

Ending impunity inside Myanmar and finding justice for victims

The International Commission of Jurists (ICJ) has prepared information sheets to help explain to the Rohingya and other victims the different efforts taking place around the world to:

1. end impunity for serious human rights violations inside Myanmar; and
2. help find justice for victims, including the Rohingya.

What is impunity?

Under international law, all countries, including Myanmar, owe duties to everyone within their territories. Impunity is what happens when violations and abuses are committed against victims but countries, including Myanmar, do not fulfill their duties to:

- a. investigate violations;
- b. prosecute people suspected of committing violations - and sentence them to an appropriate punishment if found guilty after a fair trial;
- c. provide victims with effective remedies and reparations;
- d. provide victims with knowledge of the truth about what happened; and
- e. take all necessary steps to make sure serious violations do not recur (happen again).

What is the duty to investigate?

As soon as a country knows or should have known of the violation it has a duty to commence an investigation. For the investigation to meet the standards set by international law, it must be:

- a. effective;
- b. independent and impartial;
- c. prompt; and
- d. transparent.

An effective investigation will, among other things, identify the victim or victims, determine who was involved (including the direct perpetrator and anyone senior to them who may have ordered them to commit the violation), and collect all relevant evidence. The body conducting the investigation must have sufficient financial and human resources to do its job properly. If the State does not possess the required knowledge or expertise to conduct the investigation it must seek the assistance of other states.

An independent and impartial investigation is free from undue influence. The body conducting the investigation and individual investigators must be impartial and, at all times, act without bias. The investigation team must be independent of any suspects and the units or bodies to which they belong.

A prompt investigation is one that commences as soon as possible and without unreasonable delay.

A transparent investigation is one that is open to the scrutiny of the general public and of victims' families. At a minimum, states should be transparent about the existence of an

investigation, the procedures to be followed and any findings including the law and facts that were relied on.

What is the duty to prosecute?

Investigations must seek to identify the perpetrators who committed the violations. If suspects are identified and enough evidence is collected, then they should be prosecuted in a civilian court where they receive a fair trial.

What is the duty to provide victims with remedies and reparations?

States have a duty to provide remedies and reparation to victims of violations. Remedies refer to more procedural remedies like the duty to conduct investigations and prosecutions. Reparations [are more substantive and] can take many forms including, restitution (measures that put victims back into the position they were in before the violations took place), compensation (usually financial), rehabilitation (medical and psychological support), satisfaction (truth telling, public apologies, human rights training), and guarantees of non-repetition (institutional reforms establishing civilian control of military and security forces; strengthening judicial independence; the protection of human rights defenders; human rights training; the promotion of international human rights standards in public service, law enforcement, the media, and psychological and social services).

What is the duty to let victims know the truth about what happened?

Victims and their families have the right to know the truth about the circumstances, events and causes that led to the violations. This includes knowledge as to how, when, why and by whom the violations were committed. Society also has the right to know the truth including information held by the State that sheds light on the violations - even if those records are held by the security forces such as the army and the police. When society knows the truth about past violations it can help it prevent them happening again in the future.

What is the duty to make sure violations do not happen again?

States have a duty to stop the acts that have led to the violations. They also have the duty to take steps to ensure that similar violations will not happen again in the future. These can include changes to the law, strengthening the justice sector, providing special protection to human rights defenders, adopting rights protecting procedures and policies and providing education and training to key people including the army and police.

How does ending impunity in Myanmar help the Rohingya?

Rohingya have said that they want:

- a. Justice;
- b. safe, voluntary and dignified return to Myanmar; and
- c. Citizenship.

Ending impunity in Myanmar directly contributes towards all three requests.

Investigations followed by prosecutions of suspects in civilian courts will contribute towards justice. But full justice will not have been delivered until it is accompanied by remedies and reparations for victims, as set out above.

Any return by the Rohingya to Myanmar will be not be safe until perpetrators of violations have faced justice – which will help prevent similar violations from happening again.

Myanmar must also take other steps towards fulfilling its duty to ensure violations do not happen again, such as bringing the military under civilian control, strengthening the justice sector, providing full protection to minorities, and amending or repealing laws that have contributed towards violations.

Myanmar’s Citizenship law and other laws require significant reform in order to end discrimination against Rohingya and other minorities that have contributed towards violations in the past. Until these laws are reformed, the Rohingya and other minorities will not be provided their full rights and remain vulnerable to violations happening again.

Why are bodies outside Myanmar like the International Criminal Court, the Independent Investigative Mechanisms for Myanmar and the International Court of Justice getting involved?

Because Myanmar has not yet fulfilled all of the duties set out above, various international Courts and other accountability bodies like the International Criminal Court (ICC), the Independent Investigative Mechanism for Myanmar (IIMM) and the International Court of Justice (ICJ) are working to end impunity in Myanmar and provide justice to the Rohingya and other minorities. They are working to fill the gap left by Myanmar. If Myanmar fulfilled all of its obligations as set out above, these efforts would not be necessary.