



INTERNATIONAL  
**RESCUE**  
COMMITTEE

# Access to Justice in Crisis

Legal Empowerment for Rohingya refugees living in Cox's Bazar, Bangladesh.

International Rescue Committee | October 2019.



# Introduction:

The Rohingya people of Rakhine State, Myanmar, have suffered systematic persecution and human rights violations for decades. Stripped of Burmese citizenship in 1982, their very existence as a stateless people has been defined by their lack of rights or recourse for injustice. In 2017, approximately 745,000 Rohingya sought asylum in Bangladesh after fleeing human rights abuses perpetrated by the Myanmar military which the UN Fact-Finding Mission to Myanmar declared 'undoubtedly amount to the gravest crimes under international law'<sup>1</sup>. The Government of Bangladesh (GoB) has demonstrated enormous solidarity with their Rohingya neighbours at a time when other, often wealthier, nations are turning their back on international commitments to refugee hosting. In light of the impact of the refugee influx on Bangladesh and the host community, and recognizing the rights of the Rohingya to return, it is critical that the international community maintain pressure on the Government of Myanmar to take genuine steps towards creating conditions conducive to safe and sustainable repatriation.

Realistically, such conditions are unlikely to be met in the near future. Humanitarian response should therefore consider the medium-term protection needs of the Rohingya. Currently, while 34,665 (4%) Rohingya refugees from previous waves of displacement into Cox's Bazar have been granted refugee status, the majority have not – leaving them unable to access the full range of services and rights protections normally accorded to refugees, including access to effective justice mechanisms – a critical but often overlooked element of refugee responses.

To demonstrate the importance of interventions designed to expand access to effective justice for displacement affected populations, this brief will explain how IRC's access to justice programmes work, outline the protection risks to be addressed for both communities in Cox's Bazar (based on assessments carried out in 2018) and assess the limits of the justice mechanisms currently available to both refugees and host communities, with a particular emphasis on the acute protection needs of women and girls. The brief will then conclude with recommendations for how national and international stakeholders in the crisis can best support the justice needs of the Cox's Bazar refugee and host communities.

## **Why access to justice is critical in protracted crisis responses**

Access to systems of justice – whether community dispute resolution forums or legal systems mandated by the state – is essential to ensuring the protection of basic rights. Without non-discriminatory access to systems of justice, social tensions are

increasingly irresolvable, violence becomes cyclical or used as a tool to resolve conflicts, and essential rights are eroded. Moreover, the freedom to seek redress when rights are violated is the core function of protection under the rule of law and is enshrined internationally under Articles 6, 7 and 8 of the Universal Declaration of Human Rights<sup>2</sup>. In Bangladesh, this principle is further enshrined under Article 31 of the National Constitution, which offers the protection of the law not only to 'every citizen' but to 'every other person for the time being within Bangladesh'<sup>3</sup>.

The GoB should be commended for their recognition of this essential protection but should now, with the support of the international community, take steps to fulfil their responsibilities to the Rohingya who are living, for the time being, within Bangladesh.

Justice empowers people to make informed decisions about their lives. This is particularly important for refugees for whom legal empowerment, or knowledge of their position within systems of law, can be critical to escaping cycles of discrimination, negative coping mechanisms, and violence.

In Bangladesh, the arrival of refugees has put further pressure on already strained host community justice systems. Furthermore, existing socio-cultural dynamics, prohibitive costs, and bureaucratic obstacles present often intractable barriers to refugees and host community members achieving satisfactory justice outcomes. This context reinforces the value of programmes, designed as

part of a “whole of society” response, to support refugees and host communities to build knowledge of human rights and conflict resolution and seek justice. When designed and delivered in partnership with national partners and authorities such

interventions have the further potential to strengthen local legal systems and positively contribute to greater social cohesion between refugee and host communities<sup>4</sup> laying the groundwork for long-term regional stability and safe refugee returns.



Refugee men work to clear a water channel in Kutupalong Refugee Camp in preparation for monsoon rains. (T. Nesmith/IRC)

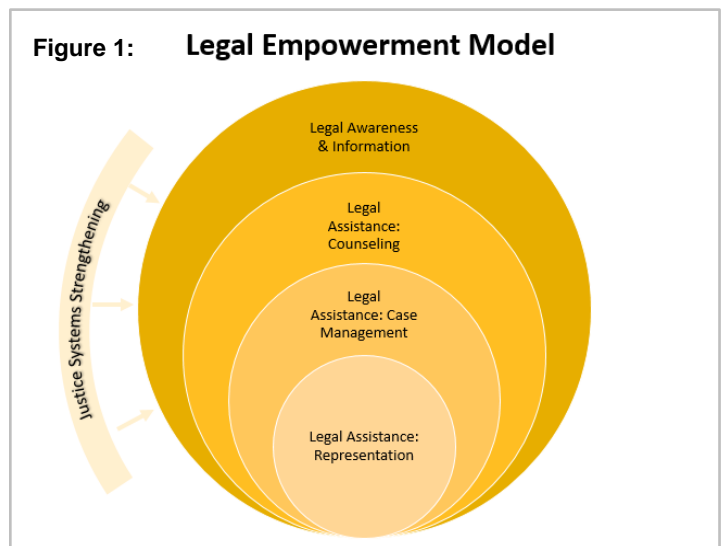
# II. What is A2J?

## Frameworks, case studies & approaches

Access to justice programmes are NGO-led initiatives which empower people in crisis contexts with the knowledge and capacity to use their preferred legal mechanisms to achieve satisfactory remedies for violations of their rights. IRC has a proven track record of successfully facilitating these interventions, contributing to refugee self-reliance<sup>5,6,7</sup> and supporting efforts to strengthen legal systems. Access to justice programmes are anchored in a Legal Empowerment Model, a framework aimed at strengthening ‘the capacity of all people to exercise their rights, either as individuals or as members of a community... [by] ensuring that law is not confined to books or courtrooms, but rather is available and meaningful to ordinary people.’<sup>8</sup> Meeting people where they are – by building their capacity to seek justice through their preferred system, be that non-state dispute resolution mechanisms or state court processes – is at the core of the model.

### The four stages of legal empowerment:

1. The first stage of the Legal Empowerment Model (see **Figure 1**) is to promote legal awareness through informing people of their rights. This can be achieved by establishing physical spaces in which to deliver information awareness sessions, through mobile outreach teams, or in certain contexts through a digital spaces such as apps and websites.
2. The second stage in the Legal Empowerment model is to offer counseling from a paralegal or trained program representative to anyone requiring tailored guidance on a particular legal issue.
3. If an individual or group still requires support in finding a solution to their legal issue, then the third stage is for a paralegal or other member of the programme team to directly manage a claimant’s case.
4. If a satisfactory resolution still cannot be found, then the fourth and final stage of the model is for a paralegal to directly represent the claimant within either the state justice system or a non-state community forum.



Underlying each stage is the strengthening of the justice systems used by claimants. This is achieved across the model by working with justice providers to ensure justice services are durable, readily available, have the capacity to process and deal with legal needs safely, and work to outcomes consistent with human rights standards.



## Access to justice programming at IRC

IRC has designed and delivered successful justice interventions in various crisis contexts, including in Thailand (see **Box 1**), Pakistan, South Sudan, Somalia, Kenya, Uganda, Tanzania, Iraq, Lebanon and Syria, with Signpost legal information programming in Europe, Jordan and El Salvador. IRC has rich experience of working with community stakeholders, supporting them to develop and practice non-violent dispute resolution practices, and the delivery of information via digital channels about how to access local services and make informed decisions about the issues that matter most to refugees<sup>9</sup>. Programmes are always designed to address whichever legal issues are most relevant in context, to those most in need of protection – including in areas of civil, criminal and administrative law. All of IRC's access to justice programmes are conducted by prioritising how regional and community-level legal systems can function in conformity with human rights standards to deliver satisfactory remedies for rights violations.

### **BOX 1: The Legal Assistance Centre (LAC) Project in Thailand**

In 2007, IRC and UNHCR began a legal assistance project in three refugee camps along the Myanmar-Thailand border to improve the protection of Karen refugees who had fled from violence in Myanmar. Approximately 135,000 Karen refugees had been living in nine camps along the border since the mid-1980s, facing protection risks including sexual violence, exploitation and physical violence with extremely limited legal recourse<sup>10</sup>.

The Government of Thailand, seeing that the project offered opportunities for both regional security and for the Karen refugees, established a steering committee to assist in the development of three legal centres offering advice, legal counsel and case management for Karen refugees. The project was the first globally recorded initiative to establish legal centres within a refugee camp<sup>11</sup>, and was a major success: supporting thousands of refugees to achieve justice through non-state mechanisms in the camps and through the Thai justice system specifically for cases of murder, sexual assault and drug offences.

Ultimately the project, through working in partnership with camp authorities and refugees, led to the development of a codified camp Constitution with mechanisms for referral to the Thai justice system and punitive measures for crimes within the camps consistent with international human rights, Thai legal standards, and Karen refugee justice preferences. The project received an A++ rating from DFID in 2013 for 'exceeding expectations... with numerous evidentiary examples of change' and continues to function today, focussing on the training and accreditation of community paralegals and increasing efforts to mitigate exploitation in the workplace through legal information approaches.

### III. Protection risks in Cox's Bazar



Photo: Maruf Hasan Bhuiyan/IRC

In December 2018 and September 2019, IRC undertook assessments of both the current risks faced by refugee and host communities, and the current opportunities for economic empowerment in Cox's Bazar<sup>12,13</sup>. These are summarized below and highlight the interconnection of risks for both host and refugee communities. Access to justice programmes can play a critical role in addressing the following risks outlined in IRC's assessments:

**Risks for refugees from encampment:** For the Rohingya, encampment in Cox's Bazar in overcrowded conditions with no legal recognition of their refugee status, limited access to education, livelihoods opportunities, civil documentation or financial services along with severe movement restrictions, has compounded existing vulnerabilities and reduced their ability to create steps towards self-reliance in becoming contributors to their communities and local economies. All of these protection risks are exacerbated by the highly

congested nature of the Cox's Bazar camps. IRC reports note that the population density is as high as 8m<sup>2</sup> per person, while minimum standard of best practice is 45m<sup>2</sup>. Population density risks are recognized by the Joint Response Plan (JRP) as 'the central challenge for refugee response across all sectors'<sup>14</sup>.

**Intra-community risks for refugees:** Multiple IRC assessments identified high rates of intimate partner violence (IPV) and other sexual or gender-based violence (GBV)<sup>15</sup>, household disputes, 'eve-teasing'<sup>1</sup>, kidnapping and human trafficking<sup>16</sup> across Cox's Bazar Rohingya communities.

**Prevalence of sexual and gender-based violence:** Global evidence shows that the Rohingyas' recent experience fleeing a campaign of violent persecution, particularly one in which sexual violence was used as a deliberate strategy, is likely to have severely compounded their risk of

<sup>1</sup> A euphemism used throughout South Asia to refer to sexual harassment or sexual assault of women by men

experiencing sexual and gender-based violence<sup>17,18,19</sup>. IRC's *What Works* synthesis brief on violence against women and girls in humanitarian crises found that those who had 'experienced conflict-related trauma were more likely to have experienced intimate partner violence in their lifetimes', and further that 'conflict/political violence [was] commonly noted as a predictor of violence against women and children'<sup>20</sup>. This is consistent with IRC's Accessing Justice Assessment, which found that conflict, displacement and lack of livelihoods opportunities have disrupted traditional social norms, leading to unfulfilled expectations for the male head of household to provide, and often resulted in men exerting authority over their families through violence<sup>21</sup>.

**Risks for Cox's Bazar host community:** For the host communities of Cox's Bazar, long-term limitations to livelihoods opportunities, exposure to drug trafficking, and shortages of local resources like firewood and food are all further exacerbated by the strain on local legal systems which has arisen in part due to the refugee influx<sup>22</sup>.

**Host and refugee inter-community risks:** Examples of host and refugee inter-community risks include sexual violence and harassment, theft, conflict over resources, the illicit drug trade, perceptions of 'otherness', and general violence.

Photo: Senwara is a volunteer at the IRC supported comprehensive women's centre. (Jessica Wanless/IRC)





# IV. State and Non-State Justice Mechanisms in Cox's Bazar

Justice in Bangladesh, like much of the world, is sought through two different approaches: state and non-state. Bangladesh's state systems of justice include the courts, magistracy, police, and other structures established through the national constitution. For the Cox's Bazar's host community, the state justice system is rarely used due to courts being both prohibitively expensive and severely overburdened; instead, justice is generally accessed through a community- or NGO-led 'Salish' a traditional rural mediation forum, or the Village Courts, a local government mechanism developed from the format of the community Salish in 1976<sup>23</sup>. For the Rohingya, the non-state system is entirely separate. All disputes are first raised through the Majhis: an unelected, top-down system of Rohingya community representatives established by the GoB in previous waves of displacement. The Majhis hear justice complaints and decide whether to facilitate a mediation process which is led by refugee community leaders<sup>24</sup>.

## **Access barriers for refugees: non-state justice mechanisms**

Majhis play numerous roles in the camps. Aside from facilitating mediation processes, they also play a key role in the targeting and provision of humanitarian assistance. IRC's assessment found that the Rohingya report rampant abuse of power by the Majhis, including incidents of exclusion of refugees from aid provision<sup>25</sup>. A lack of transparency and prevalence of unaccountability amongst the Majhis act as a disincentive for Rohingya to bring justice complaints. While access to justice programme representatives directly representing claimants can limit this corruption - and in doing so, set a positive precedent for non-state mechanisms in the future – without representation, refugees may avoid even raising their rights violations.

To reduce these barriers, the UN has proposed to replace the Majhis with Camp and Block Committees, a system in which the Rohingya elect their own community representatives<sup>26</sup>. However, the process has been stalled until new guidelines are endorsed by the Refugee Relief and Repatriation Commission (RRRC), a body responsible for the overall coordination of the Rohingya refugee response on behalf of the GoB. Eventually, the representative structure of the Camp and Block Committees may offer a greater chance of an accountable and democratic system that closes the protection gap, as well as an opportunity to reduce disincentives for Rohingya in accessing justice.

## **Access barriers for refugee women**

For women and girls in the Rohingya community, simply raising a legal issue with a Majhi remains a serious challenge. Due to the patriarchal norms of Rohingya society, women generally rely on their male head of household to engage with the Majhis. For women, this clearly makes bringing forward issues involving IPV extremely problematic. Further, as the vast majority of Majhis are male members of the Rohingya community, female survivors of GBV have a strong social disincentive to report their issue directly to a male Majhi.

Even if they do successfully raise an issue with a Majhi, it is then brought to a community mediation forum. Mediation relies on the voluntary presence of disputing parties in close proximity, creating risks of further physical harm, trauma or social stigma for GBV survivors<sup>27</sup>. Moreover, IRC's assessment shows that both host and refugee community mediation sessions in Cox's Bazar tend to be led by men, and frequently involve attribution of blame and shame to GBV survivors due to the societal belief that women hold responsibility for the violence they face<sup>28</sup>. GBV survivors attempting to access justice therefore run a high risk of further violence or societal isolation by their community<sup>29</sup>. In these instances, access to justice programme representatives can offer tailored advice and guidance, bring forward the case themselves instead of the male head of household, or help to escalate it to the state system.



### **Refugee justice mechanism preferences**

Despite these gender-based inequalities and issues of corruption, IRC's assessment found that Rohingya refugees in Cox's Bazar generally show a strong preference for non-state justice systems. Further, and in-keeping with IRC's global experience of access to justice programming, the Cox's Bazar host community largely share this preference. These findings also match global assessments conducted by UNHCR across thirteen different refugee camps – bar an explicit exception for sexual and gender-based violence, for which encamped refugees expressed a preference for utilizing state justice systems, likely as a result of the social stigma of raising them in non-state systems and low likelihood of positive outcomes<sup>30</sup>. However, the overall preference for non-state mechanisms found in these studies does not always account for the lack of knowledge, lack of access and further patterns of stigma among displaced communities surrounding the use of state mechanisms.

IRC's assessment found that while justice needs coalesced around creating access to meaningful justice for GBV survivors, current practices within non-state mechanisms in Bangladesh are reinforcing harmful gender power dynamics in the refugee community<sup>31</sup>. In these instances, IRC's experience shows that access to justice programmes can best serve the protection needs of claimants by managing their cases via state channels that allow for adequate protection of GBV claimants and advocating among camp officials, police and the criminal courts, while continuing to support non-state systems to improve in alignment with human rights standards<sup>32</sup>.

### **Refugee and host community barriers to accessing state justice**

In Bangladesh, the state legal system can be prohibitively difficult to access without NGO assistance. For refugees this is typically due to government resistance, pre-existing case backlogs, complications around legal status, language, cultural barriers and cost. To access the state justice

system, refugee claimants must first elevate their case to their Camp-in-Charge, a GoB representative responsible for camp administration, who will decide whether the claimant is permitted to leave the camp to pursue the case in court, or whether the case can be brought to the police. This can be an arduous process involving advocating with numerous stakeholders which produces few results, leaving most claimants to abandon their efforts<sup>33</sup>. NGO access to justice programming representatives can help to circumvent some of these barriers and escalate serious cases to a higher level without engaging in community mediation forums.

It is crucial to note that many of these barriers are not limited to refugees. Research indicates that Bangladesh's state legal system is also largely inaccessible for the country's rural poor population, including the Cox's Bazar host communities<sup>34</sup>. This is in part due to the national system being severely overburdened: as of August 2019 an estimated 3.6 million cases were pending hearing<sup>35</sup>. The courts are evidently understaffed and under-resourced. Thus, improving access to state justice systems would necessitate international investment and development funding for GoB to ease pressure on its legal structures, increase numbers of legal representatives, and reduce pending cases.

Even if access to the state legal system were improved, further reforms would be needed to address the current inequality of outcomes for women and girls. Steps in the right direction are being taken but outcomes remain limited. In 2000, the GoB established Women and Children Repression Prevention Tribunals which were intended to focus specifically on addressing GBV, rape, sexual harassment, and the trafficking of women and children. However, an 8-year study monitoring conviction rates through the tribunals conducted by Naripokkho, a Dhaka-based women's rights body, found that of 20,228 cases filed only 19 ended in a conviction: a success rate of 0.3%<sup>36</sup>. Improvements in reaching satisfactory remedies following instances of GBV would both demonstrate

Bangladesh's commitment to Sustainable Development Goal 5 (Gender Equality and Women's Empowerment) and work towards addressing protection risks for women and girls in Cox's Bazar.

### **Justice across refugee and host communities**

Finally, effective access to justice programming in Bangladesh would work towards supporting a shared space for justice resolution between the Rohingya and host communities, through state and/or non-state channels. Rohingya and host community members face many of the same justice challenges, and yet there are no forums for both communities to come together to find shared recourse. Rohingya community justice processes

are almost entirely inaccessible to host communities, and the host community Village Courts are inaccessible to the Rohingya due to the need for a national ID number. Without a space for resolving inter-community conflicts, ongoing patterns of theft, sexual violence and instability will only become worse<sup>37</sup>. Conversely, finding space for inter-community nonviolent dispute management and resolution would have benefits both in Cox's Bazar and beyond: a reduction in stalled cases backlogged due to jurisdictional issues, improvements to protection for the whole of society, and the building of pathways to social cohesion for host and refugees for the remainder of the Rohingyas' stay in Cox's Bazar.



IRC-supported volunteer Senwara stands in Kutupalong refugee camp. TNesmith/IRC



# V. Recommendations

The Rohingya have suffered marginalization, abuse and violations of their human rights for decades. Continued restrictions on their access to justice in a situation that bears all of the hallmarks of becoming a protracted crisis will only reinforce their suffering. Until a time when the Rohingya are able to return to Myanmar, it is crucial that they - and their host community - have improved access to justice and conflict management skills as a vital pillar in supporting their own self-reliance and the stability of Cox's Bazar. The recommendations outlined below would be the first step to offering both the Rohingya and the host communities of Cox's Bazar the protection and fulfilment of their fundamental human rights; but delivering these recommendations will necessitate regional technical expertise backed by national and international political commitment.

For the **Government of Bangladesh:**

1. **Reduce bureaucratic barriers, costs and delays** associated with court trials in order to facilitate full implementation of Article 31 of the National Constitution of Bangladesh and ensure that neither the host community nor the Rohingya are impeded from accessing the state legal system.
2. **Finalise the Refugee Relief and Repatriation Commission's endorsement of new guidelines** for the establishment of additional Camp and Block Committees across the Cox's Bazar camps.
3. As part of continued efforts to achieve SDG5 and 16, **establish a steering committee** to examine why cases of sexual and gender-based violence produce so few outcomes through the national justice system.
4. **Recognise the legal status of the Rohingya** as refugees in Bangladesh or offer other civil documentation to reduce bureaucratic barriers for rights-holders and demonstrate commitment to SDG16.

For **International Donors, United Nations and Multilateral Agencies:**

1. **Fund NGO-led access to justice programmes** to support refugee and host community legal empowerment and self-reliance, and to begin to address and mitigate the disproportionately broad range of threats faced by women and girls in Cox's Bazar.
2. **Collaborate with the GoB** to achieve the full rollout of the Camp and Block Committees across all Cox's Bazar camps to secure democratic governance for the Rohingya and fund the training of Camp and Block Committee representatives in protection principles, human rights, and legal procedures
3. **Fund state justice system strengthening development programmes** for Bangladesh to boost its judicial capacity and facilitate access to justice programming to use state legal systems for sexual and gender-based violence claims.
4. **Work with the Government of Bangladesh** to find a state or non-state forum suitable for hearing inter-community legal disputes between Rohingya and host communities of Cox's Bazar.

For **INGOs and NGOs**:

1. **Integrate legal awareness and information distribution activities** into other areas of programming by providing resources on how to locate and use legal representation in public spaces such as health centres, food distribution centres, and other areas commonly accessed by refugee and host communities.
2. **Support more effective legal services** by consulting with community representatives to understand the specific local justice needs of Cox's Bazar and the limitations of existing non-state mechanisms. Where appropriate provide technical support and training to state justice actors to ensure quality service provision.
3. **Emphasize support access to community justice mechanisms** across camps in Cox's Bazar to build capacity of those engaged in community justice mechanisms including refugee leaders, NGO and INGO workers, to work towards justice outcomes in alignment with human rights standards, whilst recognising and addressing possible limitations in current community-led processes.
4. **Collaborate with the United Nations and donors with the process of introducing Camp and Block Committees** in camp areas across Cox's Bazar, and in the meantime support Majhis to work in-line with human rights standards and GBV awareness.



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