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“What Kind of Court Is This?” Perceptions of International Justice Among Rohingya Refugees

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ABSTRACT

In the context of mass atrocities, the legitimacy of institutions for international justice—such as the International Criminal Court and International Court of Justice—is based on the assumption that they vindicate demands for accountability by the survivors of horrific human rights violations. Yet, notwithstanding advances in victim representation at these Hague-based courts, victim-centered justice remains elusive. This article contributes to centering the voices of survivors in their specific cultural contexts, against the backdrop of existing efforts that too often render invisible their perspectives. Through semi-structured interviews, conducted in late 2022, with 444 Rohingya survivors of genocide who have fled Myanmar to refugee camps in neighboring Bangladesh, we attempt to convey the priorities of these survivors situated within their cultural understanding of justice. We contextualize the empirical data gathered from the survey within Rohingyas' lived experiences of persecution in Myanmar, their cultural framings of communal justice, and their current reality of prolonged displacement in refugee camps in Bangladesh. The article concludes by describing the implications of this survey's findings on future engagement of the Rohingya in international justice processes, and a wider reflection on how grassroots perspectives can and should shape the global justice discourse.

I. INTRODUCTION

Among human rights scholars and practitioners, global justice is a sacred aspiration that finds expression in institutions such as the International Criminal Court (ICC), the International Court of Justice (ICJ), and investigative bodies established by the United Nations (UN) Human Rights Council. The intended beneficiaries of these accountability mechanisms are the survivors of mass atrocities, but the grim reality of the extreme trauma, displacement, and poverty that they face is a world away from the distant justice dispensed in "The Hague bubble." While judicial institutions in The Hague derive much of their legitimacy from acting on behalf of survivors, the voices of those same survivors are often missing in assessing the relevance and impact of such

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institutions on the ground. It is often assumed in the human rights industry that those who have suffered violent persecution must invariably share the same perceptions and priorities as actors in the elite circles of global justice. But is this assumption true? This empirical study, based on an extensive survey among Rohingya victims—displaced from Myanmar to refugee camps in Bangladesh following a genocidal campaign—is an attempt at addressing this question by surfacing grassroots perspectives on international justice.

Myanmar’s predominantly Muslim Rohingya minority population has faced over a half century of state-sponsored persecution and extreme violence perpetrated by the Myanmar military, the *Tatmadaw*.¹ This has led to hundreds of thousands of Rohingya being displaced internally within Rakhine state—where they predominantly reside—or fleeing into neighboring countries, mainly Bangladesh, on multiple occasions, including in 1978,² 1991–1992,³ 2012,⁴ and most recently during the “clearance operations” in 2016 and 2017.⁵ On each occasion, this has entailed the commission of widespread and systematic atrocities, including mass killings, torture, rape and other forms of sexual violence, and the extensive destruction of property. UN reports have recognized the Rohingya as “the most persecuted minority in the world.”⁶

The most recent wave of violence commenced in 2016 and dramatically escalated on August 25, 2017, when the Myanmar military initiated “clearance operations” in northern Rakhine state following an attack by a

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1. The Myanmar Armed Forces are known as “Tatmadaw,” which literally translates into “Imperial or Royal Armed Forces” in Burmese with the suffix “daw” or “taw” denoting “royal” or “sacred.” In Myanmar, they are usually referred to as “Sit-Tat,” meaning “Sit (Armed or Military), Tat (Forces).” Given the brutality of the Tatmadaw, including actions discussed in this article, the authors refer to them simply as the “Myanmar military,” in line with the Rohingya survivors who took part in the survey discussed in this article, who simply use the term “military” or “Burma military,” except when quoting existing sources. YE MYO HEIN, *ONE YEAR ON: THE MOMENTUM OF MYANMAR’S ARMED REBELLION*, WILSON CENTER (2022), <https://www.wilsoncenter.org/publication/one-year-momentum-myanmar-armed-rebellion> [https://perma.cc/2Y5B-2ZSW].
 2. In 1978, General Ne Win’s military junta launched the infamous military operation “Nagamin” (Operation Dragon King) to purge Burma’s Rakhine State of foreigners. Nagamin resulted in two hundred thousand Rohingya fleeing into neighboring Bangladesh reporting widespread army brutality, rape, and murder. It is noteworthy that within three years of the mass return of the Rohingya to Myanmar, who had fled in 1978, the 1982 Citizenship Law was promulgated. See, *Burmese Refugees in Bangladesh: Still No Durable Solution*, HUMAN RIGHTS WATCH (May 1, 2000).
 3. U.N. Commission on Human Rights, *Report of the Special Rapporteur on the Situation of Human Rights in Myanmar*, ¶ 235, U.N. Doc. E/CN.4/1993/37 (Feb. 17, 1993).
 4. *Myanmar’s Rohingya Crisis*, IRIN (Nov. 16, 2012).
 5. U.N. Human Rights Council, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar (FFM)*, ¶¶ 280–84, 758, 761, 781–83, U.N. Doc. A/HRC/39/CRP.2 (Sept. 17, 2018) [hereinafter FFM, Detailed Findings, 2018].
 6. Press Release, U.N. Human Rights Council, Human Rights Council Opens Special Session on the Situation of Human Rights of the Rohingya and other Minorities in Rakhine State in Myanmar (Dec. 5, 2017).

rebel movement known as the Arakan Rohingya Salvation Army (ARSA).⁷ For the next two months, the Myanmar military implemented one of the most devastating and horrific attacks on Rohingya civilians, resulting in the killing of at least 10,000 civilians,⁸ and the mass exodus of at least 742,000 survivors—half of them children.⁹

In the absence of any viable legal recourse inside Myanmar, Rohingya survivors have relied on various on-going international efforts in pursuit of justice. These accountability procedures commenced with the investigative work of the UN Independent International Fact-Finding Mission on Myanmar (FFM), established in March 2017 by the UN Human Rights Council.¹⁰ In August 2018, the FFM issued a report concluding that Myanmar's military leaders must be investigated and prosecuted for genocide.¹¹ This report in turn prompted the establishment by the UN Human Rights Council of an Independent Investigative Mechanism for Myanmar (IIMM) in September 2018. In addition, several courts have started to engage with the situation.

The ICC does not have jurisdiction over crimes committed inside Myanmar, because Myanmar is not a party to the Court. Nonetheless, in 2018 the ICC Prosecutor began to investigate certain crimes against humanity, such as deportation, that were committed within the territory of Bangladesh, which is a party to the Court. The ICJ also began to engage after The Gambia brought proceedings against Myanmar pursuant to the 1948 Genocide Convention. And in 2021, national criminal proceedings began in Argentina based on universal jurisdiction.¹²

With a view to ascertaining the perspectives of Rohingya regarding these justice processes, a survey was conducted in late 2022 by a nongovernmental organization—Legal Action Worldwide (LAW)¹³—amongst 444 survivors

7. FFM, Detailed Findings, 2018, *supra* note 5, ¶¶ 749-50.

8. Press Release, Security Council, Head of Human Rights Fact-Finding Mission on Myanmar Urges Security Council to Ensure Accountability for Serious Violations Against Rohingya (Oct. 24, 2018).

9. *Rohingya Refugee Crisis Explained*, UNHCR (Aug. 23, 2023) [<https://perma.cc/P48K-VE58>].

10. Human Rights Council Res. 34/22, U.N. Doc. A/HRC/RES/34/22, ¶ 11 (Apr. 3, 2017).

11. FFM, Detailed Findings, 2018, *supra* note 5, at summary, ¶¶ 1480-81, 1583, 1655, 1657, 1682.

12. *Id.*

13. Legal Action Worldwide (LAW) is an independent non-profit organization comprised of human rights lawyers and jurists working in fragile and conflict affected areas, <https://www.legalactionworldwide.org/>. The findings and figures used in this article rely on primary data collected by LAW through the 2022 survey in Cox's Bazar. This survey was implemented by LAW during October-December 2022 under the close guidance and supervision of the authors of this article. Upon conceptualization of the research by the authors and development of the questionnaire that is provided in the Appendix, the survey was implemented by a team of thirty-two Rohingya refugee researchers living in the camps. The data collected was in turn transcribed and then reviewed by two researchers (engaged by LAW through funding support from Switzerland and European Union). The data's analysis was prepared by the authors along with the wider LAW team.

living in Kutupalong in Cox’s Bazar, Bangladesh—the largest refugee camp in the world.¹⁴

This article presents the empirical findings of this survey against the backdrop of existing literature on survivor-centered justice. Our goal is to contribute to a better understanding of whether and how international accountability mechanisms satisfy conceptions of justice, with a view to assessing their relevance and efficacy. This is without prejudice to the wider systemic impact of such procedures, for instance on deterrence, which may not immediately benefit victims of mass atrocities.¹⁵

The article proceeds as follows: Section II provides a historical background on the violent persecution faced by the Rohingya; Section III summarizes existing studies which assess the overall value of victim participation or inclusion of victim perspectives in international justice processes and considers the empirical methodology best suited for such purposes; Section IV outlines the methodology and scope of the survey conducted amongst Rohingya refugees; Section V presents the findings of the survey which provide an insight into the community’s expectations, as well as their perceived level of understanding and level of inclusion within the ongoing justice processes. The findings are contextualized within Rohingyas’ lived experiences of persecution in Myanmar, their cultural framings of communal justice, and their current reality in prolonged displacement. Section VI concludes by describing the implications of this survey’s findings on future engagement of the Rohingya in international justice processes, as well as a wider reflection on how grassroots perspectives can and should shape the global justice discourse.

II. BACKGROUND

Discrimination against the Rohingya is formalized in the laws of Myanmar. In particular, the 1982 Citizenship Law excludes the Rohingya from the list of officially recognized national ethnic groups, rendering them ineligible for full citizenship.¹⁶ Rohingya may apply for naturalized citizenship only

See, What Kind of Court is This? It Doesn’t Match our Senses . . . ” Perceptions of Justice and International Courts by Rohingya living in Bangladesh’s Displacement Camps, LEGAL ACTION WORLDWIDE (forthcoming publication) [hereinafter LAW Survey Report].

14. *Inside the World’s Five Largest Refugee Camps*, UNHCR (July 19, 2023), <https://www.unrefugees.org/news/inside-the-worlds-five-largest-refugee-camps/>; LAW Survey Report, *supra* note 13.
15. *See, e.g.,* Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT’L L. 7, 10 (2001).
16. U.N. Human Rights Council, *Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, ¶¶ 60-5, U.N. Doc. A/HRC/42/CRP.5 (Sept. 16, 2019) [hereinafter FFM, *Detailed Findings Updated*, 2019] (explaining that the law “denies Rohingya the possibility of attaining full citizenship”).

if they can provide conclusive evidence that they entered and resided in Myanmar prior to the independence of Burma on January 4, 1948,¹⁷ a difficult requirement because of repeated episodes of forced displacement.¹⁸ In the last decade, Rohingya have been forced to accept National Verification Cards that identify them as “Bengali”—a term the Rohingya reject as it implies they are illegal immigrants from Bangladesh.¹⁹ Successive governments, with leaders ranging from military dictators to former leader and Nobel Peace Prize Laureate Aung San Suu Kyi, have persisted in refusing to utter the name Rohingya on the grounds that no such people exist among the myriad ethnic groups comprising Myanmar.²⁰

This denial of identity and citizenship has served to deprive the Rohingya of basic human rights. This systemic discrimination includes limitations on access to education and professional employment, as well as barriers to the registration of both births of Rohingya children,²¹ and marriages between Rohingya couples.²² Additionally, several policies and practices that restrict Rohingya movement, including frequent harassment at military checkpoints, have significantly restricted Rohingya access to essential healthcare.²³

During the years preceding the 2017 clearance operations, Myanmar expanded and entrenched a climate of fear among the Rohingya. In late 2016, the Myanmar military launched what was referred to as the “area clearance operations” triggered by an attack on three Border Guard Police posts by the ARSA, a Rohingya insurgency group. The 2016 clearance operations involved killings of Rohingya men and boys, indiscriminate firing on civilians, and gang rapes. This was followed by an intensification of oppressive measures—increase in checkpoints, security patrols, house searches, beatings, and extortion—which served as a precursor to the events of August 25, 2017, when the military launched a massive attack on Rohingya civilian populations in northern Rakhine state. The FFM report describes these “brutal and grossly disproportionate”²⁴ atrocities as follows:

17. See Lindsay Maizland, *Myanmar's Troubled History: Coups, Military Rule, and Ethnic Conflict*, COUNCIL ON FOREIGN RELATIONS (Jan. 31, 2022) (explaining that the new military regime changed the country's name from “Burma” to “Myanmar” in 1989).

18. FFM, Detailed Findings Updated, 2019, *supra* note 16, ¶ 63.

19. *Id.* ¶¶ 66, 86.

20. Richard C. Paddock, *Aung San Suu Kyi Asks U.S. Not to Refer to “Rohingya,”* N.Y. TIMES (May 6, 2016), <https://www.nytimes.com/2016/05/07/world/asia/myanmar-rohingya-aung-san-suu-kyi.html> [https://perma.cc/7DMX-KJG9].

After the February 2021 Military Coup in Myanmar, the civilian National Unity Government (NUG) for the first time called for repealing the 1982 citizenship law, acknowledged the need for accountability for all crimes committed by the military, and promised reparations and justice in the future “Federal Democratic Union Constitution.” See *Policy Position on the Rohingya in Rakhine State*, NATIONAL UNITY GOVERNMENT OF MYANMAR (June 3, 2021).

21. FFM, Detailed Findings, 2018, *supra* note 5, ¶¶ 461, 581; FFM, Detailed Findings Updated, 2019, *supra* note 16, ¶ 154.

22. *Id.* ¶ 581.

23. Independent Rakhine Initiative, *Freedom of Movement in Rakhine State*, ROHINGYA POST (Apr. 13, 2020).

24. FFM, Detailed Findings, 2018, *supra* note 5, ¶ 751.

Elements of the Tatmadaw's 33rd and 99th Light Infantry Divisions had been deployed to Rakhine State earlier in August. The operations were designed to instill immediate terror, with people woken by intense rapid weapons fire, explosions, or the shouts and screams of villagers. Structures were set ablaze and Tatmadaw soldiers fired their guns indiscriminately into houses and fields, and at villagers . . . The nature, scale and organization of the operations suggests a level of preplanning and design on the part of the Tatmadaw leadership consistent with the vision of the Commander-in-Chief, Senior-General Min Aung Hlaing, who stated at the height of the operations, “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.”²⁵

The 2017 clearance operations led to the destruction of at least 392 Rohingya villages, representing more than 40 percent of all villages in northern Rakhine state,²⁶ and thousands of structures, including Rohingya homes and places of worship. At least ten thousand Rohingya were killed in August and September 2017.²⁷ Women and children were disproportionately targeted, with young women and girls facing brutal acts of sexual and gender-based violence, including gang rapes, mutilation of genitals, and “branding” of their bodies through bite marks.²⁸ Infants and babies were forcefully pulled from the arms of their mothers and thrown to the ground, with many thrown into fires and burned alive.²⁹ In the subsequent weeks, there was a mass exodus of over 742,000 Rohingya to Cox's Bazar in neighboring Bangladesh, resulting in one of the largest refugee crises in the world.³⁰

In response to these atrocities, the UN Human Rights Council established the FFM,³¹ which interviewed nearly six hundred Rohingya victims and witnesses and analyzed internal Myanmar documents and satellite imagery.³² The FFM concluded that the senior Myanmar military leadership should be investigated and prosecuted by an international criminal tribunal for genocide, crimes against humanity, and war crimes against the Rohingya.³³

In February 2018, amidst growing international condemnation, the Myanmar military bulldozed the burnt Rohingya villages and mass graves in an effort to destroy the evidence of atrocities.³⁴ They also destroyed some intact but abandoned villages in an apparent attempt to erase any trace of

25. *Id.* ¶ 752-53.

26. *Id.* ¶ 959.

27. Press Release, Head of Human Rights Fact-Finding Mission on Myanmar Urges Security Council to Ensure Accountability for Serious Violations against Rohingya, SC/13552 (Oct. 24, 2018).

28. *Id.*

29. FFM, Detailed Findings, 2018, *supra* note 5, ¶ 789.

30. *Emergency Appeal: Rohingya Emergency*, UNHCR (Oct. 2022).

31. Human Rights Council Res. 34/22, *supra* note 10, ¶ 11 (establishing the UN Independent International Fact-Finding Mission on Myanmar).

32. FFM, Detailed Findings, 2018, *supra* note 5, ¶ 754.

33. *Id.* at Summary; FFM, Detailed Findings Updated, 2019, *supra* note 16.

34. *Rohingya Villages Destroyed “To Erase Evidence,”* BBC NEWS (Feb. 23, 2018); FFM, Detailed Findings, 2018, *supra* note 5, ¶¶ 863, 879, 1216.

the Rohingya.³⁵ In February 2021, the military overthrew the government of Myanmar and has since brutally suppressed peaceful protests against the coup.³⁶ Many of the army units implicated in atrocities in northern Rakhine state have also participated in crackdowns against demonstrators.³⁷ Over time, the political violence has escalated with the Myanmar military attacking and raiding villages suspected of harboring resistance forces. As of September 2022, at least 6,337 civilians have been killed.³⁸

The 630,000 Rohingyas remaining in Rakhine state are languishing in now decade-old “decrepit ‘temporary’ detention camps.”³⁹ Meanwhile, over a million Rohingya in the congested camps of Cox’s Bazar are without legal status and livelihood opportunities, leaving them dependent on humanitarian assistance and at heightened risk of exploitation and abuse.⁴⁰ There have been steep declines in funding every year, as compassion fatigue sets in, while the Rohingya remain exposed to rising insecurity and violence in their temporary shelters, in addition to weather-related hazards such as severe storms, fires, flooding, and landslides.⁴¹

The political will to pursue justice and accountability for Rohingya survivors remains constrained due to the impasse at the UN Security Council, with Russia and China using their veto power to protect Myanmar.⁴² Since the 2017 atrocities in Northern Rakhine up until the 2021 coup, the Security Council failed to put forth a single resolution on the situation in Myanmar or to make a referral to the ICC under Chapter VII of the UN Charter.⁴³ UN Security Council Resolution 2669 of December 2022, which came about only after the February 2021 military coup, is the only effort calling for an

35. Shoon Naing & Thu Thu Aung, *Myanmar Bulldozes Rohingya Villages After “Cleansing” Campaign: Group*, REUTERS (Feb. 23, 2018).

36. Thomas Andrews, @rapporteurUN, X (formerly TWITTER) (Feb. 20, 2021), <https://twitter.com/RapporteurUN/status/1363189475736768519> [<https://perma.cc/765A-JRC6>] (stating, “[t]he 33rd Light Infantry Division was reportedly involved in the lethal attacks in Mandalay today—the same division responsible for mass atrocity crimes against the Rohingya in 2017. A dangerous escalation by the junta in what appears to be a war against the people of Myanmar”).

37. *Myanmar Army Unit Accused of Rohingya Atrocities Used in Deadly Crackdown: UN*, IRRRAWADDY (Feb. 21, 2021).

38. MIN ZAW OO & STEIN TONNESSON, COUNTING MYANMAR’S DEAD: REPORTED CIVILIAN CASUALTIES SINCE THE 2021 MILITARY COUP, PRIO (2023).

39. Laetitia van den Assum, *An Update on the Situation of Myanmar’s Rohingya*, OPINIO JURIS (Oct. 1, 2021).

40. Abhishek Bhatia et al., *The Rohingya in Cox’s Bazar: When the Stateless Seek Refuge*, 20 HEALTH & HUM. RTS. J. 105, 107 (2018) (explaining that Rohingya refugees in Cox’s Bazar are left in “limbo” and without crucial protections due to Bangladesh’s refusal to grant them formal refugee status); *Rohingya Refugees in Bangladesh: Limiting the Damage of a Protracted Crisis*, CRISIS GRP. (Oct. 4, 2023), <https://www.crisisgroup.org/asia/south-east-asia/myanmar-bangladesh/rohingya-refugees-bangladesh-limiting-damage-protracted>.

41. Press Release, UNHCR, Six Years Since the Rohingya Refugee Influx in Bangladesh, UNHCR Appeals for Sustained Support and Solutions (Aug. 22, 2023).

42. *Mandate*, U.N. INTERNATIONAL, IMPARTIAL AND INDEPENDENT MECHANISM, <https://iiim.un.org/who-we-are/mandate/>.

43. See S.C. Res. 1970, ¶ 4 (Feb. 26, 2011) (referring Libya to the ICC); S.C. Res. 1593, ¶ 1 (Mar. 31, 2005) (referring Sudan to the ICC).

immediate end to violence and the release of all prisoners including State Counsellor Aung San Suu Kyi,⁴⁴ but it has done little to end the Myanmar military's impunity or secure the human rights of the Rohingya.

In the absence of a UN Security Council referral to the ICC, the ICC Prosecutor was left without authority to pursue crimes committed inside Myanmar. Instead, the Prosecutor asked the Court for confirmation that the ICC could exercise jurisdiction based on the deportation of Rohingya from Myanmar into the territory of Bangladesh, which unlike Myanmar is a state party to the Court.⁴⁵ In November 2019, the Court confirmed the Prosecutor's request for an authorization to investigate the crimes against humanity of deportation, persecution, and other inhumane acts (in particular, the violation of the Rohingya's right to return to Myanmar) under Article 7.⁴⁶ In practical terms, this means that only crimes with a trans-boundary element such as deportation, where a part of the crime has been committed in Bangladesh, can be prosecuted by the ICC. The scope of the ICC investigation is therefore limited, and crimes committed on the territory of Myanmar such as genocide are excluded.

Separately, in November 2019, The Gambia initiated proceedings against Myanmar before the ICJ under the 1948 Genocide Convention. In some respects, this action can be understood to help fill the gaps in the ICC's jurisdiction by covering atrocities committed wholly inside Myanmar.⁴⁷ However, unlike the ICC, the ICJ's jurisdiction only extends to consideration of the responsibility of states under international law, and so individual criminal responsibility for crimes committed inside Myanmar remains unaccounted for by either court.

The Gambia's application was supported by the Organisation of Islamic Cooperation (OIC), particularly by Bangladesh as the frontline state.⁴⁸ While only states have standing to initiate ICJ proceedings, in December 2019, three Rohingya survivors were supported by LAW to travel from the camps in Cox's Bazar to The Hague for the urgent hearings on provisional measures.⁴⁹

44. S.C. Res. 2669 (Dec. 21, 2022).

45. Request Under Regulation 46(3), *supra* note 42.

46. *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, ¶¶ 112-13, 131, ICC-01/19-27 (Nov. 14, 2019) (The ICC authorized the Prosecutor to investigate any crimes within its jurisdiction if: (1) the act was allegedly committed at least in part in the territory of Bangladesh (or in the territory of any other State accepting the Court's jurisdiction), and (2) the act was allegedly committed on or after March 23, 2010, when Bangladesh became party to the Rome Statute.).

47. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Application Instituting Proceedings and Request for Provisional Measures (Nov. 11, 2019).

48. Final Communiqué of the 14th Islamic Summit Conference, ¶ 47, OIC/SUM-14/2019/FC/FINAL (May 31, 2019).

49. Owen Bowcott, *Aung San Suu Kyi Impassive as Genocide Hearing Begins*, GUARDIAN (Dec. 10, 2019).

They were the only refugees from the 2017 clearance operations to be able to attend the hearing. Their presence in the room was acknowledged by The Gambia's agent and deemed to be of great significance to the entire Rohingya community upon their return to the camps. In July 2022, after rejecting Myanmar's objections to its jurisdiction, the ICJ judges allowed the case to proceed to the merits.⁵⁰ Notably, Maldives, Canada, the Netherlands, and more recently the United Kingdom (U.K.), Germany, Denmark, and France have indicated their intention to intervene formally in the case, in support of The Gambia's submissions.⁵¹

Other initiatives in the pursuit of justice include a 2019 criminal complaint in Argentina, where domestic courts have opened an investigation into the Rohingya genocide under the principle of universal jurisdiction,⁵² with Rohingya victims providing testimony in the proceedings.⁵³ Other accountability efforts include a criminal complaint filed in Germany⁵⁴ and class action suits in the United States and U.K. against Meta (Facebook) for its role in amplifying hate speech against Rohingya.⁵⁵

The establishment of the IIMM in 2018 as a successor of the FFM, to collect, consolidate, and analyze evidence of the most serious international crimes committed in Myanmar since 2011, has provided ongoing support for criminal proceedings and accountability efforts for the Rohingya. To date, the IIMM has collected and processed over 23 million information items as part of its repository.⁵⁶ It maintains close coordination with the ICC Prosecutor,

50. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Judgment, July 22, 2022.

51. See Press Release, Ministry of Foreign Affairs, Maldives Welcomes the Joint Statement by Canada and the Kingdom of the Netherlands Announcing Their Intention to Intervene in The Gambia v. Myanmar Case at the International Court of Justice (Sept. 4, 2020); See Statement, Global Affairs Canada, Joint Statement of Canada and the Kingdom of the Netherlands Regarding Intention to Intervene in The Gambia v. Myanmar Case at the International Court of Justice (Sept. 2, 2020); See Press Release, UK Foreign, Commonwealth and Development Office, Fifth Anniversary of the Rohingya Crisis in Myanmar: UK Statement (Aug. 25, 2022); See Press Release, German Federal Foreign Office, Federal Foreign Office on the Fifth Anniversary of the Attacks Against Rohingya Communities in Myanmar and the Refugee Crisis They Triggered (Aug. 25, 2022); Sm Najmus Sakib, *France to "Intervene In" Rohingya Genocide Case at UN Court*, ANADOLU AGENCY (Sept. 11, 2023); See Press Release, International Court of Justice, Canada, Denmark, France, Germany, the Netherlands, the United Kingdom (jointly) and the Maldives file declarations of intervention in the proceedings under Article 63 of the Statute (Nov. 16, 2023).

52. See *Argentinean Courts Urged to Prosecute Senior Myanmar Military And Government Officials For The Rohingya Genocide*, BURMA CAMPAIGN UK (Nov. 13, 2019).

53. Istiaque Ahamed, *Will a Legal Case in Argentina Bring Justice for the Rohingya?*, DIPLOMAT (June 21, 2023); see also Carlos G. Hamann, *Argentine Court Hears Allegations of Genocide Against Myanmar Leaders*, RADIO FREE ASIA (June 7, 2023) (In June 2023, an Argentine federal prosecutor conducted closed-door confidential investigative hearings, including taking testimony from witnesses.).

54. See *Criminal Complaint Filed in Germany Against Myanmar Generals for Atrocity Crimes*, FORTIFY RTS. (Jan. 24, 2023).

55. See *Doe v. Meta Platforms*, 2023 WL 5837443 (N.D. Cal. 2022); *Rohingya Sue Facebook for \$150bn Over Myanmar Hate Speech*, BBC News (Dec. 7, 2021).

a close dialogue with the parties in the ICJ case and has shared substantial information with the federal prosecutor in Argentina.⁵⁷

In the context of an inter-generational history of systematic persecution of Rohingya, the jurisdictional constraints of the ICJ and ICC—i.e., limited to specific international crimes rather than human rights in general, pose significant limitations. Nonetheless, both cases were met at first with elation by the Rohingya refugees in Cox’s Bazar.⁵⁸ This survey, administered about four years after these international justice mechanisms first came into play, sought the views of survivors with a view to ascertaining their perspectives on the question of international justice amidst the deteriorating security in the camps and looming fear of repatriation.

The participation of Rohingya victims in these mechanisms has been dictated by the relevant procedures of the different bodies. Rohingya have given interviews for the FFM, provided witness statements for The Gambia’s memorial to the ICJ in the absence of any procedure for the direct participation of victims at the ICJ, assisted the ICC Prosecutor’s Office with the ongoing investigation as “witnesses” or “persons of interest to the investigation,” and submitted evidence and shared their testimony with the IIMM.⁵⁹ Such engagement, including the significant initial diplomatic and media interest in the crisis, allowed the Rohingya to share their suffering with the world and to gain hope for some form of justice. Nonetheless, with the passage of time, their initial expectations combined with the prolonged realities of life in the refugee camps have resulted in shifting perceptions and priorities. In particular, Rohingya cultural understandings of the very concept of justice demonstrates a complex divergence from the narratives prevalent in elite international justice circles.

III. INCLUSION OF VICTIM PERSPECTIVES IN INTERNATIONAL JUSTICE: AN OVERVIEW

International instruments on victim-centered justice were developed mainly after the study of victimology gained prominence during the 1970s.⁶⁰ These

56. U.N. Human Rights Council, *Report of the Independent Investigative Mechanism for Myanmar*, ¶ 9, U.N. Doc. A/HRC/54/19 (June 30, 2023).

57. *Id.* ¶¶ 18–21.

58. See generally *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Public Redacted version of Annex I to the Final Consolidated Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision ICC-01/19-6, 28 June 2019 (8 November 2019) [hereinafter ICC, Annex I, 2019].

59. See *Id.* at 9–12; *The Gambia v. Myanmar Judgment*, *supra* note 50; FFM, Detailed Findings, 2018, *supra* note 5, ¶ 19; U.N. Human Rights Council, *Report of the Independent Investigative Mechanism for Myanmar*, ¶¶ 7, 17, U.N. Doc. A/HRC/54/19 (June 30, 2023).

60. See Raquel Aldana-Pindell, *An Emerging Universality of Justiciable Victims’ Rights in the Criminal Process to Curtail Impunity for State-Sponsored Crimes*, 26 HUM. RTS. Q. 615, 650 (2004). See also Jonathan Doak, *The Victim and the Criminal Process: An Analysis of*

include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the 2006 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.⁶¹ The initial studies of victimology put very limited emphasis on victim participation rights,⁶² but there has been greater integration of victims in criminal justice proceedings over the last three decades, arising from significant developments in national criminal justice systems, as well as in international human rights law, the experience of the ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY)⁶³ and Rwanda (ICTR),⁶⁴ hybrid tribunals such as the Special Court for Sierra Leone (SCSL)⁶⁵ and the Extraordinary Chambers in the Courts of Cambodia (ECCC),⁶⁶ and the establishment of the ICC with a robust regime for victim participation and inclusion of victim perspectives.⁶⁷

There is generally broad academic, court, and victim support for the inclusion of victims' perspectives in international justice processes. However, its effective and harmonious implementation has stalled due to a dearth of empirical data to support core assumptions on the logic and impact of such contributions.⁶⁸ Critics argue that without this data, the incorporation of victims' perspectives in international justice processes might be improperly implemented, risking prejudice to the right of the accused to a fair trial and failing to satisfy victims' desires for justice.⁶⁹ Moreover, logistical challenges,

Recent Trends in Regional and International Tribunals, 23 *LEGAL STUD.* 1 (2003) (provides an overview of development in victims' rights).

61. G.A. Res. 40/34 (Nov. 29, 1985); G.A. Res. 60/147 (Dec. 15, 2005). For an assessment of these two instruments, with a particular focus on the right to reparations, see also M. Cherif Bassiouni, *International Recognition of Victims' Rights*, 6 *HUM. RTS. L. REV.* 203 (2006).
62. See Jonathan Doak, *The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions*, 11 *INT'L CRIM. L. REV.* 263, 266 (2011) [hereinafter *Therapeutic Dimension of Transitional Justice*]; Jonathan Doak, *Participatory Rights for Victims of Crime: In Search of International Consensus*, 15 *CANADIAN CRIM. L. REV.* 43 (2010) [hereinafter *Participatory Rights for Victims of Crime*].
63. See S.C. Res. 827, ¶ 2 (May 25, 1993).
64. See S.C. Res. 955, ¶ 1 (Nov. 8, 1994).
65. See S.C. Res. 1315, ¶ 1 (Aug. 14, 2000).
66. See G.A. Res. 52/135, ¶ 1 (Feb. 27, 1998).
67. See generally CHRISTOPH SAFFERLING & GURGEN PETROSSIAN, *VICTIMS BEFORE THE INTERNATIONAL CRIMINAL COURT: DEFINITION, PARTICIPATION, REPARATION* (2021). See also Anne-Marie de Brouwer & Marc Groenhuijsen, *The Role of Victims in International Criminal Proceedings*, in *INTERNATIONAL CRIMINAL PROCEDURE: TOWARDS A COHERENT BODY OF LAW* 149, 150 (Göran Sluiter & Sergey Vasiliev eds., 2009).
68. See David Mendeloff, *Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?*, 6 *INT'L STUD. REV.* 355, 356 (2004); Paul Gready & Simon Robins, *Transitional Justice and Theories of Change: Towards Evaluation as Understanding*, 14 *INT'L J. TRANSITIONAL JUST.* 280, 282 (2020).
69. See Marianna Tonellato, *The Victims' Participation at a Crossroads: How the International Criminal Court Could Devise a Meaningful Victims' Participation while Respecting the Rights of the Defendant*, 20 *EUR. J. CRIME, CRIM. L. & CRIM. JUST.* 315 (2012); Salvatore Zappala, *The Rights of Victims v. the Rights of the Accused*, 8 *J. INT'L CRIM. JUST.* 137 (2010);

such as delays in proceedings, language barriers, and security concerns, have meant that victim participation rights remain remarkably inconsistent across international judicial institutions.

Various studies have assessed the value and effectiveness of victim participation in international justice processes. For instance, in a 2011 study analyzing the degree to which international criminal trials and truth commissions provide healing and satisfaction for victims, Jonathan Doak relied on psychological studies about the emotional value of storytelling.⁷⁰ Doak identified shortcomings in four themes commonly associated with victim satisfaction—account-making, truth-finding, justice, and deliberative encounters.⁷¹ He found that these themes are associated with victim satisfaction, but that a psychological and empirical analysis of the effects of these measures is essential to ensure they are carried out effectively.⁷²

Doak submits that: (1) limits placed on account-making to regulate victim testimony reportedly frustrates victims, and justice institutions should confer victims with a right to a free narrative and measures to minimize secondary victimization; (2) truth-finding is not necessarily cathartic for victims, dependent on the nature of what is being revealed and the degree to which it reflects victims' expectations; (3) substantive justice must be complemented by procedural justice to provide therapeutic benefit to victims who feel they have been treated unfairly by the justice process; and (4) deliberative accounts between victims and perpetrators can be effective for victims, but this is highly dependent on the setting, as the adversarial nature of criminal trials or the public nature of truth commissions are often not conducive for catharsis or healing.⁷³

Similarly, in a 2008 study, Patricia Lundy and Mark McGovern found that in order for victim participation to be effective, justice institutions must incorporate a bottom-up approach that actively engages local actors.⁷⁴ They propose that this should not be implemented in isolation but as a complement to the more traditional top-down approach, in which justice measures are dictated to victims, often without due regard for their agency.⁷⁵

Additionally, "therapeutic jurisprudence" studies relying on psychological literature, victim survey assessments, and interviews with experts and victims

Brianne McGonigle Leyh, *Victim-Oriented Measures at International Criminal Institutions: Participation and Its Pitfalls*, 8 INT'L CRIM. L. REV. 375, 378, 407-08 (2012); *Therapeutic Dimension of Transitional Justice*, *supra* note 62, at 264; David Mendeloff, *Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice*, 31 HUM. RTS. Q. 592, 623 (2009) (finding that extant evidence on the effectiveness of truth telling initiatives doesn't support the claim that they ease suffering of victims).

70. *Therapeutic Dimension of Transitional Justice*, *supra* note 62, at 270.

71. *Id.* at 269.

72. *Id.* at 297.

73. *Id.* at 266; *Participatory Rights for Victims of Crime*, *supra* note 62, at 43.

74. Patricia Lundy & Mark McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, 35 J. L. & Soc'y 265 (2008).

75. *Id.* at 290.

found that victim participation measures have produced both therapeutic and anti-therapeutic impacts, the latter largely arising in the context of adversarial justice.⁷⁶ These studies conclude that victim participation can be therapeutic for the victims when they are shown “recognition and respect.”⁷⁷

While these studies uncovered valuable findings, they failed to provide local context for these perceptions given the very different historical and political circumstances, as well as social and cultural understandings, prevailing in each case.

A second wave of empirical research, however, has provided greater context to explain *why* the perceptions of justice of specific victim communities diverge from international justice responses and capacities largely focused on punitive justice.⁷⁸ In recent decades, victim participation in international justice has become central in the discourse about transitional and restorative justice, and such empirical data provides guidance on effective ways to integrate victim perspectives while adequately “balanc[ing] the existing rights of the accused with any potential rights for the victims.”⁷⁹

In a 2020 study, Paul Gready and Simon Robins proposed an actor-oriented approach to resolve the vagueness surrounding the concept of victim welfare, arguing for the development of clearly articulated and substantiated “theories of change.”⁸⁰ This meant “setting out ‘underlying assumptions about the relationships between desired outcomes and the way proposed interventions are expected to *bring them about*’”—to clarify the “parameters of . . . justice, to ground expectations of achieving particular outcomes, and to achieve greater coherence within . . . justice interventions and between . . . justice and adjacent sectors.”⁸¹ Gready and Robins argued that successful empirical studies require an awareness of our assumptions of how justice mechanisms improve victim welfare.⁸²

Elke Evrard et al. expanded upon this actor-oriented approach. They proposed that in order to achieve a “context-sensitive, process-based and multi-causal understanding of impact” of institutional participation of victims,

76. Bruce Winick, *Therapeutic Jurisprudence and Victims of Crime*, in THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE 3 (Edna Erez et al. eds., 2011); Edna Erez et al., *Victim Welfare and Participation Reforms in the United States: A Therapeutic Jurisprudence Perspective*, in THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE 15 (Edna Erez et al. eds., 2011); Helmut Kury & Michael Kilchling, *Accessory Prosecution in Germany: Legislation and Implementation*, in THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE 41 (Edna Erez et al. eds., 2011); Jo-Anne Wemmers, *Victims in the Criminal Justice System and Therapeutic Jurisprudence: A Canadian Perspective*, in THERAPEUTIC JURISPRUDENCE AND VICTIM PARTICIPATION IN JUSTICE 67, 80 (Edna Erez et al. eds., 2011).

77. Wemmers, *supra* note 76, at 80.

78. See Payam Akhavan et al., *What Justice for the Yazidi Genocide?: Voices from Below*, 42 HUM. RTS. Q. 1, 39 (2020).

79. Gready & Robins, *supra* note 68, at 280.

80. *Id.*

81. *Id.* at 280-81 (emphasis in original) (A “theory of change” is understood as “setting out ‘underlying assumptions about the relationships between desired outcomes and the way proposed interventions are expected to *bring them about*’”).

82. *Id.* at 281.

empirical studies should extend their focus beyond court-related mechanisms to the identities and interests of victims themselves, the spaces in which they have participated, the relation between different modes of participation, and the open-ended nature of possible outcomes.⁸³ They asserted that this approach allows empirical studies to “start from what people do and want to achieve, rather than from what institutions offer them.”⁸⁴

Brandon Stewart and Eric Wiebelhaus-Brahm provided more concrete guidance, and warned scholars to be cautious with how they use and interpret their samples.⁸⁵ For example, in the context of transitional justice, they advised against “overgeneralizing about what the findings mean in policy terms,” such as whether a certain sample can apply to both transitions from authoritarian rule and transitions from war.⁸⁶

The present survey takes guidance from these studies to better understand the perceptions amongst Rohingya and to develop an empirical basis for their integration into international justice processes. Previously, submissions such as those made by the ICC Registry,⁸⁷ and studies with Rohingya victims,⁸⁸ have detailed common Rohingya understandings of justice processes, perceptions of justice, and obstacles faced.⁸⁹ While these over-arching observations have been valuable, they have generally not situated their results within the Rohingya cultural framing, thereby limiting the extent to which the trends and aspirations observed in the Rohingya context can provide an empirical basis or actionable guidance. LAW’s survey on Rohingya perceptions of justice among Rohingya survivors in the refugee camps in Cox’s Bazar, Bangladesh sought to address this blind spot.⁹⁰

83. Elke Evrard et al., *The Meaning of Participation in Transitional Justice: A Conceptual Proposal for Empirical Analysis*, 15 INT’L J. TRANSITIONAL JUST. 428, 447 (2021).

84. *Id.* at 438.

85. Brandon Stewart & Eric Wiebelhaus-Brahm, *The Quantitative Turn in Transitional Justice Research: What Have We Learned About Impact?*, 1 TRANSITIONAL JUST. REV. 97, 121 (2017).

86. *Id.*

87. See, e.g., ICC, Annex I, 2019, *supra* note 58; *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Public Redacted Version of “Registry’s First Report on Information and Outreach Activities,” 6 July 2020, ICC-01/19-33 (July 6, 2020) [hereinafter ICC, Registry’s First Report, 2020].

88. See, e.g., *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Submissions on Behalf of the Victims Pursuant to Article 19(3) of the Statute (May 30, 2018); *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Observations on Behalf of Victims from Tula Toli (June 18, 2018); *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Victims’ Joint Request Concerning Hearings Outside the Host State (Aug. 4, 2020); *We Also Have Dreams: Ongoing Safety and Quality of Life Issues for Rohingya Refugees in Bangladesh*, BURMA HUMAN RIGHTS NETWORK (2022) (from October 2020 to April of 2021 BHRN interviewed twenty-nine refugees aged fourteen to sixty from ten different camps in Cox’s Bazar).

89. Jessica Olney & Shabbir Ahmad, *Beyond the Coup in Myanmar: The Views of Rohingya Refugees in Bangladesh*, JUST SECURITY (June 10, 2021).

90. LAW Survey Report, *supra* note 13.

IV. METHODOLOGY

In October and early November 2022, a team of researchers collected empirical data from a sample of 444 Rohingya refugees.⁹¹ Most have limited literacy levels, having come from impoverished rural communities, and having been denied access to formal education by discriminatory laws and policies.⁹² Additionally, they are predominantly a traditional community, with very limited integration into modern state structures, and thus accustomed to settling disputes informally among authority figures within their communities.⁹³ Their perceptions of justice are situated in the context of their lived experiences before, during, and after the atrocities they witnessed and survived.

At a general level, the survey findings were broadly consistent with previous studies of Rohingya perceptions of international justice. At a more granular level, however, the culturally specific dimension of the survey surfaced restorative needs and conceptions of accountability that international justice is not adequately prioritizing, but theoretically could.⁹⁴ For instance, the survey found that Rohingya priorities lie more with securing legal status, rights, and protections, reflective of their exigent suffering, rather than the punishment or reprimand that lengthy and distant ICC or ICJ proceedings might bring. While it is possible that a fraction of the immediate needs of the Rohingya could be met, for instance, through post-judgment reparations orders of the ICC and ICJ, the provision and enforcement of such measures would be far from immediate. This divergence “underscore[s] the need for scholars and advocates to make a concerted effort to listen to the voices from below before defining ‘justice’ narrowly as accountability through criminal trials.”⁹⁵

Rohingya views on justice were gathered primarily through qualitative research methods. Data was gathered through a mix of semi-structured focus group discussions and in-depth individual interviews with key informants. The interviews and data processing were performed by a team of thirty-two Rohingya community-based researchers (which included the facilitators of focus group discussions (FGDs), transcribers, translators, and a data archivist) currently living in the refugee camps in Bangladesh, in collaboration with the lead researchers.

91. *Id.*

92. Eleanor Albert & Lindsay Maizland, *The Rohingya Crisis*, COUNCIL ON FOREIGN RELATIONS (Jan. 23, 2020).

93. Daniel Coyle et al., *Voices of Our Hearts: Clan, Community, Nation: Belonging Among Rohingya Living in Makeshift Camps*, U.N. INTERNATIONAL ORGANIZATION FOR MIGRATION (2020) [hereinafter Coyle et al.].

94. Akhavan et al., *supra* note 78, at 38. See also Rebecca J. Hamilton, *Platform-Enabled Crimes: Pluralizing Accountability When Social Media Companies Enable Perpetrators to Commit Atrocities*, BOS. COLL. L. REV., 1351, 1379-414 (2022) (discussing what a survivor-centered approach to justice could look like in light of the atrocities faced by Rohingya).

95. Akhavan et al., *supra* note 78, at 2.

Both focus group discussions and individual interviews with key informants were conducted with the same interview tool (Appendix 1)⁹⁶ which was developed through a process of extensive testing and adaptation over a three-week period of testing and review of initial data. The survivors received an extensive explanation of the scope and purpose of the research before the interviews commenced, and all interviews were recorded with informed consent.⁹⁷

Semi-structured interviews were conducted by a team of male and female Rohingya researchers living in the refugee camps through seventy-six focus groups⁹⁸ chosen from randomly selected sub-blocks across the camps. Randomized selection mitigated any selection bias in the recruitment of participants who, in general, were eager to participate in the discussions and expressed a desire for their views on justice to be recorded. Focus groups, however, were organized based on age because of cultural dynamics that change what information is shared and how opinions are expressed in the presence of other generations.⁹⁹ Specific focus-groups comprising additional populations (persons with disabilities, religious leaders, trans/intersex/third gender *Hijras*, widows, victims with severe injuries from the violence) were separately identified and included in the sample to ensure minority voices were incorporated.¹⁰⁰

Individual key informant interviews were conducted with fifteen Rohingya identified by the community-based researchers on the basis of their

96. See *infra* Appendix I for interview tool. Initially, questions about what Rohingya desired as an outcome of a justice process were not widely understood and needed extensive refinement for participants to better understand and articulate what constituted a just decision or outcome. The English version of the tool provided in Appendix I represents a back translation of the questions that were developed and refined through testing and feedback from the Rohingya community-based researchers (note: because of the back translation, some of the questions may sound strange when phrased in English).

97. All interviews were transcribed by a team of dedicated community transcribers with experience in transcription. The lead consultants later reviewed and checked transcriptions for accuracy.

98. The researchers all had training and previous experience conducting qualitative interviews within the camps. Additionally, they received four three-hour trainings about justice broadly, the ICC and ICJ proceedings, and the use of mixed qualitative/quantitative data collection techniques that were employed for the focus groups. After trainings, they tested the tools and provided feedback on how to improve them to eliminate any challenges in starting data collection more formally.

99. In general, younger participants would be less likely to share divergent opinions or opinions in general in the presence of an older person.

100. This ensured representation by persons with disabilities, *hijra* (a traditional group of people assigned male at birth who later present as women and may either identify as women or as *hijra*. The nearest Western approximate terminology would be “transgender women” but the *hijra* identity has specific cultural and traditional characteristics and practices associated with it), religious leaders including *imams*, *hafez* (those who have memorized the Quran), and Amirs of the South Asian religious tradition of Tablighi Jammat, which is the predominant form of Islam practiced in the camps, and widows. See *infra* Appendix I for breakdown by population.

social status and reputation (*izzot*).¹⁰¹ Six of these were with women and nine with men.¹⁰²

Quantitative data was derived from four standardized groups of open-ended questions asked in each focus group discussion. The answers from the participants were coded by identifying key words used in their responses.¹⁰³

The questions posed were as follows:

1. As a victim, what are the one or two things you need to receive to feel that you get justice?
2. Should the Rohingya get anything to heal the damage done or reduce the trouble faced? What do they need? What is important to them for this?
3. Should anyone be punished for what was done to the Rohingya? Who? Why is it important to punish anyone for these crimes?
4. Are Rohingya leaders included in the ICC/ICJ processes? Are Rohingya people included in the justice process? Which leaders? How?

Qualitative data was analyzed using an inductive approach to create common themes from the interviews and focus group discussions.¹⁰⁴ Overall, there was a high degree of congruity in the findings with most variation occurring on secondary points.

It bears emphasizing that these findings are not reflective of the entirety of the Rohingya diaspora. Nor does this data capture the experiences of Rohingya living in Myanmar. While there is sufficient data from both male and female participants to conduct a thorough analysis, there is comparatively more data from male research participants due to accessibility of populations. The researchers and the authors believe that the data is representative of the general opinions within the camp population when the interviews were conducted but underscore that these opinions are likely to evolve.

V. JUSTICE THROUGH ROHINGYA EYES: FINDINGS OF THE SURVEY

Nearly four years after international justice proceedings first began, a million Rohingya remain stranded in Cox's Bazar.¹⁰⁵ The interviews sought to capture

101. *Izzot* can be translated as “honor” in Rohingya and generally relates to social standing within the community. For further discussion on *izzot*, see Coyle et al., *supra* note 93.

102. The interviews with women were conducted by a Rohingya woman (name not disclosed due to security and safety concerns) with extensive research experience. The interviews with men were conducted by one of the lead researchers, Abdullah Jainul, who is a Teknaf native, speaks Rohingya fluently, and has over two years' experience conducting research in the camps in Bangladesh.

103. The answers from the participants were coded by indicatively identifying key words used in responses to the questions. This enabled a better understanding of how certain views are dispersed within the population.

104. See generally MATTHEW B. MILES ET AL., *QUALITATIVE DATA ANALYSIS: A METHODS SOURCEBOOK* (2019).

105. *Emergency Appeal: Rohingya Emergency*, UNHCR (Nov. 2023).

the views of this population, and to understand them within the context of their daily lives in the camps, which one female participant described as “like hell.”¹⁰⁶ As another participant explained, “[s]pending one day here is like spending six or seven years.”¹⁰⁷

Rohingya do not feel safe in the camps. The shelters they live in are temporary and do not provide enough protection from the natural elements. Meanwhile, organized criminal activity is widespread, and the humanitarian aid and support services initially deployed to Cox’s Bazar have been progressively reduced.¹⁰⁸

The camps in Cox’s Bazar are fenced, limiting mobility outside the camps.¹⁰⁹ Moreover, Rohingya in the camps are prohibited from formal employment or education opportunities in Bangladesh.¹¹⁰ In addition to dwindling humanitarian aid, Rohingya have no ability to access an independent source of income.¹¹¹ Given concerns over further ethnic cleansing by Myanmar, the policy of Bangladesh remains that the Rohingya must be repatriated once conditions are appropriate. This places Rohingya in limbo; they may not be able to return to Myanmar in the foreseeable future, yet they are not able to integrate into Bangladesh either.¹¹² The totality of these conditions means that the genocide of the 2016-2017 clearance operations is not experienced as a past trauma, so much as an ongoing situation. Rohingya exist in this indeterminate time and space, their societal structures destroyed and their cultural and linguistic identity disappearing, with no autonomy or opportunity to progress beyond the events that forced them to flee.

A. Lived Experiences of Justice Processes

Few Rohingya have any experience with formal courts, and whenever formal law has been applied to them, it has been to impose discriminatory restrictions on their travel, education, marriage, and reproductive freedom.¹¹³ In the face of this state-sponsored oppression, it is unsurprising that Rohingya have developed a preference for traditional community-level governance and justice proceedings involving local, familiar arbitrators.¹¹⁴

106. Research participant code: F2-2.

107. Research participant code: M1-2.

108. See generally Coyle et al., *supra* note 93.

109. See *Restrictions on Rohingya Freedom of Movement in Bangladesh “This Persecution Is the Worst There Is,”* YOUTH CONGRESS ROHINGYA (Sept. 2023).

110. There is some primary education available, but the curriculum offered is not recognized in either Myanmar or Bangladesh. See Md. Rahim Ullah, *Rohingya Education in Myanmar and Exile*, RESEARCH GATE (Nov. 2023); See *Why Rohingya Children Are Being Deprived of Education*, DAILY SUN (Dec. 22, 2023).

111. *Rohingya Refugees Face Hunger and Loss of Hope After Latest Ration Cuts*, UNHCR (Jul. 19, 2023).

112. *Id.*

113. See generally Coyle et al., *supra* note 93.

114. *Id.*

Within Rohingya communities, dispute resolution and justice proceedings have traditionally been the responsibility of a *shomaz*—a committee comprised of male community members with social standing (*izzot*).¹¹⁵ These committees and the extended family networks they are embedded within developed over centuries, and have often been the sole source of support for people throughout extended periods of formal rule by governments hostile to the Rohingya.¹¹⁶ It is these in-person kinship systems that Rohingya know and trust in respect of governance, and especially in relation to justice.¹¹⁷

Under communal justice traditions, the village *shomaz* sits disputants together in a circle to discuss the problem.¹¹⁸ Often, disputants are represented by their clan elders or people that they trust within the *shomaz*.¹¹⁹ Of critical importance is that all members of the dispute—both those who perpetrated the harm and those who were harmed—are present when the issue is discussed and decided face-to-face.¹²⁰ Over time, the Myanmar state began to exert some control over these local justice processes. Under the state-led justice system, the Village Tract Chairmen (*Ukkattas*) who were selected by the villagers gradually became more involved in arbitration of community disputes, especially from the 1990s onwards, but the *Ukkatta* would still rely on local leaders as part of deliberations.¹²¹

In terms of sources of law, Rohingya reference *sharia* (Islamic law), the *hadith* (traditions of the prophet), and customary law as guiding principles in reaching a judgement.¹²² Within these traditions, the *shomaz* have supreme authority to decide on a wide range of punishment and compensatory actions according to their discretion.¹²³ The goal of these justice proceedings is a mediated resolution between disputants or an arbitrated settlement with a clear delineation of right and wrong determined by those with *elom* (wisdom, knowledge, or education).¹²⁴ These communal justice systems vest total discretion in the adjudicators to reach a correct decision, with a distinction between substantive justice (*insaaf*, a just decision) and procedural justice (*bisar*).¹²⁵

There is therefore a significant difference between Rohingyas' lived experience of justice and the international justice institutions, at least as

115. *Id.* at 6.

116. See generally Coyle et al., *supra* note 93.

117. *Id.*

118. LAW Survey Report, *supra* note 13.

119. *Id.*

120. *Id.*

121. This transition was associated with the gradual build up and oppression of the Rohingya population. Many *Ukkattas* were perceived as corrupt and would simply make decisions based on whichever party had bribed them. Progressively over the years, *Ukkattas* were selected from ethnically Rakhine communities even in Rohingya majority areas. Fines and other judgements issued through these processes were also paid out to the state and not to the claimant.

122. LAW Survey Report, *supra* note 13.

123. *Id.*

124. See Coyle et al., *supra* note 93.

125. *Id.*

regards the actors presiding over the justice process and victim participation. As one participant described the ICJ proceedings:

The accused was produced but the victim was not summoned. Yes, the accused has been produced but the victim has not been produced. If my brother is killed, I will be the victim and I will file a case, but they have not produced the victim. I am asking someone—what kind of rules these are that the accused appears but the victim does not have to appear? . . . I [do] not understand what kind of [court] is this court.¹²⁶

The idea that justice for Rohingya victims could be achieved in the absence of the victims themselves is hard to reconcile with their lived experiences of a justice process. This perceived foreignness of the process does not automatically mean that the ongoing ICJ and ICC proceedings are irrelevant or illegitimate in the eyes of Rohingya communities. Instead, it helps explain their inability to comprehend the procedure and, in turn, fuels the misconceptions (as discussed in the survey findings below) that the documentation efforts done to date have not enabled Rohingya to share their experiences effectively with the courts.

B. The Meaning of Justice: Expectations

In view of the ongoing struggles of daily life in the camps, the interviews began without any assumption that questions about “justice” would resonate with the survivors. Given the scale and severity of the harms experienced by those the researchers spoke with, it is hard to imagine what justice could even look like. But when participants were asked whether justice was relevant to their lives in the camps, every single participant answered resoundingly in the affirmative. As one participant described it: “[i]f a person doesn’t eat food they can’t live for long in the world; they stay alive but cannot live for long. Justice is as important for us as food for humans.”¹²⁷

Stranded in the camps, the notion of justice seems to have become a totem—imagined to be a panacea for all historical and contemporary harms. This of course begs the question of what, in concrete terms, survey participants had in mind when they spoke of justice. Each participant was asked to identify one or two concrete things they needed to see happen to feel that they personally had received justice.

As seen in Figure 1 (below), 86 percent of participants said they needed citizenship and the right to identify as Rohingya in Myanmar.¹²⁸ Indeed, many participants used the terms justice and citizenship interchangeably. Equating justice with citizenship was the signature finding of the entire research project with extraordinary unity expressed on this point. It is, however, not a

126. Research participant code: KII a5.

127. Research participant code: M5-5.

128. LAW Survey Report, *supra* note 13.

new result, but rather further validation of what Rohingya have been saying through various channels consistently for several years.¹²⁹

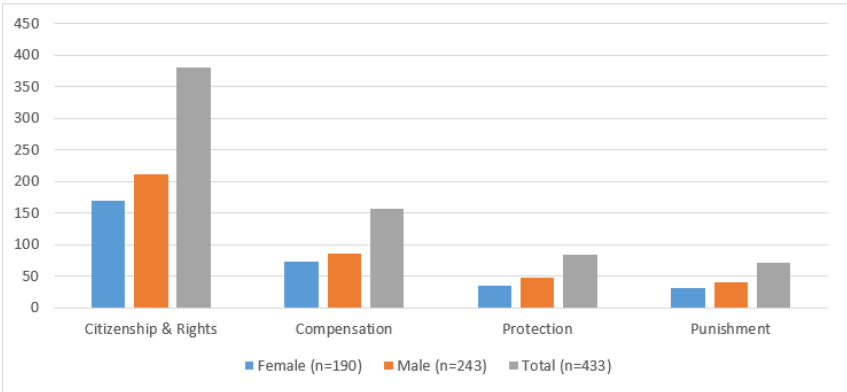


Figure 1. What are the one or two things you need to receive to feel that you get justice?

Rohingya participants view equal citizenship—the recognition of Rohingya as an ethnic group indigenous to Myanmar—as the gateway to all other rights. “We didn’t have a nationality card. That’s why they could oppress us,” explained one participant.¹³⁰ Another participant explained citizenship as justice in this way: “What is the reason for the issue that happened on us? We need to fix the root cause. If we want compensation, their punishment, and such things, I don’t think we get out justice. The best justice for us is to fix the root cause of the problem.”¹³¹

Adults and elderly participants emphasized the connection between citizenship and opportunity for future generations.¹³² In the words of one participant, “[j]ustice [meaning citizenship] is important for our children and grandchildren. If it prevails, they will have access to education and they will be able to become successful . . . in Myanmar.”¹³³ As another explained:

Justice [meaning citizenship] is important. If we get it, we will be able to spend [the] rest of our life in our native land, and our children will have access to education. Now, we cannot claim Myanmar as our native land. If we can return there with justice, our children will be able to claim it as their native land.¹³⁴

129. See, e.g., *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Public Redacted Version of Annex I to the Final Consolidated Registry Report on Victims’ Representations Pursuant to the Pre-Trial Chamber’s Decision, ¶ 6, 20-22, 32, ICC-01/19-6 (June 28, 2019); Olney & Ahmad, *supra* note 89.

130. Research participant code: F2-1.

131. Research participant code: M1-6.

132. LAW Survey Report, *supra* note 13.

133. Research participant code: F1-3.

134. Research participant code: F1-3.

Apart from citizenship, participants expressed a desire for justice to come in the form of compensation, protection (non-repetition of violence), and punishment, with only 16 percent of participants identifying the latter as something they would need to see happen in order to feel that justice had been done.¹³⁵ Amongst those who sought punishment, it was directed at Myanmar military's Commander-in-Chief, Min Aung Hlaing (59 percent), the military generally (38 percent), and Aung Sun Su Kyi (25 percent), the State Counsellor at the time of the clearance operation. Only a small fraction (2-3 percent), mainly survivors of torture and sexual and gender-based violence, sought corporal punishment and shared graphic accounts of the punishment that they felt must be meted out to their perpetrators. Though many participants expressed desire for revenge for their lost relatives, they also stated that for them this was not necessarily the most meaningful form of justice. This perception in favor of maintaining communal harmony can be said to be rooted in the Rohingyas' lived experience of justice—the researchers during the survey were often told that following the communal dispute resolutions, disputants would be asked to shake hands, apologize, and promise to put their grievances behind them.

The desire for compensation seen in this survey mirrors one of the priorities stated by the victims of mass atrocities in other contexts as well. For instance, in a 2012 study with twenty-eight Rwandan genocide survivors after the *Gacaca* courts were officially closed, victims interviewed explained that reparation was an integral part of the justice process.¹³⁶ Survivors were dissatisfied that no compensation was offered to those who lost relatives. This was summarized in one testimony as follows: “when you lose a person, normally people come to you and give you something—often money—to cover expenses, to compensate you. However, this was not considered in *gacaca* for people who lost their relatives. *Gacaca* only provided reparation in cases concerning property crimes.”¹³⁷ Similarly, a 2015 study based on thirty qualitative interviews conducted at the Khmer Rouge Tribunal in Cambodia noted that although most victims were told explicitly that the ECCC would not offer any form of individual compensation, many continued to insist that individual reparation was essential to their definition of justice.¹³⁸

Another notable theme that emerged was “protection” which was explained by participants to mean the establishment of a peacekeeping force in Rakhine, led by the UN or other countries, to ensure that genocide would not occur again. Such understanding of protection from violence (i.e., through the international community's involvement) was also a key finding in a field

135. LAW Survey Report *supra* note 13.

136. Anne-Marie de Brouwer & Etienne Ruwebana, *The Legacy of the Gacaca Courts in Rwanda: Survivors' Views*, 13 INT'L CRIM. L. REV. 937, 960 (2013); see also Jordan Nowotny, *The Limits of Post-genocide Justice in Rwanda: Assessing Gacaca from the Perspective of Survivors*, 23 CONTEMP. J. REV. 401 (2020).

137. de Brouwer & Ruwebana, *supra* note 136, at 960.

138. See Elisa Hoven & Saskia Scheibel, “Justice for Victims” in *Trials of Mass Crimes: Symbolism or Substance?*, 21 INT'L REV. VICTIMOLOGY 161 (2015).

survey with one thousand Yazidi genocide survivors where the majority of respondents (between 61-69 percent) prioritized international protection against further harm.¹³⁹

The Rohingyas’ prioritization of citizenship, compensation, and protection reflected in the findings above were consistent with another question asked to all participants in the survey to further probe the concrete meaning of justice to them. When asked if Rohingya in general should receive anything to heal the damage done, the top three responses were citizenship, compensation, and protection (see Figure 2), with citizenship again the clear top priority.¹⁴⁰

As noted by one participant: “We want international community to destroy [the] 1982 law, and we hope they will do it. We had Myanmar citizenship, and we were living there since long time, and our citizenship should be restored. If they provide these two things, we will get everything.”¹⁴¹

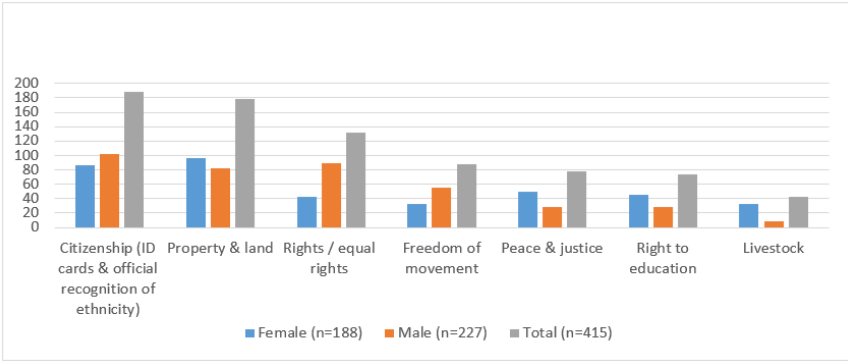


Figure 2. Should Rohingya get anything to heal the damage done?

In the words of another participant, “[e]xcept citizenship, we don’t want anything else [from the ICC or ICJ].”¹⁴²

As readers will be aware, the one clear manifestation of justice sought by Rohingya refugees in Cox’s Bazar—equal citizenship rights in Myanmar—is something that only the Myanmar government can grant. Even if the Rohingya refugees in Cox’s Bazar were perfectly informed about the mandate and enforcement powers of the ICC and ICJ, these international justice

139. Akhavan et al., *supra* note 78, at 16.
140. LAW Survey Report, *supra* note 13.
141. Research participant code: M2-2.
142. Research participant code: F1-6.

processes would fail to meet their expectations of justice. Yet, as interviews with participants in this research revealed, the Rohingya population in Cox's Bazar is far from well-informed about the limitations of international justice.

C. International Justice Processes: Level of Understanding

All participants were asked whether they knew of anyone working to provide justice for the Rohingya. In cases where participants were unable to provide a response, we offered a short prompt about the cases at the ICC and ICJ. Survey participants were asked what they knew about the international justice cases and from where they received their information. Across the board, participants had limited knowledge of the cases being undertaken in their names.

Generally, participants referred to a “Rohingya justice case” or “our case” seemingly unaware that the proceedings at the ICC and the ICJ are two different forums. Moreover, there was little understanding of the mandate, procedures, or enforcement capacity of either court. Frequently participants assumed that “our case” for justice would deliver the justice they sought—namely citizenship.

It makes sense that in the absence of specific information about the outcomes that international courts can deliver, Rohingya have filled in the gaps with their own assumptions based on their own experiences of justice, such as the *shomaz* which has total discretion to decide on a just outcome.¹⁴³ If justice for the Rohingya means citizenship, then it follows that citizenship is what a justice process should deliver. Unfortunately, such beliefs are divorced from the reality of the outcomes that judges at the ICC or ICJ can reach.

This mismatch of expectations and lack of understanding is not entirely novel to the Rohingya context. Confusion seemed to extend to most aspects of the ECCC too, with Cambodian victims having a difficult time describing the different responsibilities of legal actors such as judges and prosecutors, and misunderstanding their own rights.¹⁴⁴ Furthermore, survivors participating in Case 001 at the ECCC believed that they were going to be entitled to individual, financial reparations and reported serious distress upon discovering that they would not be receiving any money.¹⁴⁵

As with the importance of citizenship, this finding, that Rohingya refugees in Cox's Bazar are poorly informed about international justice, is not new information. The ICC Registry's first outreach report in 2020 concluded that

143. See Coyle et al., *supra* note 93, at 6.

144. See Hoven & Scheibel, *supra* note 138.

145. Rachel Killean, *Procedural Justice in International Criminal Courts: Assessing Civil Parties' Perceptions of Justice at the Extraordinary Chambers in the Courts of Cambodia*, 16 INT'L CRIM. L. REV. 1, 30 (2016).

“there is massive confusion and that the overwhelming majority of people have very little information and understanding, if any, of these various justice initiatives and, importantly, their different mandates and functions.”¹⁴⁶ It should be concerning to all advocates of international justice that four years later, there seems to have been little improvement in this regard.

In some cases, participants expressed frustration at those involved in the international justice system, notably the perceived lack of engagement of ICC and ICJ lawyers with the survivors:

I have a question that people or organisations who have been working for us in the ICC/ICJ judgement for about five years . . . They said that they are working for us to fix our issue, but there's no result . . . about it. We have been facing challenges with everything such livelihood, habitation, etc. We are blaming them, why they are delaying to make a verdict to our complaint. It has passed five years that we have been living in the camps. We want to say that we are facing problems [. . .].¹⁴⁷

High expectations combined with a lack of knowledge, alongside a lack of tangible progress, can lead to disenchantment. A 2010 study relating to Bosnia and Herzegovina, based on interviews with twenty-three survivors from a region that was the site of “particularly brutal and widespread violence,” concluded that most victims viewed the ICTY with hope and promise at the beginning, but ultimately grew frustrated and lost hope that the tribunal could bring about reconciliation or meaningful change.¹⁴⁸ Significantly (and mirroring the experience of the Rohingya), the overwhelming majority of non-Serbian victims from the region studied were refugees after the war, and their primary concern was securing basic necessities and returning to their homes.¹⁴⁹ Most had little knowledge about the ICTY.¹⁵⁰ At the outset, as indictments were brought against leadership figures, victims became hopeful that the tribunal would impose accountability and usher in a new era.¹⁵¹ As proceedings wore on, however, some indictments were dropped, and sentences were less severe than victims hoped.¹⁵²

A 2015 study of victim perceptions of the ICC noted the importance of victim outreach and the deleterious effects its absence can have on public understandings and perceptions of the tribunal and post-conflict justice more generally.¹⁵³ This sense of disenchantment with the ongoing justice processes was clearly present in the Rohingya survey population as well.

146. ICC, Registry's First Report, 2020, *supra* note 87, ¶ 14.

147. Research participant code: M1-3.

148. Refik Hodzic, *Living the Legacy of Mass Atrocities—Victims' Perspectives on War Crimes Trials*, 8 J. INT'L CRIM. JUST. 113, 116, 117 n 7, 118 (2010).

149. *Id.* at 119.

150. *Id.*

151. *Id.* at 120.

152. See generally DIANE ORENTLICHER, *SOME KIND OF JUSTICE: THE ICTY'S IMPACT IN BOSNIA AND SERBIA* (2018).

153. Alexa Koenig et al., *THE VICTIMS' COURT? A STUDY OF 622 VICTIM PARTICIPANTS AT THE INTERNATIONAL CRIMINAL COURT UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW HUMAN RIGHTS CENTER 1-4* (2015).

D. International Justice Processes: Level of Involvement

In the set of questions regarding international justice, participants were asked whether they thought Rohingya were included in the ICC's work. The majority (81 percent) said they did not know.¹⁵⁴ Of the remaining participants, most (fifty-six out of eighty-six) believed that the Rohingya population was not included in the ICC.¹⁵⁵

In fact, victim participation is embedded within the ICC's procedures. Victims' representatives have been doing outreach and making submissions to the Court. Some Rohingya participants in the survey had been engaged in these processes. As one participant explained it:

[P]eople like to come to us and report our voices to their boss by collecting from us. The boss can use a smartphone or laptop to reach all of our voices to the ICC in no time. There are lawyers who receive this information, and they prepare a file with our information. On the day of hearings in the court, the file is presented there.¹⁵⁶

More commonly though, there was little awareness of this activity. And in some cases, previous engagement by Court staff was now being viewed in a negative light because of the absence of progress in the Court's work.

I don't think our demands are being presented [at the ICC]. Different people come here to take interviews and collect information from us. They promise to reach our information to the international levels. Even after spending five years, we haven't seen any improvement in the justice process. Now, we think the people who collected information from us have not actually [taken] our demands to the higher levels.¹⁵⁷

The perceived lack of Rohingya representation at the international courts was repeatedly highlighted by participants as a reason for the absence of progress towards citizenship. “If the voices from our protests reached to the [ICC/ICJ] our case would have been solved today. Our case isn't being solved there because our voices are not actually reaching there.”¹⁵⁸

There are at least two observations to draw from these responses. First, and akin to the previously discussed findings, Rohingyas' frustration with their lack of participation and the remoteness of the ongoing international justice process is not new. Second, it reflects the deep-seated procedural expectation amongst the Rohingya given their lived experiences of a justice process where the victim is also necessarily present and involved.

154. LAW Survey Report, *supra* note 13.

155. *Id.*

156. Research participant code: F1-4.

157. Research participant code: F1-6.

158. Research participant code: F1-1. Interestingly, this echoes views from an entirely different survivor population, the Yazidi genocide victims in Iraq, who told researchers they believed that if the international community actually knew what they have suffered, they would have resolved their situation already. See Akhavan et al., *supra* note 78, at 24.

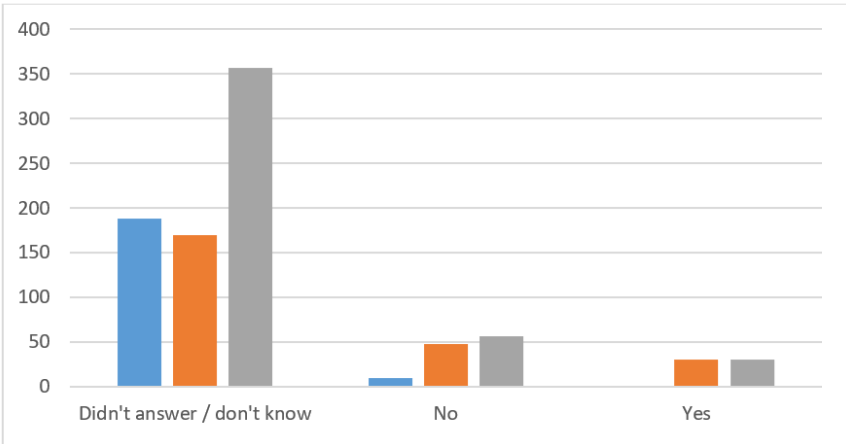


Figure 3. Is the Rohingya population included in the ICC process?

Already Rohingya have specifically asked the ICC, through a victim submission, to explore avenues to hold the proceedings in Bangladesh or another country in the region within reasonable proximity of the affected population. They argued their request was timely, even in advance of arrest warrants being issued, to enhance the perceived legitimacy of the ongoing investigation. The ICC Pre-Trial Chamber, however, denied the request to explore this possibility as premature given there were no forthcoming hearings on the horizon, and citing the difficulties of even investigating in Bangladesh in light of the COVID-19 pandemic at the time.¹⁵⁹

VI. CONCLUSION: IMPLICATIONS FOR INTERNATIONAL JUSTICE

Despite the extremely challenging circumstances in the Rohingya refugee camps in Cox’s Bazar, not a single participant in the survey considered the question of justice to be unimportant or irrelevant. Every single participant stated that they wanted justice for their inhumane treatment in Myanmar, particularly the genocidal violence during the 2017 clearance operations.

159. *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Decision on Victims’ Joint Request Concerning Hearings Outside the Host State, ¶ 27, ICC-01/19-38 (Oct. 27, 2020) (Notably, the Chamber stated that “it would be unproductive to request the Registry to conduct a more extensive assessment of the possibilities of holding hearings in Bangladesh or other locations in the region. Nevertheless, the Chamber will keep the possibility of conducting certain procedural steps *in situ* under review.”).

However, the narratives collected make it clear that for the Rohingya, justice is not simply a question of accountability for past crimes, but an ongoing reality as they continue to live the consequences of Myanmar’s ethnic cleansing campaign, stuck in a limbo in the refugee camps, and in some cases with serious long-term physical and psychological injuries.

Despite pointing out the foreignness of the process itself, and low confidence about international justice processes being able to effectively take account of the experiences they have relayed to international interlocutors thus far, several participants still wanted the chance to attend the hearings themselves, provide direct testimony, and engage in direct confrontation or dialogue with the accused. This reflects a striking desire on the part of the participants to be involved in the ongoing justice processes, notwithstanding their skepticism. This suggests it is important for existing community outreach efforts to be increased and continued in a sustained manner by the relevant actors.¹⁶⁰ This is necessary to ensure an adequate level of understanding within the Rohingya community about international justice processes, their duration, the limitations on in-person participation, and, in turn, their perceived involvement in the ongoing justice processes.

In terms of what justice means to the Rohingya, the survey reflects that the substantive conception of justice held by the Rohingya diverges significantly from the expected outcomes of the ongoing international proceedings. For most of the participants, justice is viewed as fixing the root cause of their problem—i.e., not merely bringing the perpetrators to trial, but instead being conferred citizenship, compensation, and protection. The vision of justice expressed in the survey data goes not only beyond retributive and/or expressive notions of justice, but also beyond restorative justice. Rohingya seek not only “safe, dignified, and voluntary” return to their homeland—the oft-used phrase to depict the solution of the Rohingya crisis—but also to obtain the citizenship and belonging that would in turn grant them the full bundle of rights that they have been deprived of for over half a century. For most, returning to their homeland without citizenship is “unthinkable.” In sum, the Rohingya are seeking transformative and comprehensive justice, which is not something that the ongoing international justice processes offer.

Considering these findings, it is important to both manage expectations of the Rohingya community and, at the same time, catalyze open and equal dialogue between survivors and the international justice community to push for outcomes that will be more meaningful to Rohingya than what is currently on offer. Clearly, more effort is needed to bridge the enormous gap

160. Updates on current outreach activities of the ICC and IIMM can be seen on the ICC registry reports and IIMM bulletins. See e.g., *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Public Redacted Version of the “Seventh Registry Report on Information and Outreach Activities” (June 16, 2023); IIMM Bulletin, Issue 7 (Oct. 2022).

between the refugee camps and “The Hague bubble.” Of course, it may not be possible to completely reconcile the divergence between the community’s demands and the ongoing justice processes considering the circumscribed mandate of the respective international justice mechanisms. But as an ethical matter, engagement with the grassroots is essential, because the means and ends of justice should be consistent.¹⁶¹ This may require initiating dialogue to reshape legal interventions and the ongoing proceedings/investigations in a way that creates pathways to meet the community’s expectations for participation, as well as their desire for future protection and compensation. This may necessitate further consideration of modalities for reparations and rehabilitation for survivors including establishment of trust funds or promoting lines of inquiry as part of current investigations that can in parallel result in freezing of assets of the perpetrators in Myanmar for potential reparations in the future.¹⁶²

From the Rohingya perspective, shifting focus away from retributive justice is not only important to bring about an outcome which is closer to their expectations, but it is also vital for their future in Myanmar as they see it. Admittedly, there was a sizeable number of participants (16 percent) who sought punishment.¹⁶³ However, more commonly, there was an emphasis on communal unity and reunification which has long been a survival strategy for the Rohingya in the face of external pressure and hardship. The experience of permanent loss was omnipresent in discussions about punishment and even when participants spoke of revenge for their lost relatives, they acknowledged that it was contrary to resolution of their predicament and distinct from justice. Participants noted that:

161. *Id.*

162. At the international level, in the case of *Prosecutor v. Bosco Ntaganda*, the ICC assessed Mr. Ntaganda’s liability for reparations and asked court officials to “continue exploring whether Mr Ntaganda possessed any undiscovered assets” and monitor his finances “on an ongoing basis” (see *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2858-Red, Addendum to the Reparations Order of 8 March 2021, ¶¶ 358-63 (July 14, 2023)). Also at the international level, the UN Compensation Commission previously had the UN Compensation Fund, which received a percentage of the proceeds generated by the export sales of Iraqi petroleum and petroleum products to redress victims of Iraq’s invasion and occupation of Kuwait in 1990-1991, <https://micicinitiative.iom.int/united-nations-compensation-commission-uncc-0>.

At the domestic level, in the Philippines, the Human Rights Victims’ Claims Board was established to provide reparations to victims of the regime of Ferdinand Marcos and was financed from funds from Marcos’s wealth (Republic Act No. 10368, An Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime, Documentation of Said Violations, Appropriating Funds therefore and for other Purposes, Section 7). Also at the domestic level, in Colombia, the Revolutionary Armed Forces of Colombia-People’s Army agreed to contribute to reparation as part of the peace agreement they signed with the Government of Colombia in 2016 (Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, ¶¶ 5.1.3-5.1.4 (Nov. 2016)).

163. LAW Survey Report, *supra* note 13.

[There is a] proverb saying that, if a dog bites me, I shouldn't bite it back. If [they are] to be punished for what was done to us, they will have more hatred and anger towards us. It can be enough for us if they don't torture us again and we can live there peacefully.¹⁶⁴

No one should be punished for what was done to us. That may be our fault or their fault. Whatever meant to happen, has happened. They should mediate both of us.¹⁶⁵

This empirical study, based on an extensive survey among Rohingya victims and in particular viewing their perspectives in cultural context, should be a reality check for international justice practitioners around the world. The survey results show us that as important as the ICC and ICJ may be, it is not enough to offer just one pathway toward justice. Steering the current accountability discourse away from punitive justice towards a wider transformative justice, embedded with timely reparations in the form of compensation and/or protection against further violence, may go some way to addressing what matters most for survivors. It may seem impossible at present to deliver the citizenship and other rights that the Rohingya desire, to restore lost worlds irretrievably destroyed by horrific violence. Indeed, it is humbling to realize that the enormity of genocide cannot be reduced to the confines of legal processes, that accountability before international courts and tribunals is both imperative and inadequate; but the beginning of every journey towards justice is to help victims reclaim their humanity by listening to their voices.

164. Research participant code: F1-2.
165. Research participant code: M1-10.

APPENDIX I: ADDITIONAL METHODOLOGICAL INFORMATION

A. Survey Tool: Questionnaire

*Designates that the question will be quantitatively coded and analyzed

- **What do you understand as justice?¹⁶⁶ What do you understand as judgement?**
Insaf hoile onorá ki buzó? Bisar hoile onora ki buzó?
- If a thief steals something from someone, they might be punished in judgement. They might have to return what they stole; they might go to jail, they might have to pay a fine, and they might be beaten. What are some things that should be done to receive justice for what happened to us on 25th august? Uggwá sure honó uggwá maincóttu kessú zinís sur goijjé de óile sur hibare bisarot maizzé sásti diya za. Óit fare sur híbattu ze zinísigin sur goijjé híin fírai diya fore; óit faré taráttu ziyólot za fore, óit fare taráttu tiañ gunári diya fore, óit faré sur goijjé de híyanolla boli sur híbare mara za. Añarar owre 25 ogostot mazé ziyán ekkán na-insafi óiye, añarar owre ziyán ekká'n onniyai óiye híyanor bisar faibollá boli, insaf faibollá boli hon gorá foribo boli buzor?
- **You have a life, you have a future. How important is justice to you in your life? Why?**
Onorattu ekkán zindigi asé, onoráttu ekkán sarmor zindigi asé. onorár zindigilla bolí bisar foonnán hoddur zorurot/ hoddur dorhari? Kiyollá?
- **Who is responsible for providing the Rohingya justice? Why?**
Ruáingar bisar gorí dibar zimma hon tarar? Kiyollá?
- **Do you know of anyone working to provide justice to the Rohingya on what happened? Prompt ICC/ICJ.**
Ruáingar bisar gorí dibolla ham goréddé hendilla honikkore sinó de asé né, yatoba honó adalotore sinó ne? ICJ/ ICC or babote icára do.
- **What do you know about these cases? Where do you get your information?**
muaddama iínor babote ki zano? Hoddur zano? Hóbor iin hontu fo?

*Small description of ICC & ICJ Cases

- **When do you think they will be finished? What do you hope will happen after the cases?**
E muaddama iin hoñtté fúraibo boli buzor? Muaddama fúrai baade ki óibo boli onorá acá goroor?
- ***Are Rohingya leaders included in the ICC/ICJ judgement? Are Rohingya people included in the justice process? Which leaders? How? *Facilitator to summarize answers.***

166. There are two terms which could be used for “justice.” One is better translated as “judgement” (*bisar*) and has a more neutral connotation about a ruling/decision in a case. The other is literally “justice” (*insaf*) but this only has a positive connotation—similar to “right,” “fair,” etc. For this we are deciding to use the neutral term “judgement” to ask these questions because it could mean a range of positive and negative things (depending on whether someone is victim or perpetrator, etc.). Judgement also clearly implies there will be some effect, a decision, punishment, or action taken.

Ruáingar honó zimmadar/ leader ókkol ICC/ICJr bisar iyánót cáamil asé né? Ruáingar manúc ókkolore bisar iyánót maizzé cáamil gorá giye ne? hon zimmadar/ hon leader? Keen gorí?

- What do you want from ICC/ICJ? What are your demands? Do you think your wants/demands are being presented to them? How?
ICJ yatoba ICCttu onorá ki sóor? Onora ki dabi goró? Onorar dabi gin tarar adalotot foónsér boli buzoor ne? keen gorí?
- ***Should anyone be punished for what was done to the Rohingya? Who? Why is it important to punish anyone for these crimes? Facilitator to summarize answers.**

Rohingyar owre ziin gorá giye híinollá boli honó kiyoré cáza/ cásti diyá foribone? Haré? hon taráre? Kiyollá?

- ***Should the Rohingya get anything to heal the damage done or reduce the trouble faced? What do they need? What is important to them for this? Facilitator to summarize answers.**

Ruáinga ókkolottu ze nuksan gin ói giyegoi híin gom/behtor ói aibolla bolí yatoba ze ocáni gin faiyé híin homi aibólla boli Ruángattu honó kessú faa foribóde asé né? Híyanolla Ruáingattu ki lagibó? Iyánolla boli taráttu ki zinisgan zorurot? Kiyollá?

- Would you return to Myanmar even if you don't get justice? Why/Why not? Insaf nofoódde óileyó onorá bormat zaibagói ne? Kiyolla?
- **What do you want most from the international community with respect to justice? What do you want from them to help you move on with your life? Why?** International community ottú yatoba duniyattú bisaror mutaallek beggunot-tubare bicí hon jinisgan soo/ hon jinisgan acá goro? Kiyolla?
- ***As a victim, what are the one or two things you need to receive to feel that you get justice?**

Zulúmor cíkar óiyode manúc hísafe háas gorí homaskom hon zinisgan faíle yatoba hon diyán zinis faíle bisar fiayó bolí buzibá?

GLOSSARY OF RELEVANT TERMS

- Justice: insaf; bisar foon (get justice)
- Injustice: na-insafi; bisar no foon (not getting justice)
- Judgement: bisar; rai
- Criminal: jibáye kosúri goijjé; ducí
- Victim: zulumor cíkar
- Court: kuúth, adalot
- Case: Muaddima
- Punishment: cáza; sásti
- Compensation: gunáari
- Trial: bisar; kuúthor/ adalotor bisar
- Verdict/Decision: rai; fáisala
- Rights: hók
- Representative: zimmadar; leader
- Judge: joz/ joc; bisar goróya
- Jail: ziyól

B. Table 1. Overview of FGD Participants

Demographic groups	Female		Male		Total	
	FGDs	Participants	FGDs	Participants	FGDs	Participants
Older Persons	4	24	2	12	6	36
Adults	8	48	16	92	24	140
Young adults	7	40	6	36	13	76
Mixed	8	48	6	36	14	84
Under 18	4	24	2	12	6	36
Religious leaders (<i>imams</i> , <i>hafez</i> ¹ , <i>Dhul Foir</i> ² or <i>tabligh</i> ³ members)	0	0	6	36	6	36
Additional groups, including persons with disability, <i>hijras</i> , ⁴ and widows (female headed households)	3	14	4	22	7	36
Grand Total	34	198	42	246	76	444

1. Someone who has memorized the Quaran.

2. *Dhul foir* are a traditional religious group of *sufi*. They variously understand themselves and are seen as different than mainstream Muslim Rohingyas who practice Deobandi traditions of the *tabligh* as their main form of Islam.

3. The *Tabligh* refers to the South Asian religious tradition of Tabligh Jamat, which is the predominant form of Islam practiced in the camps.

4. A traditional group of people assigned male at birth who later present as women and may either identify as women or as *hijra*. The nearest Western approximate terminology would be “transgender women” but the *hijra* identity has specific cultural and traditional characteristics and practices associated with it.