meeting space was available. This support was commendable and should continue. However, such meeting spaces are few in the camps, as most land is occupied by shelters, markets, and NGO facilities. **In addition to government support, humanitarian agencies are also responsible for ensuring that Rohingya can engage with the justice process.** NGOs and UN agencies hinder the community's ability to do so when they refuse to provide meeting space, a challenge faced by investigators during recent visits.

Humanitarian agencies usually consider support of justice actors to fall outside of their mandate to be neutral. But they must recognize that impeding the logistical aspects of the process also constitutes a failure to uphold neutrality. As the main holders of camp structures adequate for holding large community meetings, humanitarian agencies have a duty to uphold Rohingyas' right to access private spaces and protections. This is required under international law.<sup>25</sup> ICC representatives should not have to worry about having a place to meet with and interview people.

In addition to physical space, access to high-speed internet may also be needed for investigators to communicate with camp residents from afar.

### *Allowing project registration and camp access for justice groups*

Logistical support is also needed to enable the work of international civil society groups working to support community and victim engagement. These needs may extend to various researchers, academics, and journalists observing the process as well. Such visitors also need to be able to procure a camp pass from the office of the Refugee Relief and Repatriation Commissioner's (RRRC) in Cox's Bazar in order to be able to meet with refugees.

In Bangladesh, foreigners' ability to procure visas and camp passes is often contingent on the approval of their organizations' projects by the NGO Affairs Bureau (NGOAB), attached to the Prime Minister's Office. **The NGOAB should ensure that project proposals by international justice-focused civil society groups can be approved and registered.** (This is already required of all humanitarian and development initiatives that involve the transfer of foreign funds into the country.) The types of programming that should be eligible for NGOAB registration include those related to truth-telling, awareness raising, information sharing, victim advocacy, mock trials, and creative expressions of historical memory. Rohingya-led community-based organizations should be empowered to take the lead on these processes and pursue partnership with international civil society counterparts as they see fit.

### *Securing the support of camp officials*

The sensitization of camp-level authorities will help facilitate an effective and inclusive justice process. The RRRC's office can also engage with justice-focus civil society groups to provide orientation to CiCs and other camp authorities to maximize their ability to support victim participation and community engagement in the justice process. By orienting all camp-level personnel, particularly the Camp-in-Charge of each camp, to the international justice process and the importance of victim participation and empowerment, the RRRC can ensure that the logistical support needs outlined above are fulfilled.

As the mechanisms are moving ahead quite quickly, this orientation should be carried out in a timely manner. It can be delivered as a workshop, conducted online given the ongoing limitations presented by Covid-19. Civil society can support such the effort as trainers, even from afar.

### *Conducting ICC proceedings in the region*

In September 2020, victims' rights advocates have mobilized a call for the ICC to conduct proceedings within the Asia Pacific region, with some recommending that the court be situated in the immediate Cox's Bazar vicinity.<sup>26</sup> This would make the proceedings more accessible for individuals who

<sup>25</sup> Guidance on victim and witness protection is provided in the OHCHR Manual on Human Rights Monitoring, p. 8. <https://www.ohchr.org/Documents/Publications/Chapter1-1-MHRM.pdf>. Also see The Minnesota Protocol on the Investigation of potentially Unlawful Death (2016), par. 190. <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

<sup>26</sup> Ahmed, Farhaan Uddin (2020). "Bangladesh should host ICC's proceedings in Cox's Bazar." The Daily Star, September 25. <https://www.thedailystar.net/opinion/news/bangladesh-should-host-iccs-proceedings-coxs-bazar-1966933>



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testify and for the affected community at large. Theoretically, there are no barriers to this, and a request submitted directly by victims was filed with the ICC in August 2020 with support of an Australian legal team.<sup>27</sup> <sup>28</sup> In September the ICC Registry outlined five potential scenarios for doing so.<sup>29</sup> A decision depends on the capacity and will of Bangladesh or another country in the region to host the trial.

### ACCESS TO INFORMATION AND CIVIC EDUCATION

Ideally, international justice mechanisms would be built in a bottom-up manner in which victims' demands are at the center. But many of the Rohingyas' needs require legal reform in Myanmar, such as the overhaul of the 1982 Citizenship Law,<sup>30</sup> which international law is starkly incapable of instigating. **The camp population needs access to information about the international justice process, but case-specific information sharing is insufficient.** As discussed, community support may shift as people become more informed about the potential and limitations of the justice process to resolve the root causes of the crisis.

#### *A holistic strategy toward meaningful engagement*

In addition to basic schooling and literacy, introductory civic education on topics such as human rights, rule of law, international law, and social justice will provide a base of background knowledge to community members. A community languishing without access to basic education and development services is unlikely to be able to participate optimally. Camp residents' ongoing requests for education and self-reliance should be heeded as part of an overall strategy toward broader legal empowerment.<sup>31</sup> The input of the affected community should be at the heart of envisioning an overall process of transitional justice; such ownership will position Rohingyas themselves to be invested in and drive the process forward.

#### *Entrusting international and Rohingya civil society leadership*

University and academic partners may help provide such instruction. Internet access and online learning throughout the camps can also play a role. Rohingya-led CBOs already conduct awareness-raising activities on legal issues, and should be permitted and encouraged to do so freely despite their lack of formal registration as NGOs in Bangladesh.

### **National and international civil society organizations with expertise on international justice bear an onus to approach their work from a community perspective that focuses on clarifying what the mechanisms can do for the Rohingya, and working to fulfill their demands.**

A trauma-sensitive approach is essential: the shortcomings of international justice are likely to leave people feeling hopeless. Yet, from an ethical standpoint, ensuring that they are informed is the right thing to do. The atrocities committed against the Rohingya were egregious, and it is perfectly reasonable that their expectations of the international community to help are high. The true failure here is the international community's incapability to deliver solutions; not the Rohingyas' to understand or accept. Thus, conversations about "expectations management," while important, should be tempered with humility.

The effectiveness of the courts depends in part on the support of civil society. The ICC and others rely explicitly on adjunct support from civil society and CBOs. In fact, in its three-year strategic plan, the ICC Office of the Prosecutor (OTP) specifically acknowledges the importance of support from other actors, acknowledging, "The Office does not operate in a vacuum; it acknowledges the need for consultation with other actors and the international

<sup>27</sup> Victim Advocates International (2020). "Rohingya Victims ask the ICC to consider Moving the Proceedings Closer to the Affected Community." August 4.

<https://www.victimadvocatesinternational.org/rohingya-victims-ask-the-icc-to-consider-moving-the-proceedings-closer-to-the-affected-community/>

<sup>28</sup> ICC (2020). "Victims' joint request concerning hearings outside the United States." August 4. [www.icc-cpi.int/CourtRecords/CR2020\\_04736.PDF](http://www.icc-cpi.int/CourtRecords/CR2020_04736.PDF)

<sup>29</sup> ICC (2020). "Registry's Observations on the Victims' Joint Request Concerning Hearings Outside the Host State." September 21.

<https://www.scribd.com/document/476895606/Registry-s-Observations-on-the-Victims-Joint-Request>

<sup>30</sup> See Burmese Rohingya Organization UK (2014). "Myanmar's 1982 Citizenship Law and Rohingya."

<https://www.burmacampaign.org.uk/media/Myanmar%E2%80%99s-1982-Citizenship-Law-and-Rohingya.pdf>

<sup>31</sup> The Asia Foundation and Centre for Peace and Justice, Brac University (2020). *Navigating at the margins: Family, mobility and livelihoods amongst Rohingya refugees in Bangladesh*. San Francisco: The Asia Foundation and Dhaka: Centre for Peace and Justice.



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community, in light of their important role and responsibilities.”<sup>32</sup>

In contrast to the courts’ own awareness-raising services, which may be inherently self-promoting, the contribution of civil society actors is needed to ensure that both neutral and critical lenses are applied to the international justice, via academic approaches. This will empower camp residents to draw their own conclusions.

### *Amplifying victims’ voices from the camps*

While some Rohingya camp-based CBOs are active, a more vibrant camp civil society presence would help amplify the community’s eagerness for justice. **Victims’ groups should be encouraged to form and speak out, and international civil society should help amplify their voices.** Research shows that in its first iterations, camp civil society groups vied for political influence, but that the landscape has more recently become more inclusive, though less vocal.<sup>33</sup> This has created space for the horizontal mobilization of victims’ movements. For instance, each camp or village could organize its own victims’ rights group. In addition, there are new opportunities for civil society to be vocal about the justice process due to the reversal of a year-long internet shutdown in August 2020.<sup>34</sup> Existing resources can help civil society groups navigate their involvement and should be made available in Burmese and Rohingya languages. For example, a 2019 analysis by the Ferencz International Justice Initiative guides civil society groups on considerations for engagement with the IIMM.<sup>35</sup>

## ENGAGEMENT OF VICTIMS, WITNESSES, AND COMMUNITY DOCUMENTATION EFFORTS

The previous sections pertain mainly to a broad strategy for community engagement in the camps. Unique considerations are needed in regard to individual victims and witnesses who will engage with courts and investigators to provide testimony. **Camp authorities, humanitarians and international civil society share the responsibility along with the**

**courts to make sure that those who testify are 1) well-informed, 2) safe, and 3) supported throughout proceedings.**

### *Ensuring meaningful and informed consent*

The most fundamental need of those who participate with international justice mechanisms is to be meaningfully informed about the process and what their participation entails, without which their engagement is not truly consensual. For example, victims may be asked to recount painful memories multiple times, and must be made aware of this expectation beforehand. Moreover, the courts and other actors may be unable in some instances to ensure the future protection of those who testify, for example upon repatriation to Myanmar. These limitations and potential risks must be communicated at length.

Since 2017, numerous human rights organizations, journalists, academic researchers and others visit the camps to document abuses. Sometimes these findings are shared with formal investigative entities; at other times they are only used for a graduate student’s dissertation. Researchers should be explicit about the purpose and potential impact of their activities, and be clear when these are not linked to a formal process. This may affect people’s decision about whether to share information. Moreover, any details found by the defense to differ from formal testimony could be used to weaken victims’ credibility.

### *Protecting and supporting testifying victims and witnesses*

The next need is to ensure victim and witness safety. Protection needs will vary based on the content of the testimony. Some witnesses may be asked by the prosecutor to explain the general context in which genocide occurred, rather than to describe a specific incident. Their protection needs will differ. Psychosocial and other support services should be available to victims, as re-traumatization can occur for those who repeat their stories. Humanitarian agencies should be prepared to provide counseling and support services in the camps on a specific case-by-case basis for those who testify.

<sup>32</sup> International Criminal Court. *Strategic Plan 2019 -2021*. <https://www.icc-cpi.int/itemsDocuments/20190726-strategic-plan-eng.pdf>

<sup>33</sup> Centre for Peace and Justice (2020). *Civil society, governance and security dynamics in Rohingya refugee camps*. Policy brief, May.

<sup>34</sup> Bhuiyan, Humayun Kabir (2020). “3G, 4G internet restored in Rohingya camps.” *Dhaka Tribune*, 28 August. <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2020/08/28/3g-4g-internet-restored-in-rohingya-camps>

<sup>35</sup> Ferencz International Justice Initiative (2019). *Lessons Learned from the First Generation of UN Investigative Mechanisms for Future Criminal Accountability: Considerations for CSO engagement with the United Nations Independent Investigative Mechanism for Myanmar*. [https://www.ushmm.org/m/pdfs/19.09.17\\_Considerations\\_for\\_CS0\\_Engagement\\_with\\_UN\\_Investigative\\_Mechanisms.pdf](https://www.ushmm.org/m/pdfs/19.09.17_Considerations_for_CS0_Engagement_with_UN_Investigative_Mechanisms.pdf)



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**Testimonies go on public record, and some victims and witnesses may never be safe to return to Myanmar.** Victims must be made aware of this prior to engaging. But their awareness alone is inadequate. This must be acknowledged by those planning for repatriation in the future, and government and humanitarian officials should be aware that anyone who testifies may require third-country resettlement in the future. Rohingya victims of sexual and gender-based violence need to be engaged with unique sensitivity.

### *Responding to and referring victims and witnesses*

External actors should be prepared to help victims connect to formal mechanisms. For example, many survivors of violence have participated in support groups facilitated by humanitarians in which they have likely shared their experiences and raised their voices in support of the justice process.

Humanitarian agencies have the responsibility to refer these inquiries to justice actors rather than simply disregarding them. A request for justice should never be ignored, but humanitarian staff in Cox's Bazar have been explicit about their unwillingness to take on these topics.<sup>36</sup> All non-justice actors who interact with victims should develop and abide by standard operating procedures defining how staff should respond to and refer testimonies and queries about international justice to the appropriate actors.

Humanitarian agencies working in Cox's Bazar are likely sitting on documentation of testimonies and evidence conveyed by victims. They typically refrain from sharing it with justice actors, as they consider justice to fall outside of their mandates are careful not to jeopardize their neutrality. This approach may be pragmatic, but it is deeply flawed. Reviews and regrets have come up due to similar behaviors in other contexts, notably Sri Lanka. The failings of the international community in that example led the UN to conduct an internal review resulting in an ostensible renewed focus on "human rights up front," as the slogan declares.

But the UN is failing to do just that with regard to justice for the Rohingya, as a 2019 independent review confirmed.<sup>37</sup> As one of the smallest UN bodies, the Office of the High Commissioner for Human Rights (OHCHR) is mandated to oversee

human rights issues, but has only one staff person in Cox's Bazar and cannot be expected to fulfill the human rights obligations of the entire UN apparatus. A simple first step would be for other UN agencies and their INGO partners to ensure that victims who wish to submit their testimonies are appropriately referred, and their queries about the justice process replied to.

### *Incorporating community-led documentation and translation*

Since 2017, camp-based civil society groups have led extensive efforts to document human rights abuses committed by Myanmar against the Rohingya. International civil society should build relationships with these groups and make sure they are engaged by investigators, who are based in Europe and generally new to the Rohingya issue. The lack of nuanced contextual understanding amongst foreign investigators has substantive legal implications, and there is room for misunderstanding given most court staff's lack of regional and cross-cultural experience working with Rohingya.

While not necessarily legally admissible, community documentation efforts help build the overall case and enhance investigators' understanding, and should be carefully considered. Camp authorities should thus support and encourage their activities. International civil society groups should also work exclusively with Rohingya interpreters (rather than Chittagonian, a related but different language) as a way to help close gaps in understanding. Numerous professional Rohingya translators live in the camps and are ready to assist.

## RECOMMENDATIONS ON VICTIM PARTICIPATION AND COMMUNITY ENGAGEMENT

There are a number of ways in which the Government of Bangladesh, humanitarian actors, and international civil society should support Rohingya victim participation and community engagement in the international justice process in three areas: logistical support, awareness-raising, and support for victims, witnesses, and community-led documentation. The recommendations mentioned in this briefing paper are summarized below:

### *Recommendations to the Government of Bangladesh*

May 29.

<https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/Myanmar%20Report%20-%20May%202019.pdf>

<sup>36</sup> See Hölzl (2020)

<sup>37</sup> Rosenthal, Gert (2019). *A brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018.*



Inspiring Excellence

## CENTRE FOR PEACE AND JUSTICE

- Continue to support camp visits by investigators and prosecutorial teams from the ICC and other mechanisms.
- Support a camp-wide outreach coordination framework, including the establishment of physical “justice hubs” in each camp.
- Ensure that the affected Rohingya population is engaged in and aware of the justice process, and have access to platforms that amplify their voices.
- Sensitize camp-level authorities on the international justice process and the need to support victim participation and community engagement across the camps.
- Ensure that international civil society groups are able to visit the camps, register projects, and conduct awareness-raising activities about international justice.
- Encourage Rohingya-led groups to conduct advocacy and awareness-raising activities in the camps and liaise with international justice actors, both in the camps and remotely. This is important for the justice process to be effective.
- Implement activities that promote the preservation of testimonies, historical memory, truth-telling and reconciliation outside of the formal justice process.
- In the case of the ICJ case, where there is no investigative or outreach team, take responsibility for ensuring that updates are shared and explained.

### *Recommendations to humanitarian agencies*

- Recognize the subtleties of neutrality. This means ensuring that victims have access to secure and private spaces to participate in the justice process, their right under international law.
- Avoid “sitting on” victims’ testimonies and queries about international justice; ensure that a referral mechanism is in place so that people who want to testify and share their stories can link with justice actors.
- Develop specific psychosocial support services to address potential re-traumatization of testifying victims and witnesses.

### *Recommendations to international civil society*

- With donor and government support, provide programmatic services for “justice hubs” established in each of the 34 camps.
- Promote community awareness about international justice and broader civic education through trainings, workshops, and multimedia learning resources.
- Equip camp residents with an academic perspective on international justice from which they can draw their own conclusions.
- Ensure that individual victims and communities are provided with the information needed to provide meaningful informed consent for participation in justice mechanisms and other human rights efforts.