

Umme Wara

RECONCILIATION AND JUSTICE MECHANISM IN THE ROHINGYA CAMPS IN BANGLADESH

Abstract

The widespread and systematic attack had turned the Rohingyas into the world's biggest persecuted and stateless community. Even though over one million Rohingya victims have found refuge in the Bangladeshi camps after years of excruciating torture and discrimination, the camps where they reside now continue to be riddled with challenges, criminal activities and conflicts. Several formal and informal justice mechanisms have evolved over the years to address the growing issues and conflicts within the camps. This study considers the importance of addressing the crimes and conflicts, processes of accessing justice and the reconciliation processes of the deeply torn stateless community, taking into account specific needs and challenges based on power dynamics, age, gender or other diversity factors. As an approach to fill up the pertinent research void, this qualitative study sets out to understand and analyse the present picture of the justice mechanism. By taking in-depth semi-structured interviews of the Rohingya victims, this study aims explicitly to investigate and analyse their experiences in accessing the justice processes. Another critical purpose of this study is to outline strategic solutions towards the existing challenges by conducting Key Informant Interview (KII) with relevant experts and people from international justice facilitators in the camps. This study reveals that even though the Rohingyas took shelter in Bangladesh as displaced people, their trauma, constrained lifestyle in the camps and vulnerability compelled a lot among them towards criminal activities like Gender-based violence (GBV), intra-community conflicts and narcotics-related crimes. Due to the lack of any specific legal framework pertaining to refugees or stateless persons, they enjoy minimal access to the formal justice processes of the country. In response to the problems they have been facing in the camps, different forms of formal and informal mechanisms have developed that provide them with some sort of justice. However, these mechanisms are merely a temporal response to the burgeoning crises; hence, numerous areas require reformation and development.

Keywords: Rohingya Refugee, Reconciliation, Informal Justice Mechanism, Human Rights

1. Introduction

The Rohingyas are an ethnolinguistic, Muslim minority group of the northern Rakhine state who are not acknowledged as “citizens” of Myanmar and are considered by the United Nations as “one of the most persecuted groups in the world.”¹ Due to the systematic and series of state repressions, thousands of Rohingyas had to cross the border and took shelter in Bangladesh in the years 1978, 1991-1992, and 2016.² On August 2017, due to a deadly genocidal crackdown by Myanmar's army on Rohingya Muslims, another 745,000 fled into

Umme Wara is an Assistant Professor, Department of Criminology, University of Dhaka. Her e-mail address is: wara.criminology@du.ac.bd

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¹ Nasir Uddin, *The Rohingyas: An Ethnography of 'Subhuman' Life* (Oxford: Oxford University Press, 2020), 3.

² Azeem Ibrahim, *The Rohingyas: Inside Myanmar's Hidden Genocide* (London: Hurst Publishers, 2016), 52.

Cox's Bazar.³ After experiencing decades of persecution in their own land they have taken refuge in Bangladesh which has offered them shelter, sustenance and security for which they are eternally grateful.⁴ But the quality of life of the members of this community remains to be deplorable.

Along with this condition, the Rohingyas also face conflict and severe human rights violations. However, the formal mechanisms of justice have not yet been developed while the informal ones continue to work ineffectively, eventually depriving the victims of their basic human right of fair justice. Now in Bangladesh, living in one of the world's largest and densest refugee settlements, Rohingyas have limited access to identity, civil status documentation, and formal justice mechanisms.⁵ Studies suggest that both the Rohingya and the host community heavily depend on the informal justice processes to deal with the crimes they commit in the camps and to reconcile the conflicts that take place in the camps.⁶ A wide spectrum of delinquency such as inter-partner violence, drug peddling and violent conflicts are taking place within the Rohingya community, which is very normal considering their population size, density, education, and joblessness. A range of recent studies reveals that the camps are susceptible to intimate partner violence and domestic violence. Additionally, adolescent girls are very vulnerable to forced early marriage, sexual violence, and trafficking.⁷

Since 2016, about sixty murders have taken place in the camps due to the bloody confrontations and disputes over control of markets, Yaba smuggling, human trafficking, and other petty issues.⁸ From 2017 to 2019, in the internal conflicts among different gangs, forty-three Rohingyas were killed, thirty-two others died in alleged gunfights with law enforcement agencies.⁹ The question remains what is the mechanism of seeking justice in the camps? Many genocide experts and human rights activists talked about the importance of localising human rights, and formulating transitional justice and informal justice mechanism as the instruments of peacebuilding in the post-genocide period.¹⁰ A 2019 report of the International Rescue Committee (IRC) states that "the access to justice mechanisms for Rohingya refugees closely follows the humanitarian governance structures of informal transitional justice processes." Here, in the informal

³ "UN Joint Response Plan Rohingya Humanitarian Crisis, 2019," Relief Web, accessed March 12, 2022, <https://reliefweb.int/report/bangladesh/2019-joint-response-plan-rohingya-humanitarian-crisis-january-december-enbn>.

⁴ Md Rafiqul Islam, Md Touhidul Islam, Md Shaheenur Alam, Maria Hussain and Md Mazedul Haque, "An Assessment of the Sustainability of Living for Rohingya Displaced People in Cox's Bazar Camps in Bangladesh," *Journal of Human Rights and Social Work* 2, no. 2 (2022): 1-15.

⁵ "Rohingya Refugees Live in Inhumane Conditions," Relief Web, accessed July 02, 2022, <https://reliefweb.int/report/bangladesh/rohingya-refugees-live-inhumane-conditions>.

⁶ "The International Rescue Committee Annual Report 2019," The International Rescue Committee, accessed July 22, 2022, <https://www.rescue.org/sites/default/files/document/5264/irc2019-annual-report.pdf>.

⁷ "The Rohingya Amongst Us: Bangladeshis Perspectives on the Rohingya Crisis Survey 2018," XChange Foundation, accessed June 01, 2022, <http://xchange.org/wp-content/uploads/Xchange-Foundation-Bangladeshi-Perspectives-Survey.pdf>.

⁸ Rock Ronald Rozario, "Struggling Rohingya Seduced by Crime at Refugee Camps," *UCA News*, May 09, 2019, <https://www.ucanews.com/news/struggling-rohingya-seduced-by-crime-at-refugee-camps/85111>.

⁹ Shantanu Mukharji, "Bangladesh Rohingya Problem Spinning out of Control?" *The Statesman*, August 28, 2019, <https://www.thestatesman.com/opinion/bdesh-rohingya-problem-spinning-control-1502793340.html>.

¹⁰ John Elster, *Closing the Book: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004), 195; Koen De Feyter, "Localizing Human Rights," accessed August 01, 2022, <https://web.archive.org/web/20180721172232/http://www.ua.ac.be/objs/00152976.pdf>; Genevieve Parent, "Reconciliation and Justice after Genocide: A Theoretical Exploration," *Genocide Studies and Prevention: An International Journal* 5, no. 3 (2010): 277-292.

mechanism, the local *Majhi* functions as an interlocutor who may work to resolve conflicts or escalate them to higher authorities. If the *Majhi* cannot resolve the dispute, the Camp in Charge (CIC) will be called upon to support. The informal justice mechanism follows a conciliation model where community leaders attempt to resolve conflicts.¹¹

Against this background, the need for a resilient, effective justice system is very important for the Rohingyas, as they have already encountered massacre and injustice and are highly vulnerable to crimes, conflicts, and injustices because of their displacement and dependence on charity.¹² Then a question arises what role is being played by the conventional justice system? What are the fine lines between informal mechanisms and formal justice procedures? What are the prevailing challenges regards to accessing justice and how the concerned authorities should mitigate them? These vital questions are still inadequately addressed in the existing research.

For this reason, this article considers the importance of addressing the crimes and conflicts, processes of accessing justice, and the reconciliation processes of the deeply torn stateless community, taking into account of specific needs and challenges based on power dynamics, age, gender, or other diversity factors. The present article is divided into seven sections. After providing an introduction, section two provides the methodology of how data has been gathered and presented. The prevalence of crime and conflict in the camps has been presented in section three. Section four presents the existing structure of the reconciliation process in the Rohingya camps. In section five, the major challenges have been discussed with the data from the stakeholders. Section six then provides the mechanisms and way forward for ensuring justice for the displaced people. Finally, a conclusion has been provided summarising the result of the study.

2. Methodology

This study primarily focuses on describing displaced Rohingya people's experiences, insights, and internal feelings about the crimes and conflicts in the camps and its subsequent justice mechanism. This study has used an exploratory and descriptive research design since it involves the researcher going into the field and focusing on the participants' personal experience.¹³ The study adopts the qualitative approach and attempts to provide a thorough and deep overview of the justice mechanism and challenges faced by the Rohingyas in accessing it.

The whole study has been conducted in two phases, both complementing each other to ensure quality data collection. In the first phase, the study used semi-structured interview technique to collect in-depth qualitative data both from the Rohingya victims and other direct stakeholders (like *Majhi*, CIC) concerning justice in the camps. The second phase involved Key Informant Interviews (KII) with experts to get a rich description of the problems and recommendations for durable solutions. The selection process of the in-depth interviewee used the

¹¹ "Annual Report 2019," The International Rescue Committee. accessed July 22, 2022, <https://www.rescue.org/sites/default/files/document/5264/irc2019-annual-report.pdf>.

¹² Albert Eleanor and Lindsay Maizland, "The Rohingya Crisis," Council on Foreign Relations, accessed May 03, 2022, <https://www.cfr.org/backgrounder/rohingya-crisis>.

¹³ C R Kothari, *Research Methodology: Methods and Techniques* (New Delhi: New age International Publishers, 2004), 4.

purposive snowball sampling method used in qualitative research to explore the respondents' perception.¹⁴ To choose samples from fragile populations or people under specialised care, the adaptation of snowball sampling as a non-probability method helps researchers gain needful access and gather information.¹⁵ The first phase of field interviews was conducted in the Cox's Bazar camps in December 2019. Then the second phase of KII was completed virtually with relevant experts and people from international justice facilitators in the camps in the middle of 2020.

3. Crimes and Conflicts in the Camps

Even though the Rohingyas took shelter in Bangladesh as displaced people, their trauma, constrained lifestyle in the camps and vulnerability compelled a lot of them towards criminal activities. One of the *Majhis* who was interviewed opines on this matter that since most of the Rohingyas remain idle without any work, they tend to get involved with criminal activities. However, he insists that if the rate of crime were to be compared with the amount of population residing in the camps, it would be pretty low. Yet if the crimes committed in the camps were to be depicted in a pattern, it would be seen that gender-based violence, physical assaults and drug-related crimes were the most common forms of crimes.

3.1 Gender-based Violence (GBV)

In the camps, the marriage and divorce process are equally ineffective and faulty as the victims most often went into relationships without signing any credible official documents, resulting in loopholes to be exploited later. Gender-based violence, especially domestic violence, is one of the most prevalent forms of victimisation that the women in the Rohingya camps go through.¹⁶ GBV takes place primarily in the form of sexual harassment, domestic violence, and rape. Marriages in the Rohingya community take place following the exchange of binding dowry in the form of gold or money. Men are also obliged to give gold to the women's families before marriage. But in most cases, the men do not end up providing the full negotiated amount and instead physically abuse the wives when they seek their gold. These monetary transaction issues most often spiral further into their family relations and lead to family disputes. Since men have the upper hand in the families, they also sell the relief received for money and use the money for their personal causes. These conflicts regarding money and wealth are one of the primary reasons behind the torture and victimisation of women in the Rohingya camps. One of the interviewees, Minara from Kutupalong camp, shares her story: "One day my husband came home and told me to give him food. I said, You've sold all the things and gas we got as reliefs. You did not even bring me wood. How will I cook food? He then abused me both physically and orally. He

¹⁴ Kathleen M Blee and Verta Taylor, "Semi-Structured Interviewing in Social Movement Research," in *Methods of Social Movement Research*, eds. Bert Klandermans and Suzanne Staggenborg (Minneapolis: University of Minnesota Press, 2002), 92-117.

¹⁵ Norman K Denzin and Yvonna Lincoln, *The Sage Handbook of Qualitative Research* (SAGE Publications Ltd., 2005), 245; Chaim Noy, "Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research," *International Journal of Social Research Methodology* 11, no. 4 (2008): 330.

¹⁶ "Coronavirus Disease (Covid-19): Violence against Women," accessed June 05, 2022, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-violence-against-women>.

and his parents told me that they will not let me live in their place. In spite of being tortured enough, I wanted to stay with them.”¹⁷

Women also complained regarding pervasive extramarital affairs of their husbands within the Rohingya camps. Because the men are supposed to pay their wives’ due gold to dissolve their marriage, most husbands choose not to divorce their wives. Women are physically and verbally abused within their own households and since most do not have any other support system to take refuge in, they continue to live with these ruthless mistreatments. Zainus, a Rohingya woman from the Kutupalong camp reveals, “They (her husband’s family) are threatening us that after three days they will kill us with a knife. He does not want to give my jewellery that is why he is also always absent from the meetings with CIC.”

Another respondent Noor *Majhi* also informed that there are cases of rape among the Rohingyas. While talking about the rising nature and prevalence of the GBV-related crimes in his block, he said, “We get the cases of women more often. Family-related cases are higher up in number. The husband tortures his wife. Gender-based violence is large in number. Teenager girls here, when go to the bathroom or latrine and near tube-well, they get tortured and teased by the boys.” Another respondent namely Zainus shares a similar experience saying that she faced the same situation when she went to the bathroom and her husband’s friends forcefully took her away. That was also done for his second marriage. When Zainus’s family made a complaint and the *Majhis* tied him up, he escaped, went inside Osman *Majhi*’s home and, with a knife, stabbed the *Majhi* and ran away.

3.2 Drug-related Crimes and the Interventions of Clandestine Justice Structure

Interviewing the Rohingyas, it was also often heard that there is an endemic drug-related problem in the camps. There are frequent cases of Yaba. Regarding the Yaba issue, one of the *Majhis*, namely Dildar Ahmed said, “The problem is some men take Yaba tablets and beat their wives. They take marijuana, they drink alcohol. They get it from the border. At first, the Yaba that was coming through influx is now closed, but the problem is still there.”

CIC Kholilur Rahman of the Kutupalong camp said “Amid their family disputes, there are groups in each block and they fight among themselves. One group’s dominance gets heavy on another. These are some of the cases. There are also issues of drug addicts who steal money or assault others. Drug addiction and community conflict are some of the issues.” He also added, “Divorce, polygamy, and polygyny both are rampant and indiscriminate among them.” He also mentioned the name of “Alia King” as a clandestine justice mechanism in the camp. They torture and expropriate money in the name of justice. If any woman goes to work, they intervene. Some of the victims also affirmed that they come, vandalise and torture. He added “I heard that a Rohingya woman was gang raped by thirty-two people. But the victim’s family said we can not go to CIC because they say that we will kill you; if you go to the CIC. Many said that the “Tatmadaw”, i.e., the Burmese military used to torture us there and here our own people, i.e., the Alia King is torturing us.”¹⁸

¹⁷ Interview with author, December 19, 2019, Kutupalong Camp, Ukhia.

¹⁸ Interview with experts, December 20, 2019, Kutupalong, Ukhia.

Group conflict is now a common phenomenon in the Rohingya camps.¹⁹ Although they are living as displaced people, they are highly polarised and divided for their religious beliefs and perceptions. Over the last three years, different cases of crimes and violence have occurred in the camps (Table 01).

Table 01: Violent Incidents in the Camps in 2018-2020²⁰

Violent crimes	2018	2019	2020
Abduction	02	02	7
Assault	23	30	26
Destruction of property	01	01	02
Fight	01	03	03
Gun fight	01	28	28
Mob violence (Large group violence)	-	01	-
Sexual assault	04	01	02
Clash	06	07	09

Table 01 shows that people in refugee camps are involved in conflicts and violent clashes. In order to explore more information, experts were asked about the intergroup conflict in the camps. In one of the KIIs, a university Professor, mentioned that that “divorce, polygamy and polygyny both are rampant and indiscriminate in the camps. The local authority and administration struggle to control the situation.” In another KII, a senior protection coordinator mentioned the presence of informal and hidden grouping systems in the camps. “Alia King” can be cited as an example of it.

Indeed, crimes and violent conflicts are frequently occurring in the Rohingya camps. Literature review and in-depth interviews reveal this scenario vividly. Congested living conditions, poverty, insecurity, future uncertainty and domination by religious groups are primarily responsible for the prevalence of crimes and violence.²¹ Also, due to the population density within the Rohingya camps, different types of organised crimes like black market of small arms and weapons, smuggling and drug business have increased over the years.²² However, the justice mechanism is very much in peril and fragile and people in the camps hardly get remedy for the crimes and violence. The next section highlights the justice processes in the camps.

4. Existing Structure of the Reconciliation and Justice Mechanism

The 1951 Refugee Convention and its 1967 protocol are not signed by Bangladesh nor have they signed the 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention Relating to the Reduction of Stateless

¹⁹ Md Rafiqul Islam, Majedul Haque and Umme Wara. “Intra-Group Conflict among Rohingya Displaced People in Bangladesh”, in *The Rohingya Crisis and the Two-Faced God of Janus: What Lies Ahead*, eds. Kawser Ahmed and Helal Mohiuddin (Maryland: Lexington Books, 2022), 31-52.

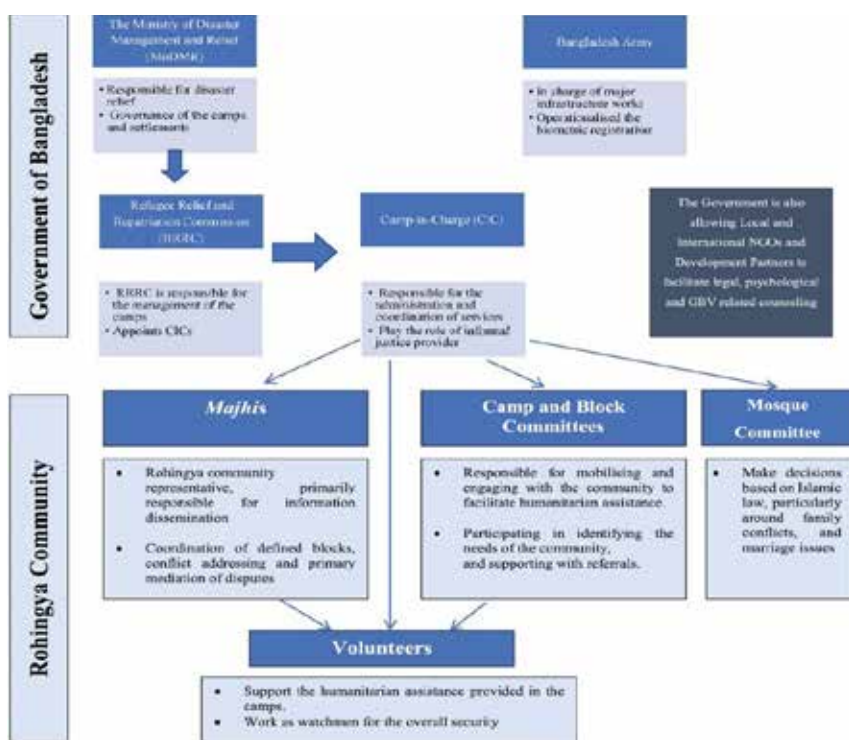
²⁰ Intiaz Ahmed, “State of Peace 2020: An Initiative of BPO-Bangladesh Peace Observatory,” (Dhaka: Centre for Genocide Studies, 2020).

²¹ Interview with experts, December 19, 2019, Kutupalong Camp, Ukhaia.

²² Rafiqul Islam and Umme Wara, “Conflict Potential of the Rohingya People in Bangladesh and Beyond,” *Journal of ASEAN Studies (JAS)* 10, no. 01 (2022): 110.

Persons.²³ Due to the lack of any specific legal framework pertaining to refugees or stateless persons, the Rohingyas practically fall under the legal provisions for all non-citizens and thus, they can enjoy minimal access to the formal justice processes of the country. Formal justice is only accessible for them if there is a severe or cognisable crime, i.e., kidnapping, human or drug trafficking, murder, rape, or assault. Therefore, the socio-legal dynamics of the camps influence the preference for informal justice.

Figure 01: Rohingya Refugee Camp Governance Structures: Facilitators for providing justice and reconciliations (Developed based on the information provided by the respondents)



4.1 Line of Jurisdiction

Ever since the Rohingya community entered Bangladesh, formal justice availability has been under construction. Still lacking a proper mechanism of attaining justice in some spheres, the system has developed over the years to what it is presently. Initially, there was no official form of administration. The registered camps later had one CIC to look after the camps. Violent crimes in the

²³ Sreeparna Banerjee, “The Rohingya Crisis: A Health Situation Analysis of Refugee Camps in Bangladesh,” Observer Research Foundation, accessed June 16, 2022, <https://www.orfonline.org/research/the-rohingya-crisis-a-health-situation-analysis-of-refugee-camps-in-bangladesh-53011/>.

camps include murder, rape and assaulting women, robberies, and other drug-related crimes, which are not handled by the *Majhis* and are directly sent to the CIC. Head *Majhi*, Osman expressed, “If we get any such news that yaba is being sold in blocks or someone carried that, through the CIC and with the help of police and the military we handover them in the court.” Their (*Majhis*’) work is finished there he explained. He added, “Our duty is over. Our work is just till we send them. Who keeps illegal drugs we hand them over in court, that is our duty. Then we do not have any work.”²⁴

The *Majhis* mostly deal with issues like domestic violence, conflicts, fights, etc. They mostly mediate these conflicts through negotiation, agreement, and monetary compensation. For example, “Ongikarnama” papers are signed to demonstrate commitment and obligation to not repeat the deviant behaviours. In case of issues accounting for grievous injury, e.g., murder, rape, these cases are handed over to the CIC. The CIC usually partakes in the same justice process except with his superior authority; seldom are cases handed over to law enforcement, mobile courts, etc. The CIC also has the jurisdiction to adopt harsher responses like the imprisonment of up to 2 years, eviction, etc. As per the narrative of the *Majhis*, the CIC has extensive popularity and credibility among the community, accounting for their unquestioned acceptance and obedience.

When complainants can not take the cases to court, mobile courts tend to go to the camps to uptake some of the serious cases as per what it can solve but then again, it can not take the cases without the permission of CIC. Upon taking cases, mobile courts can however direct cases to the police station and prison later on. Certain cases are deemed conformable, while few are non-conformable. The conformable ones are again divided into two categories conformable and purely conformable. There are some offences that are conformable but with the permission of the court. For example, section 379 is conformable but with the court’s permission, but some offences are purely conformable, like 302. Issues related to financial matters are conformable with the consent of the court. These property rights-related cases fall under civil issues, but it is backed up by the court. Similarly, enactment issues like cheque dishonour are dealt with there too, i.e., the non-negotiable case of 138.

One of the most common complaints in the area was related to marital issues that frequently involved seeking a divorce. Four *Majhis* we talked to emphasised the significance of an Ukil in the process of judgment, whose presence is required in every proceeding and who sits through the process of a divorce. There are other NGOs with female lawyers as well who lend legal help to the Rohingyas. In the International Organization of Migration (IOM) camps, lawyers in Cox’s Bazar, Chittagong provide service. Even outside prosecution, the Rohingyas manage to have their lawyers. Lawyers and TAI officers also reside within the camp who can provide service beyond the regular serving hours.

4.2 Selection and Reconciliation Roles of the Camp Leaders and Majhis

During the early stage of the influx, the army categorised the community into three camps—registered, makeshift or undocumented, and forcibly displaced Myanmar nationals. Kutupalong and Noyapara both registered camps have a

²⁴ Interview with author.

community governance system whereby camp or block leaders are elected on a voting system. Their main tasks include community mobilisation and addressing justice issues if the CIC delegates them the task. The camp leaders are succeeded by a deputy camp leader, camp assistant and eighteen other members. These blocks also aim for women empowerment by maintaining the fact that if the camp leader elected is a man, the deputy camp leader has to be a woman. Regarding the voting system for appointing these block leaders, CIC Kholilur Rahman informs that “At first, we select the deserving candidates for the election which follows criteria like involvement with drugs or violence. Then we give nominations to twenty people who can participate from the block. From these twenty participants, we do their background checks with the help of investigative agencies to check if they are involved with drugs, violence against women, or have any cases filed against them. If someone gets the highest votes but a yaba case is filed against him, we reject them.”

In the other camps, *Majhis* are regarded to be the primary form of access to justice for the Rohingyas. The camps are divided into six blocks with one head *Majhi* for each of the blocks, following sub *Majhis* under each of them, making a total of sixty-seven *Majhis* for approximately 1800 families in the camps. These *Majhis* were designated after consulting with the elders and wise people of the community. Initially, they would work under the army in providing distribution tokens to each of the families in a block, but now they also work in providing informal justice to the community. They usually receive no monetary incentive for this job and take up this task as a voluntary service to their community. Even though these *Majhis* have not received any formal training for this service, they learn everything through work experience. Given the amount of time as *Majhis*, they have developed a well-structured formality of conducting this justice process. At the very initial stage, they listen to both parties in a crisis; follow this up with meetings with witnesses, and attempt to mediate the conflicts as a neutral party. Since they do not have the jurisdiction to provide any justice, they merely work in mediation or taking the cases to the CIC.

A head *Majhi* of the West block in Kutupalong camp mentions such cases saying, “For example in cases with two or three marriages, if we can resolve the dispute between the parties and the first wife agrees or accepts to let the second wife stay, we tend to bring upon harmony. We come and arrange settlements for them if they want to stay together. If there is no acceptance or resolution, we bring them to the office to conduct a divorce.” Another *Majhi*, namely Zakaria shares, “When reconciling the husband and wife, we often make a pledge with several points. For example, for the husband, the clauses may include following the Sharia laws of Islam, not abusing the wife, properly maintaining the wife, and refraining from extramarital or unsocial activities. As for the wife, the clauses may include following Sharia laws, obliging the husband’s orders, looking after the husband’s property and family members, and refraining from extramarital affairs.”

However, there are a few issues beyond their jurisdiction, such as drug cases. If they anytime come across such criminal activities or incidents, they directly report it to the CIC. Another head *Majhi* namely Noor reaffirms this pattern as he shares, “Whenever they face any problem, they first inform the sub-*Majhi*. If the sub-*Majhi* fails to solve it then they inform it to the head *Majhi*. If head *Majhi* is unable to solve it then the case is handed over to CIC sir.”

4.3 Role of Imams (Religious Leaders) and Other Esteemed Community Members

By following the practices of a community-based informal justice mechanism, the *Majhis* also take help from *Imams* or locally esteemed members of the camp in the mediation process. The *Imams* usually address issues that involve Islamic Shari'ah and dispels decisions as a neutral party. Since divorce and marriage disputes are usually some of the most common issues in the Rohingya community, the *Imams* have a huge role to play in this informal justice process. Md. Siddik, Imam of the Kutupalong camp, affirms that "In divorce cases, I see whether the separation occurred according to Shari'ah. If it has occurred according to Shari'ah then I write them a document; if not then I try to reconcile the parties by advising them not to fight in the future and live peacefully. If it does not work again then I get them divorced. In most of the cases, I do not want to conduct divorce and try my best to reconcile the husband and wife. If three talak is given then I get them divorced. I never write three talak in the document. I keep one talak pending so that if within 3 months 13 days they again want to reunite and reconcile then they can do so."

Md Siddik, Imam of the Kutupalong continues, "If someone leaves his wife or gives her divorce, then I will see according to Shari'ah whether he can keep his wife or not. If he can keep then I settle the matter and tell them not to fight in the future. On the other hand, if three talak (divorce in Islam) is given then I ensure the divorce in the paper." He also recalls another case saying, "There was a case where the ex-husband and wife had two sons. In the divorce paper, I had written the cost of food and clothes the father has to bear. The amount decided was BDT 500 for two sons and *Majhi* was also present during the decision. However, the husband gave cost for only three months and so the wife gave a complaint to the Army. When the army asked me how I made this decision, I told them that I did so according to the Shari'ah. The wife had lied that the cost was decided BDT 1000 for both of the sons, but I said that it can not be like that since they get food from the government; if the sons get sick then the father will buy their medicine and for their pocket money, I decided that the father will give each of his sons BDT 250 per month since they do not have any income. The Army then said you made a good decision."

4.4 Deciding Punishment or Compensation

The *Majhis* informed that compensation is usually the hospitalisation costs for any physical fights. For issues that reach this level of severity, the *Majhi* sits with both parties after treatment to reach mediation. In cases where they can not do anything about the matter, they end up changing the camp of the victim or the perpetrator to disconnect them. For more serious matters like eve-teasing, women or child assaults, the cases are transferred to the CIC. Besides these *Majhis*, people in the camps can also go directly to a lawyer without notifying the *Majhi*. The United Nations High Commissioner for Refugees (UNHCR) and other organisations provide legal help to the victim. There are usually both male and female lawyers, so those female victims can share their personal victimisation experience with them without any hesitation.

From this section, it is seen that access to justice in the camps is exercised and implemented through the informal justice process. In this process, the *Majhis*, CIC, *Imam*, and community leaders play the key role. The critical cases are

referred to the higher authority to resolve. Although this process is commonly followed in the camp areas, this process has challenges and limitations. The following section shows the major challenges of accessing to justice in the camps area.

5. Understanding the Challenges in Addressing Justice

5.1 Legal Constraints in Accessing Formal Justice

The key challenge the Rohingya people face in accessing justice is the host country's legal constraints. As the Forcibly Displaced Myanmar Nationals (FDMNs) in Bangladesh, the Rohingyas are not entitled to receive legal services from the formal justice system. However, Article 31 of the Constitution of Bangladesh mentions that the protection of the law is not only extended to the citizens of Bangladesh, but also to others residing within Bangladesh for the time being, thus including the FDMNs in their right to access to due process and equal protection of the law.²⁵ Other international treaties and legal provisions include the Article 6 and 7 of the Universal Declaration of Human Rights (UDHR), Article 1 and 2 of the International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) also prescribe to provide the right to access to justice and protection of the law.²⁶

However, the study finds constraints and loopholes that pose challenges in accessing the justice system. Rohingyas do not possess any personal and property rights due to the restriction by Bangladesh's Constitution. Neither a Rohingya can have a job nor can they own any moveable and immovable property. Since Bangladesh is not a signatory to the relevant 1951 Convention and its protocol of 1967, there is no guaranteed mechanism that Rohingyas can exercise the rights mentioned in this particular law. The Bangladesh government and UNHCR have dissimilar views regarding this issue, yet Rohingya refugees enjoy certain rights under customary international law, leaving them to risks and limited opportunities for a durable solution to their plight.

5.2 CIC Centeredness of Justice Structure

According to one of the *Majhis*, alleged criminal cases are not taken to courts and are limited to being addressed at the offices. As Osman further added regarding visitation, "They keep it in the office but once a month they also take relatives to see some jailed offenders under the administration of the government." The court is however accepting criminal cases for formal proceedings should the Rohingyas be able to come out of the camp to the court, the decision which strongly depends on the CIC who would not give permission other than medical issues and without which they can not go. If they manage to leave without permission, the detectives catch them eventually and return them to the camps without torturing them. Regarding this, *Majhi* Dildar stated, "You have to take permission from the CIC first to come out of the camp. You want to come to the court but you do not have permission to leave that territory. When the CIC gives

²⁵ C R Abrar, "No Justice for Rohingyas?"

²⁶ C R Abrar, "No Justice for Rohingyas?"

permission, naturally, the responsibility is shifted upon the CIC, or else he can go to any part of Bangladesh.”

5.3 Problems of the Majhi System

The buffer presence of the *Majhis* often creates a gap among the refugee communities, CICs, and the humanitarian community hindering direct and meaningful participation in accessing justice. Since it is a voluntary post, their reluctance and insincerity often create communication gaps in sending and receiving information between refugees and humanitarian organisations.²⁷ In GBV-related cases the delivery of justice through the *Majhis* comes off in an unequal way. The “Majhi system” often fails to respect or promote gender equality. Many of the respondents mentioned that the *Majhis* use their power when the defendant is relatively weak. But they failed to summon the powerful defendants that result in the obstruction of justice. About this issue one of the *Majhis*, namely Osman narrated, “There have been some (female-related) cases where the defendant never attended. A couple of weeks’ time is given but even then, if they do not come, we write to the CIC notifying how the defendant never came. The CIC too, contacts us, the *Majhi* or head *Majhi*, inquiring why they did not come. Then the CIC takes action as it deems appropriate.” The selected *Majhis* do not have any training in reconciliations and have a vague idea of justice. Nepotism and bribery often play a role in the process of recruitment and ultimately, 90 per cent of the solved cases come back for resolving this fundamental problem sometimes.

5.4 Case Backlog, Lack of Information and Bribery

GBV and conflict-related cases are not only abundant but also grossly unresolved due to the overburden of cases that arrive at the doorstep of the Investigation Officer’s or the lawyers. Cases are piling up in the CIC’s office too, waiting to be resolved. A number of cases are coming up every day and mounting the existing backlog. Another challenge faced by the Rohingyas in accessing justice is unawareness about the justice mechanism. Some get deprived of justice for the very reason of not knowing who to seek it from. There are many accounts of tortured wives not being able to find the head *Majhis*, some crying in the street not knowing where to go at all. The judicial process is theoretically free but sometimes the *Majhis* would demand BDT 200 or 500 from complainants for a service that is supposed to be free. *Majhis* often show reluctance to commence mediation if they are not paid. In many cases, judgment is transacted in exchange for money. Even though the formal and informal mechanisms were supposed to serve as mediation to the issues in the camps, this justice process remains to be riddled with challenges related to bribing. Minara shares her state of helplessness at the face of these challenges saying, “As I have a boy, I did not want to get separated from my husband. But they continued torturing me so I came to my parent’s house and told my brothers everything. Then the trial was set on Friday under the supervision of Johuruddin *Majhi*. I wish my brothers went to the trial and told the *Majhi* everything. I told them that my husband tortured me and aborted my child, that he used to sell relief and he was having an affair with someone. But I did not get any justice. Because my husband bribed *Majhi*. They

²⁷ “Protection Considerations on the ‘Majhi System’,” Humanitarian Response, accessed April 14, 2022, https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/protecti_on_considerations_on_the_majhi_system_pswg_fv_june_2018.pdf.

forced me to sign my divorce papers and gave me BDT 34,000. They did not even let me keep my child.”

However, CIC Kholilur Rahman painted a picture that the culture of bribing is not a prevalent issue to hinder justice processes. He asserts that “I have not seen this but I have heard that may be in one or two cases, and money is exchanged (to access justice). I found out recently that they give BDT 100 to my peon to visit my office. This is why I keep my office open and say that nobody needs permission to come here. Here are many health posts and the patient is transferred to Cox’s Bazar with my referral. They are habituated to paying money. In Myanmar, they used to pay 5 lakh to get married. To receive the child after birth, they had to pay money. So, they have continued this practice here.”

5.5 Lack of Training, Research and Development

There are many recruits who do not have sufficient idea of justice. Nepotism and bribery often play a role in the recruitment process; ultimately, 90 per cent of the solved cases come back to resolving this fundamental problem sometimes. One of the respondents lamented saying, “If they were given an orientation course before their posting here, even though one is done by the UNHCR for 2-3 days, even at the RRRC level, but when they come with that reluctance in the very beginning, no matter how sensitised you make them, they do not get that motivated. So, I always say one thing in the training, there is an American maxim that you can bring the horse to the water, but you can not make him drink. They might receive that training, sensitisation, awareness building, but we can not change much unless they do not have that conviction.”

5.6 The Dominance of the Powerful Clandestine Rohingya Groups

Another challenge the Rohingyas face in accessing justice is when the police would often reluctant to take complaints against influential or notoriously infamous individuals. Even the *Majhis* refuse to take the case, or sometimes they fall in grave danger of taking them and receive death threats even from the accused. As previously mentioned, going to the CIC is not always an option either. One of the respondents spoke about the despair “There are some people in the camps who run a clandestine justice system at night. They are so powerful. They do drug businesses. Since this is a confidential issue, we have raised this topic numerous times, even the intelligence agencies know this; I have the pictures, I know where they are but they are not being apprehended for some reason.” One of the Rohingya women described her case facing similar issues. She explained, “They did not bother about the head *Majhi*’s decision. Then we went to the CIC to complain. They did not bother about CIC’s decision too. They did not even present in the meetings. Then we went to the CIC. Still, they did not care. We were repeatedly failing to make them present in the judgment. There is a very powerful person in the office named Siraj; he is my husband’s maternal uncle, who has beaten me severely and married another girl. By Siraj’s power, the boy’s family members are threatening us not to file a case.”

5.7 Density, Illiteracy and Culture of Impunity

The informal judgments are over-relying on the reconciliations rather than providing exemplary punishment. This culture of impunity discourages victims from urging for petitioning justice. Mohammad Noor, Camp Secretary at Camp 2

East reports on this regard, “It is a congested place, here family-related cases are higher up in number. For example, the husband tortures wife. The male does not have any work here, for remaining home all day they get into a fight with their wives. So, gender-based violences are large in number. Actually, the thing is, from our population 95 per cent are illiterate. This is one part. Another part is, densely population. We stay so close. If one sees it in your house that your husband has beaten you and neighbours get to know this, then their family also do the same. So the density of the population and illiteracy are the reasons here. Most importantly, the perpetrators are usually meagerly fined, not charged with exemplary punishments. That creates frustrations among the complainants”.

5.8 Under Representation of Women

The quality of justice is not aligned with women’s interests. The informal justice mechanism is designed in an extremely male-centric way. Due to the insignificant female representation within the informal justice mechanism, female victims face numerous challenges in directly participating in the mediation process.

The findings from the field visits within the Rohingya households and camps revealed the myriad of issues that have crippled the Rohingya lives. Even though the state of affairs is far better than what they experienced back in Myanmar and they are eternally grateful to Bangladesh for extending their support and providing refuge, the problems do not cease to exist. In response to the problems, they have been facing in the camps, different forms of formal and informal mechanisms have developed that provide them with some sort of justice. However, these mechanisms are merely a temporal response to the burgeoning crises and hence, these mechanisms are riddled with numerous challenges that require reformation and development. For example, even though all sorts of petty crime or dispute is solved within the community, it was learnt from one of the camp managers that they have the administrative right but not the judiciary right to intervene and resolve the issues on their behalf. Against that context, a few experts were interviewed to gain some insight into how the challenges could be mitigated in developing a formidable justice system for the Rohingyas.

6. Ways and Means for Improvement

The *Majhis* and camp secretaries are one of the most popular forms of informal justice mechanism for the Rohingyas in the camps but they have no formal training for these tasks. Other challenges like nepotism and bribery undermine the efficacy and transparency of the delivery of justice in the hands of these *Majhis*. In this regard, Haruno Nakashiba from UNHCR narrates, “The *Majhis* were mainly appointed by the military when the Rohingyas came to Bangladesh in large numbers so we can see the necessity that initiated this measure. But as the settlements have been regularised now, they need a better mechanism to elect the refugee representative by the refugee community.”²⁸

Similarly, Asif Shahan, Associate Professor of Development Studies at Dhaka University shares that if the development partner and government can work together in devising a democratic format for electing the *Majhis*, including *Majhis*’ wives or other influential women of the camps, they can help in exerting some

²⁸ Interview with experts, October 07, 2020.

pressure through the informal mechanisms and making it more effective. They also mentioned that of course, there are going to be challenges and some sort of discord from the *Majhis*' end when these mechanisms are going to be revamped. Still, developing a method of better and more equitable community representation is essential.²⁹ Tamara from IOM reiterates this necessity saying "Once you introduce the formal mechanisms, i.e., those endorsed by the government of the country, the power of the informal mechanisms usually fades gradually. The more community engagement you can ensure, the more you shall see the power of the informal mechanisms fading."³⁰

6.1 Strategic Solutions Towards Mitigating the Challenges

Since both the formal and informal justice mechanisms in the camps are infused with various challenges, the experts shared their opinions on how these issues can be mitigated through feasible and strategic solutions. Regarding the presence of formal mechanisms for justice, an IOM officer mentioned, "There is no formal mechanism because there are layers of referral mechanisms inside the camps. This is mainly because I do not think there is enough awareness regarding the sense of what is happening in the host community from the officials, referral mechanisms and the governance structure. Secondly, they are also quite reluctant to use the traditional mechanisms, which does not exclude Cox's Bazar but more or less everywhere you have the camps."

As for developing a more formal justice mechanism Asif Shahan shares, "From my experience, I have seen that judicial officers have very minimal involvement in the camps. The mobile courts are more functional, but they definitely have a gap in their judicial knowledge. While I visited the camps during 2018-19, I saw that some NGOs had stepped up as para-legal support, offering them legal counsel and in case they can not resolve any issue, they would refer this to their panel lawyers. If this could be continued, utilising these mediators would help channel some form of justice mechanism, I think."

Legal support from NGOs or other humanitarian agencies can be particularly helpful because the local courts and police stations in Bangladesh are already overburdened by their pre-existing issues. Haruno Nakashiba from UNHCR confirms as she says, "I think the Bangladeshi criminal justice system is overwhelmed with the number of cases they have to deal with; so usually that takes time and it is quite challenging for even the Bangladeshi people in accessing justice. So, when it comes to the Rohingya people who are not citizens of Bangladesh, they find it even more difficult". Tamara from IOM shares similar thoughts as she observes, "May be the governments can negotiate and yes definitely they can seek repatriation, but as long as they are here it should be looked after that they have access to basic justice and security. May be the smaller crimes can be resolved within the community, but for everything that goes beyond, the logic of intervention is that it should be prosecuted officially. However, the backlog of cases in the Bangladesh courts is huge, so additional cases from the Rohingyas will be burdensome. One of the good modalities that fulfilled the purpose of accessing justice was the mobile courts, so maybe in the future, we could consider this mechanism as a tool in resolving certain issues in the camps."

²⁹ Interview with experts, August 26, 2020.

³⁰ Interview with experts, October 05, 2020.

6.2 Raising Accountability of Myanmar and the International Community

No matter whatever form of justice process is developed in the camps, they are always going to be temporal because Bangladesh has not ratified the 1951 Refugee Convention, and hence, the Rohingyas are not going to receive rights as such in this country. This is undoubtedly one of the largest challenges in ensuring justice for Rohingyas in both the short and long run as was similarly echoed by a UNHCR officer as she said, “The most important challenge is finding sustainable solutions which are in Myanmar. But because the Rohingya people have experienced human rights violations and systematic violence, and they are stateless, that makes bringing the solutions addressing the causes of the problem much more complex.” She further added, “There are two aspects of accessing justice—one, when the Rohingya people are perpetrator of a crime and second, is when the Rohingya people are the victims of a crime. For the first one, there is a provision in Bangladesh that if the accused can not find a lawyer by himself, the government provides state-assigned lawyers. Still, that service does not apply to the Rohingya people. So, as humanitarian agencies, we are providing them with legal assistance. As for the latter, i.e., when the Rohingya people are the victims, some police station has a misunderstanding that the Rohingya people can not file a case, so even then, we try to intervene and provide them with the due legal assistance.”

Under such circumstances, the most sustainable and equitable solution that is available for the Rohingya issue is to hold the main perpetrator, i.e., Myanmar, accountable for their actions and make them compensate for them. However, the current situation depicts a scenario far from that reality and hence questions were also asked on what measures could be taken towards a permanent solution to this crisis at the place. Professor Dr. Imtiaz Ahmed, Professor of the Department of International Relations and Founder of the Centre for Genocide Studies at the University of Dhaka, claims, “The whole question of justice should be directed towards Myanmar, the gaze should be shifted to the international community and their failure in this crisis. Using this pandemic to our advantage, we can organise webinars to bring the international actors and hold them accountable for their apathy in this crisis.”³¹

6.3 Towards a Humanitarian Justice

While treading through the Rohingya camps, it is difficult not to be imbued by the divulging realities of these forcibly displaced people. Hence it is crucial to bear this in mind that at the end of the day, these efforts in addressing the challenges of developing the mitigating initiatives are all efforts in improving the lives of these brutally tortured and desperate people who have found their refuge in Bangladesh. It is absolutely essential not to be carried away with the stream of bureaucracies and structural complications that, in turn, would lead to losing vision in sight. It is here that Professor Dr Imtiaz Ahmed said, “I would say do not be a positivist or empiricist when you participate in refugee discourses because being a refugee is a matter of an individual’s entire life so you can not confine this within numbers. So, when you are questioning issues of justice, you need to remember that asking the victim these questions is inhumane in the first place. So, I think one of the lacking with the humanitarian agencies is that they do not assess the situation comparatively and eventually lose the complexity of the crisis in quantifying the

³¹ Interview with experts, March 22, 2020.

aspects through the mainstream discourse”. Also, as we keep devoting our concentration to the state of affairs in these camps, we must not lose focus of the greater scenario at sight. Professor Dr. Imtiaz Ahmed claims in this regard, “We have to keep in mind that 1.1 million people are living in that area and that too people who have survived genocide. We have mapped violence in the Rohingya camps through micro-narratives and other methods and I can say very confidently that the crime rate in that region is much less compared to any other crisis area and the people feel much safer in these camps. You have to understand that in order to get an idea regarding the justice issues in the Rohingya camps, we need to assess the scenarios in non-Rohingya regions and other areas.”

7. Concluding Remarks

The findings of the study reveal the myriad of issues that have crippled the Rohingyas’ lives. Even though the state of affairs is far better than what they experienced back in Myanmar and they are eternally grateful to Bangladesh for extending their support and providing refuge, the problems do not cease to exist. In response to the problems, they have been facing in the camps, different forms of formal and informal mechanisms have developed that provide them with some sort of justice. However, these mechanisms are merely a temporal response to the burgeoning crises and hence, these mechanisms are riddled with numerous challenges that require reformation and development. For example, even though all sorts of petty crimes or disputes are solved within the community, it was learnt from one of the camp managers that they have the administrative rights, but not the judiciary rights, to intervene and resolve the issues on their behalf. Against that context, a few experts were interviewed to gain some insights on how the challenges could be mitigated in developing a formidable justice system for the Rohingyas.

To ensure human rights, there needs to take scopes of improvement within the justice mechanisms. The *Majhis* and camp secretaries are the most popular medium of informal justice mechanism for the Rohingyas in the camps but they have no formal training for these tasks. Other challenges like nepotism and bribery undermine the efficacy and transparency of the delivery of justice in the hands of these *Majhis*. Strategies are essential for the solutions towards mitigating the challenges in accessing to justice in the camps. Since both the formal and informal justice mechanisms in the camps are infused with various challenges, the experts shared their opinions on how these issues can be mitigated through feasible and strategic solutions.

Lack of information and education about the rights also matters for ensuring the camps’ justice system. Enough awareness regarding the knowledge as to what is happening in the host community from the officials, referral mechanisms and the governance structure needs to be ensured. The judicial officers have very minimal involvement in the camps. The mobile courts are more functional. Thus, mobile courts and the role of the mediators need to be strengthened to ensure justice in the camps. Legal support from NGOs or other humanitarian agencies can be particularly helpful because Bangladesh’s local courts and police stations are already overburdened by their pre-existing issues.

Raising accountability of Myanmar and the international community is a prime concern for their recognition as a citizen in Myanmar and befitting repatriation. No matter what form of justice process is developed in the camps,

they will always be temporal because Bangladesh has not ratified the 1951 Refugee Convention and hence, the Rohingyas are not to receive rights as such in this country. This is certainly one of the largest challenges in ensuring justice for Rohingyas in both short and long run. Access to justice by the Rohingya refugees is extremely essential in terms of humanitarian justice. While treading through the Rohingya camps, it is difficult not to be imbued by the divulging realities of these forcibly displaced people. Hence it is crucial to bear in mind that at the end of the day, these efforts in addressing the challenges or developing the mitigating initiatives are all efforts to improve the lives of these brutally tortured and desperate people who have found their refuge in Bangladesh. It is essential not to be carried away with the stream of bureaucracies and structural complications that, in turn, would lead to losing vision in sight.

The Rohingyas reiterated their vision of ultimate justice as returning to their homeland with their due rights and justice for the victimisations they have experienced. Until then they are grateful to Bangladesh for granting them refuge but there are scopes to improve the the state of affairs where humanitarian agencies and international communities all have a key role to play. As long as all these stakeholders do not come together to strive for justice for this persecuted community, the Rohingyas shall continue to be perpetual victims.