

# SHELTERS OF JUSTICE IN DISPLACED PERSONS SETTLEMENTS: A PROPOSAL FOR ROHINGYA CAMPS

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## Abstract

Hundreds of thousands of Rohingya refugees live in camps in Bangladesh, where their everyday legal needs remain unmet. This article puts forward a front-line justice system aimed at addressing those needs. It proceeds in three steps. First, it reviews the documented legal needs of Rohingya and the current approaches to the administration of justice in displaced persons camps. Second, it examines the model of front-line justice, which rests on the implementation of justice shelters providing legal information, mediation, and safeguard orders. In doing so, it discusses how the confluence of legal traditions in Canada can provide inspiration for a justice system that reflects the legal pluralism prevailing in Rohingya camps and empowers them to build their own justice structures. The second part also reviews the implementation of front-line justice in Mali and Haiti, and the lessons we can draw from these two cases. Building on those lessons, the third part puts forward an adapted front-line justice system tailored to the Rohingyas' legal needs.

## Introduction

Natural disasters, armed conflicts, persecution, and other catastrophes have led to unprecedented forced displacements in recent years. Those displacements represent a significant challenge for host states and the international community, who have often responded by confining refugees and migrants to official settlements and unofficial makeshift camps. For example, more than 900,000 Rohingyas currently live in refugee camps in Bangladesh, right across the border from their home country, Myanmar.<sup>1</sup> Life in those camps and similar environments poses many challenges: health risks are increased; food and water are scarce or unhealthy; violence is frequent; and housing is inadequate. Basic needs are left unaddressed, often for long periods of time.

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<sup>1</sup> UNHCR, "Bangladesh Operational Update" (November 2021) at 1, online (pdf): <https://data2.unhcr.org/en/documents/download/90088> [UNHCR, "November 2021 Update"].

These basic needs also include justice needs. Camps are dynamic communities in which interpersonal tensions inevitably arise, often amplified by a preexisting context of violence.<sup>2</sup> While host states generally provide some security apparatus to the camps, they usually focus on addressing urgent manifestations of violence and controlling movements at the camps' borders. The ordinary justice needs of displaced persons are little more than an afterthought, when they are dealt with at all.

In this article, we argue that host states and the international community can and must do more to address the everyday legal needs of displaced persons living in camps. To that end, we put forward a solution that builds on the model of front-line justice, which rests on the quick deployment of 'justice shelters' providing legal information, mediation services, and safeguard orders when necessary.<sup>3</sup> We argue that this model, which was implemented in Haiti and Mali in response to a natural catastrophe and a civil war, respectively, is well suited to respond to the documented needs of displaced persons living in camps, including Rohingya refugees.

In addressing this topic—and in line with the theme of this special issue—we also reflect on the contribution that the Canadian experience in alternative dispute resolution can make to the administration of justice in other contexts and jurisdictions. Under the inspiration and impulse of Quebec and other provinces, Canada has become an international leader in dispute resolution. In particular, the implementation in 1998 of judicial mediation (also called judge-led mediation) in Quebec contributed to “a new, participant-centered normative order [...] that conceptualizes litigation more broadly and holistically and, thus, offers justice that is fuller and better adapted to the needs of parties with a variety of conflicts”.<sup>4</sup> Moreover, the confluence of legal traditions characteristic of Canada can inspire the development of justice structures that are more responsive to situations of legal pluralism. As we argue in this paper, this openness to legal pluralism is particularly important for refugees who find themselves governed by the laws of their host country but continue to rely on their own norms and the laws of their home country to resolve disputes arising among themselves.

This article is divided into three parts. The first one reviews the literature on the justice needs of displaced persons living in camps, including Rohingya refugees living in Bangladesh, and examines current approaches to the administration of justice in those contexts, with a focus on legal empowerment. The second part explains the model of front-line justice and how it contributes to legal empowerment and to the

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<sup>2</sup> See e.g. Kazi Fahmida Farzana, *Memories of Burmese Rohingya Refugees* (New York: Palgrave Macmillan, 2017) at 184.

<sup>3</sup> Louise Otis & Eric H Reiter, “Front-Line Justice” (2006) 46 *Va J Intl L* 677 [Otis & Reiter, “Front-Line Justice”]. See section 2.1, below, for a description of the model's main features and the context in which it was developed.

<sup>4</sup> Louise Otis & Eric H Reiter, “Mediation by Judges: A New Phenomenon in the Transformation of Justice” (2006) 6 *Pepp Disp Resol LJ* 341 at 353–54 [Otis & Reiter, “Mediation by Judges”].

recognition of legal pluralism in camps. The second part also examines how front-line justice has been implemented in Haiti and Mali and draws some important lessons from these two examples. The last part builds on those lessons to adapt front-line justice to the documented reality of Rohingya refugee camps in Bangladesh. Finally, it identifies some potential hurdles that must be anticipated when designing a front-line justice system tailored to displaced persons settlements.<sup>5</sup>

## 1. Justice in Displaced Persons Camps

In this first section, we review the main justice needs of displaced persons living in camps (1.1) and we discuss current approaches to the administration of justice in that context, with a focus on legal empowerment (1.2). Before we turn to these points, a brief clarification of the notion of “displaced persons” is in order.

“Displaced persons” is an umbrella term which encompasses internally displaced persons (IDPs) and refugees. Both categories refer to people who were forced to flee their homes for various reasons including armed conflicts, situations of generalized violence, human rights violations, natural disasters, or persecution.<sup>6</sup> However, they remain conceptually distinct because while refugees have crossed an international border and find themselves outside their country of origin, IDPs remain in their home state.<sup>7</sup>

This difference is important for the administration of justice in camps because it determines the official law that applies to displaced persons. While IDPs remain under the jurisdiction of their home state and subject to its laws (even when they face persecution at the hands of that same state), refugees become subject to the laws of the

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<sup>5</sup> The solutions we put forward here are far from definitive. As with most other institutional reforms, their success depends on multiple factors and can only be tested after their implementation: see Mariana Mota Prado & Michael J Trebilcock, *Institutional Bypasses* (Cambridge: Cambridge University Press, 2019) at xi–xii, 10–11.

<sup>6</sup> For IDPs, see UN Commission on Human Rights, “Report of the Representative of the Secretary-General, Mr. Francis M. Deng – Addendum: Guiding Principles on Internal Displacement”, UN Doc E/CN.4/1998/53/Add.2 (1998) at para 2 [UNCHR, “Guiding Principles”]; see also UN Office for the Coordination of Humanitarian Affairs, *Guiding Principles on Internal Displacement*, 2<sup>nd</sup> ed (Washington, DC: Brookings, 2004) at 1. The definition of “refugee” is limited to displacements resulting from “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”: *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137, art 1(A) [*1951 Convention*]; as amended by the *Protocol Relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267, art 1(2) [*Protocol*].

<sup>7</sup> *Guiding Principles*, *ibid* at para 2 (IDPs “have not crossed an internationally recognized State border”); *1951 Convention*, *ibid*, art 1(A); as amended by the *Protocol*, art 1(2). See also the *1951 Convention*, *ibid*, arts 1(D), (E) and (F), which excludes those receiving protection or assistance from another organ of the UN, those enjoying rights normally accorded to nationals in their country of residence, and those who have committed or participated in the commission of certain serious crimes or heinous acts.

country in which they find themselves following their displacement.<sup>8</sup> In both cases, international instruments guarantee some basic rights, including free access to the courts, but those protections often remain theoretical.<sup>9</sup> These considerations and the difference between IDPs and refugees must be considered when designing justice institutions for displaced persons camps. Having made that clarification, we turn to a review of their everyday justice needs.

## 1.1 Justice Needs in Displaced Persons Camps

### 1.1.1 Main Justice Needs

This article focuses on everyday justice needs arising within camps. These needs are distinct from other types of legal issues, for example claims against the host state or claims stemming from the underlying displacement, although these types of disputes can be interrelated and generate everyday justice needs in the camps. Any claims against the host state must be brought before that state's justice system—which is however often difficult to access for refugees—and claims related to the displacement, which pertain for example to human rights abuses suffered in a refugee's home state, are usually best addressed by other solutions such as transitional justice mechanisms, which have been relatively successful in some contexts and are already discussed at length in the literature.<sup>10</sup> Although these two types of legal issues are critically important for displaced persons, this paper focuses instead on everyday legal issues which arise within the camps, among its residents.

These everyday justice needs usually coalesce around four main areas of concern: (1) sexual and gender-based violence (SGBV); (2) land and property-related disputes, including theft; (3) human rights violations; and (4) discrimination, although this fourth category overlaps with the others.<sup>11</sup> These four categories are not unique to

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<sup>8</sup> See respectively *Guiding Principles*, *supra* note 6, principles 1(1), 2(1) (noting that IDPs “shall enjoy [...] the same rights and freedoms [...] as do other persons in their country” and that national authorities must protect them); and *1951 Convention*, *supra* note 6, art 2.

<sup>9</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, art 2(3); for refugees, see *1951 Convention*, *supra* note 6, art 16.

<sup>10</sup> See e.g. Erin K Baines, “The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda” (2007) 1 Intl J Trans Justice 91; Luc Huyse & Mark Salter, “Introduction: tradition-based approaches in peace-making, transitional justice and reconciliation policies” in Luc Huyse & Mark Salter, eds, *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008) 1; Susan Harris Rimmer, “Wearing his Jacket: A Feminist Analysis of the Serious Crimes Process in Timor-Leste” (2009) 16 Austl Intl LJ 81; *Report of the UN Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UNSC, UN Doc S/2004/616 (2004) at para 8; see also Jeffrey R Seul, “Coordinating Transitional Justice” (2019) 35 Negotiation J 9 at 10; Ruti G Teitel, *Transitional Justice* (Oxford: Oxford University Press, 2000); Alexandra Barahona De Brito, Carmen Gonzalez-Enriquez & Paloma Aguilar, eds, *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford: Oxford University Press, 2001); Lavinia Stan & Nadya Nedelsky, eds, *Encyclopedia of Transitional Justice* (Cambridge: Cambridge University Press, 2013).

<sup>11</sup> Carolien Jacobs et al, “Justice Needs, Strategies, and Mechanisms for the Displaced: Reviewing the Evidence” (Social Science Research Council, Working Paper, 2017, online:

the context of camps, nor are they the only legal needs that arise in camps, but they have been identified as the main everyday justice issues arising in that context. It is worth discussing them in greater detail.

First, SGBV issues are particularly prevalent. They include rape and defilement, to which youth and female refugees are frequently exposed,<sup>12</sup> but also “forced and/or early (child) marriage; abuse by authorities, including physical abuse; sexual exploitation; sexual assault; other inappropriate sexual behaviour, indecent acts and sexual harassment; incest; abductions or kidnapping (especially of girls and women); trafficking of women and girls; forced prostitution; and disappearances of women and girls”.<sup>13</sup> SGBV issues are even more pressing considering their systemic underreporting<sup>14</sup> and the fact that they are often compounded by relationship disputes, “including cases of domestic violence but also situations of abandonment [...] and a myriad of other potential problems between couples and families”.<sup>15</sup>

The second category of everyday justice needs arising in camps concerns theft and property disputes. The incidents reported in that category generally range from petty theft to violent robberies,<sup>16</sup> and include land ownership disputes between displaced persons and local residents (although as previously mentioned, this paper does not focus on these types of issues, but instead on disputes arising among camp residents).<sup>17</sup> Connected to these concerns are financial issues including debt disputes between the camps’ inhabitants.<sup>18</sup> These incidents are similar to those which occur in any community where money and property are regulated.

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<<https://www.ssrc.org/publications/view/justice-needs-strategies-and-mechanisms-for-the-displaced-reviewing-the-evidence/>>; see also Rosa da Costa, *The Administration of Justice in Refugee Camps: A Study of Practice*, UN Doc PPLA/2006/01 (2006) at 40–41; Julie Veroff, “Crimes, conflicts and courts : the administration of justice in a Zambian refugee settlement” (Department of International Development at Oxford University, Research Paper No. 192, 2010) at 11–15, online: <<https://www.unhcr.org/research/working/4cd7bfa99/crimes-conflicts-courts-administration-justice-zambian-refugee-settlement.html>>; Kirsten McConnachie, *Governing Refugees: Justice, Order and Legal Pluralism* (Oxford: Routledge, 2014) at 107 (mentioning theft, assault, disorder, fighting, and relationship disputes); Anna Lise Purkey, *Refugee Dignity in Protracted Exile: Rights, Capabilities and Legal Empowerment* (Oxford: Routledge, 2020) at 118–20.

<sup>12</sup> See e.g. Veroff, *supra* note 11 at 15.

<sup>13</sup> Da Costa, *supra* note 11 at 11.

<sup>14</sup> See Adrienne L Fricke & Amira Khair, “Laws without Justice: An Assessment of Sudanese Laws Affecting Survivors of Rape” (Washington, DC: Refugees International Report, 2007), online (pdf): <<https://www.refworld.org/pdfid/47a6eb870.pdf>>; see also Da Costa, *supra* note 11 at 46.

<sup>15</sup> McConnachie, *supra* note 11 at 107.

<sup>16</sup> Veroff, *supra* note 11 at 12–15, 22.

<sup>17</sup> *Ibid* at 12–13.

<sup>18</sup> See e.g. Faustina Pereira, Jessica Olney & Azizul Hoque, “Community Perspectives on Access to Civil Justice After Cross-Border Displacement: The Needs of Rohingya Refugees in Bangladesh” (San Francisco: Centre for Peace and Justice & The Asia Foundation, 2021) at 7, online (pdf): <[https://asiafoundation.org/wp-content/uploads/2021/02/X-Border\\_Community-Perspectives-on-Access-to-Civil-Justice-after-Cross-Border-Displacement-The-needs-of-Rohingya-Refugees-in-Bangladesh.pdf](https://asiafoundation.org/wp-content/uploads/2021/02/X-Border_Community-Perspectives-on-Access-to-Civil-Justice-after-Cross-Border-Displacement-The-needs-of-Rohingya-Refugees-in-Bangladesh.pdf)>.

The third area of concern pertains to restrictions and violations of basic human rights. “[R]efugees are often subject to a wide range of restrictions on their rights”, including “be[ing] prohibited from leaving the camps, [a restricted] ability to seek employment outside of the camp [and] limitations on their right to protest or to express themselves freely”.<sup>19</sup> State restrictions on freedom of movement are also commonplace.<sup>20</sup> For instance, those living in the Meheba camps in Zambia reported that they could not move outside the camps without a permit specifying their terms of travel, despite the qualified freedom of movement enshrined in the *1951 Convention Relating to the Status of Refugees*.<sup>21</sup>

The fourth category of everyday legal needs concerns systemic discrimination, which can hamper the displaced persons’ equal access to employment, security, education and other services.<sup>22</sup> Some respondents living in the aforementioned Meheba camps reported that events of discrimination occurred not only between refugees, but also at the hands of local officials and citizens.<sup>23</sup> The UNHCR’s Protection Division confirmed this finding more generally and also documented severe access to justice barriers in host countries.<sup>24</sup>

These four categories of legal needs, as well as other everyday civil and criminal disputes, affect the quality of life in displaced persons settlements. Their impact is even greater in protracted situations, when IDPs and refugees “find themselves in a long-lasting and intractable state of limbo” in which “their basic rights and essential economic, social and psychological needs remain unfulfilled after years”.<sup>25</sup> The Rohingya refugee camps in Bangladesh, to which we now turn, are an example of such a protracted situation in which many everyday legal needs remain unmet.

### 1.1.2 Justice Needs of the Rohingya in Bangladesh

Since 1978, the Rohingya have been fleeing Myanmar and taking refuge in Bangladesh and other neighbouring countries, sometimes living in makeshift camps

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<sup>19</sup> Purkey, *supra* note 11 at 85.

<sup>20</sup> Da Costa, *supra* note 11 at 6, 13, 27; Veroff, *supra* note 11 at 14.

<sup>21</sup> Veroff, *supra* note 11 at 6; *1951 Convention*, *supra* note 6, art 26 (specifying that this right should be qualified only by the “regulations applicable to aliens generally in the same circumstances”; see also art 31 applying to refugees unlawfully in the country of refuge).

<sup>22</sup> *Ibid* at 15.

<sup>23</sup> *Ibid*.

<sup>24</sup> UNHCR, *Operational Protection in Camps and Settlements* (Geneva: UNHCR, 2006) at 27 [UNHCR, *Operational Protection*].

<sup>25</sup> Adapted from UNHCR Executive Committee Standing Committee, *Protracted Refugee Situations*, UN Doc EC/54/SC/CRP.14 (2004) at 1; usually, a protracted situation is one that lasts five years or more: UNHCR Executive Committee, *Conclusion on Protracted Refugee Situations*, No 109 (LXI), UN Doc A/AC 96/1080 (2009).

for decades.<sup>26</sup> During the most recent wave of displacement, an unprecedented number of Rohingya crossed the border in a short period of time: from August 2017 to August 2018, “over 700,000 Rohingya people from Myanmar fled to Bangladesh following a military campaign against them which several high-level UN officials, including the Secretary General himself, have described as ‘ethnic cleansing’”.<sup>27</sup> Thousands more have crossed the border since then, with a total of 907,766 Rohingya refugees living in the Cox’s Bazar area as of November 2021.<sup>28</sup> These refugees live in more than 34 camps,<sup>29</sup> the largest being the Kutupalong camp which hosts more than 620,000 people within its 13 square kilometers.<sup>30</sup>

The main challenges faced by the Rohingya refugees who live in those camps relate to various needs such as access to food, clean drinking water, robust shelters, electricity, and education.<sup>31</sup> Fortunately, there has been some improvement on these fronts in the past few years.<sup>32</sup> As a result, humanitarian assistance has turned towards other needs, including justice issues.<sup>33</sup> The Rohingya refugee camps are “a physical and material site of complex social and political phenomena, a site of both impasse and negotiation”,<sup>34</sup> prone to everyday conflicts. Life in those camps “is neither monolithic nor static”; rather, “the space is a highly contested political space where multiplicities of authorities of various degrees are interactive with each other”.<sup>35</sup> This constant interaction gives rise to the same types of tensions that exist in any

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<sup>26</sup> Farzana, *supra* note 2 at 145–46.

<sup>27</sup> Inter Sector Coordination Group, “Situation Report – Rohingya Refugee Crisis” (2 August 2018), online (pdf):

<[https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/isgc\\_situation\\_report\\_02\\_august\\_2018.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/isgc_situation_report_02_august_2018.pdf)>; UN, News Release, “Secretary General Urges Justice for Rohingya Community, in Video Message on Refugee Joint Response Plan” (16 March 2018), online: <<https://www.un.org/press/en/2018/sgsm18939.doc.htm>>. Myanmar’s actions have also been described by various experts as involving elements of genocide, see e.g. Michael A Becker, “The Plight of the Rohingya: Genocide Allegations and Provisional Measures in *The Gambia v Myanmar* at that International Court of Justice” (2020) 21 *Melb J Intl L* 428.

<sup>28</sup> UNHCR, “November 2021 Update”, *supra* note 1 at 1.

<sup>29</sup> Strategic Executive Group, “2021 Joint Response Plan – Rohingya Humanitarian Crisis” (10 May 2021), online (pdf): <<https://reporting.unhcr.org/sites/default/files/2021%20JRP.pdf>> [2021 JRP].

<sup>30</sup> *Ibid* at 6.

<sup>31</sup> *Ibid* at 11.

<sup>32</sup> Strategic Executive Group, “2020 Joint Response Plan – Rohingya Humanitarian Crisis” (March 2020) at 14–16, online (pdf): <[https://reliefweb.int/sites/reliefweb.int/files/resources/jrp\\_2020\\_final\\_in-design\\_280220.2mb\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/jrp_2020_final_in-design_280220.2mb_0.pdf)> [2020 JRP].

<sup>33</sup> See e.g. Pereira, Olney & Hoque, *supra* note 18.

<sup>34</sup> Ashika L Singh, “Arendt in the refugee camp: The political agency of world-building” (2020) 77 *Pol Geo* 102149 at 2.

<sup>35</sup> Farzana, *supra* note 2 at 184.

community, amplified by a crowded environment that blurs the distinction between the public and private spheres.<sup>36</sup>

SGBV is a particular concern. The 2019 *Joint Response Plan* noted that many Rohingya women and girls living in camps “continue to be at disproportionate risk of GBV, including domestic and intimate partner violence, forced marriage, exploitation and trafficking”.<sup>37</sup> This statement echoes a 2017 study which concluded that a significant number of Rohingya respondents had been exposed to SGBV,<sup>38</sup> as well as a recent round of camp profiling which noted in November 2019 that “violence against women as a perceived risk appeared to increase”, especially with respect to domestic violence and sexual assault.<sup>39</sup> A related issue is human trafficking, defined as the trade or even the sale of human beings. In the sixth round of camp profiling completed in November 2019, that issue was consistently reported as one of the most pressing protection and safety concerns among the Rohingya refugees, although its prevalence was slightly lower than before.<sup>40</sup>

Another justice issue that extends beyond the four categories discussed previously is the corruption of officials. The governance of refugee camps in Bangladesh is an intricate matter, with multiple overlapping levels of authority. Camps are formally under the jurisdiction of the Bangladeshi government, which however focuses on controlling the refugees’ movements and punishing offences they commit. The camps’ daily management and the provision of aid is ensured by humanitarian organizations and the United Nations, usually through UNHCR’s coordination. These multiple levels of governance are all potentially subject to corruption. For instance, officials in some camps have been reported to seek bribes or confiscate rations,<sup>41</sup> although the issue is not extensively documented. Everyday justice needs arise from those situations, with Rohingya refugees seeking to avoid corruption or remedy its consequences.

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<sup>36</sup> *Ibid* at 128.

<sup>37</sup> Strategic Executive Group, “2019 Joint Response Plan for Rohingya Humanitarian Crisis” (February 2019) at 16, online (pdf): [https://reliefweb.int/sites/reliefweb.int/files/resources/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.compressed\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/2019%20JRP%20for%20Rohingya%20Humanitarian%20Crisis%20%28February%202019%29.compressed_0.pdf) [2019 JRP].

<sup>38</sup> Andrew Riley et al, “Daily stressors, trauma exposure, and mental health among stateless Rohingya refugees in Bangladesh” (2017) 54 *Transcultural Psychiatry* 304 at 310.

<sup>39</sup> REACH, “Cox’s Bazar – Settlement and Protection Profiling: Round 6 – Report 5” (November 2019) at 11, online (pdf): <https://reliefweb.int/sites/reliefweb.int/files/resources/73601.pdf> [REACH, “Profiling: Round 6”]; see also International Rescue Committee, “Access to Justice for Rohingya and Host Community in Cox’s Bazar” (New York: IRC, 2019) at 4, online: <https://www.rescue.org/sites/default/files/document/3929/accessingjusticeassessmentexternalfinalsmall.pdf>.

<sup>40</sup> REACH, “Profiling: Round 6”, *supra* note 39 at 10–11.

<sup>41</sup> Farzana, *supra* note 2 at 177.



Unfortunately, those justice needs remain largely unaddressed, with Rohingya refugees identifying access to justice as one of their primary concerns. A round of camp profiling completed in April 2018 showed that in many sectors, legal assistance was part of the top ten most commonly reported needs.<sup>42</sup> While in 2019 13,512 Rohingya refugees living in Bangladeshi camps received “legal assistance to support their access to formal justice mechanisms”,<sup>43</sup> access to justice remains a pressing issue.<sup>44</sup> In 2021, a study concluded that refugees “lack [...] an adequate camp dispute resolution system” and “need better access to civil justice”, with “two-thirds of respondents sa[ying] they were unable to access information, justice-related services, and expert help in the camps when needed”.<sup>45</sup> These issues constitute a significant daily stressor which negatively impacts the refugees’ mental health.<sup>46</sup>

Efforts are underway to address these needs more effectively. The 2021 *Joint Response Plan* prepared by UN agencies, international NGOs, and the Red Cross/Red Crescent identifies as a primary strategic objective the protection of refugees, including the improvement of dispute resolution mechanisms.<sup>47</sup> More specifically, it notes the importance of “enhancing access to justice through standardized mediation and alternative dispute resolution mechanisms”.<sup>48</sup> It also emphasizes the importance of “community-based protection mechanisms” relying on “meaningful, inclusive, equitable, and gender-responsive community representation”.<sup>49</sup> That type of representation can count on the Rohingya’s desire for participation: in March 2020, the UNHCR noted that “22,109 refugees are estimated to be actively involved in [community] structures”.<sup>50</sup> This represents an opportunity for potential new justice institutions. Before presenting our proposal, we turn to a review of current approaches to the administration of justice in camps.

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<sup>42</sup> REACH, “Rohingya Refugee Crisis – Camp Settlement and Protection Profiling – Cox’s Bazar, Bangladesh – Round 3” (April 2018), online (pdf): <<https://data2.unhcr.org/en/documents/download/63821>> [REACH, “Profiling: Round 3”]. Round 6, in November 2019, did not question refugees regarding “legal assistance” but asked them questions about the reporting of incidents, which showed that security was a concern and that “[a]wareness of alternative community-based protection mechanisms [...] remain[s] low”: REACH, “Profiling: Round 6”, *supra* note 39 at 10–11.

<sup>43</sup> UNHCR, “Bangladesh Operational Update” (February 2020) at 3, online (pdf): <<https://reliefweb.int/sites/reliefweb.int/files/resources/74560.pdf>>.

<sup>44</sup> Shahnam Karim, Arif Chowdhury & Ishrat Shamim, “Status of Rohingya Refugees in Bangladesh: A Comparative Study with Emphasis on Aspects of Women and Girls in Camps of Kutupalong, Cox’s Bazar, Bangladesh” (2020) 7 *Open Access Lib J* e5831 at 10.

<sup>45</sup> Pereira, Olney & Hoque, *supra* note 18 at 2.

<sup>46</sup> Riley et al., *supra* note 38 at 309, 320.

<sup>47</sup> 2021 JRP, *supra* note 29 at 13–14.

<sup>48</sup> *Ibid* at 30.

<sup>49</sup> 2021 JRP, *supra* note 29 at 14.

<sup>50</sup> UNHCR, “Bangladesh Operational Update” (March 2020) at 5, online (pdf): <<https://reliefweb.int/sites/reliefweb.int/files/resources/75569.pdf>>.

## 1.2 Current Approaches to the Administration of Justice in Camps

The legal support provided to displaced persons living in camps can take different forms. The traditional “care and maintenance approach” focuses primarily on basic needs such as shelter, food, education, and healthcare. As part of that approach, justice needs are often a mere afterthought, and no specific system is implemented to deal with everyday disputes arising in camps. Instead, officials encourage refugees to petition the host state’s legal system, which is however often completely inaccessible to them.<sup>51</sup> While that approach is “potentially effective in the first stages of a refugee crisis”, it has been criticized for failing in “substantially and sustainably bettering the lives of refugees in protracted refugee situations, in leading to durable solutions for those refugees, or in providing any substantive benefit for the host state and local communities”.<sup>52</sup> With respect to justice issues, it has been criticized for placing displaced persons living in camps in a situation of “simultaneous engagement with and alienation from the law”,<sup>53</sup> being controlled by a legal apparatus in which they have no say nor power.

Recent initiatives have distanced themselves from that traditional approach and focused on different objectives, including legal empowerment. In 2008, the Commission on the Legal Empowerment of the Poor (CLEP) defined legal empowerment as “a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors”.<sup>54</sup> This “bottom-up approach” calls for cooperation “with communities, civil society organisations, paralegals, and customary justice”.<sup>55</sup> Although it has been criticized, this definition of legal empowerment has been endorsed by many scholars and UN agencies.<sup>56</sup>

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<sup>51</sup> In Mae La Oon (Thailand), officials were reluctant to establish a “separate system of community supported camp justice”, but their approach was described as a failure since “refugees still prefer their own system of camp justice”: Marc Hertogh, “Your rule of law is not mine: rethinking empirical approaches to EU rule of law promotion” (2016) 14 Asia Eur J 43 at 55.

<sup>52</sup> Purkey, *supra* note 11 at 28.

<sup>53</sup> Elizabeth Holzer, “What Happens to Law in a Refugee Camp?” (2013) 47 Law & Soc’y Rev 837 at 839.

<sup>54</sup> Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, vol 1 (New York: UN, 2008) at 3, online: <[https://www.un.org/ruleoflaw/files/Making\\_the\\_Law\\_Work\\_for\\_Everyone.pdf](https://www.un.org/ruleoflaw/files/Making_the_Law_Work_for_Everyone.pdf)>. For an earlier definition, see Stephen Golub, “Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative” (Carnegie Endowment for International Peace, Rule of Law Series Working Paper No 41, 2003) at 25, online (pdf): <<https://carnegieendowment.org/files/wp41.pdf>>.

<sup>55</sup> Lars Waldorf, “Legal empowerment and liberal-local peace-building” in Matthew Saul & James A Sweeney, eds, *International Law and Post-Conflict Reconstruction Policy* (Oxford: Routledge, 2015) 229.

<sup>56</sup> See e.g. *Legal empowerment of the poor and eradication of poverty*, GA Res 63/142, UNGAOR, 66<sup>th</sup> sess, UN Doc A/RES/63/142 (2009); Stephen Golub, “The Commission on Legal Empowerment of the Poor: One Big Step Forward and a Few Steps Back for Development Policy and Practice” (2009) 1 Hague J Rule of Law 101.

Anna Lise Purkey recently argued that justice interventions in the context of protracted refugee situations should be guided by legal empowerment.<sup>57</sup> This new approach broadens the range of rights with which the justice system is concerned, focusing not only on the fulfillment of the refugees' basic needs, but also on their ability to enforce their rights and participate in the "development of social norms of behavior and civic education".<sup>58</sup> This emphasis on the refugees' participation seeks to allow them to construct their own legal space and implement justice structures adapted to their own situation.<sup>59</sup>

This legal empowerment approach embraces and fosters legal pluralism both with respect to the institutions responsible for administering justice in camps and with respect to the norms and laws these institutions are called upon to apply. Instead of disregarding the refugees' own informal institutions, it recognizes that these mechanisms can and should coexist with formal justice structures, the latter being reserved primarily for serious crimes.<sup>60</sup> From an institutional perspective, "legal empowerment includes both top-down and bottom-up components and emphasizes the importance of partnership between different actors".<sup>61</sup>

In terms of the laws and norms to be applied by those institutions, we mentioned earlier that while refugees are officially governed by their host country's laws, they often continue to rely on their own norms to resolve disputes arising among themselves. An approach grounded in legal empowerment reflects and gives effect to those "multiple overlapping legal and quasi-legal regimes"<sup>62</sup> to which refugees are subject, including "camp by-laws, regulations and codes of conduct, religious or traditional laws and mores, informal codes of conduct outlining gender roles and expectations, the laws of the country of origin, and international laws and standards".<sup>63</sup> In that sense, it allows people living in camps to take control of their legal landscape and build it in parallel to the official law of the state.

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<sup>57</sup> Purkey, *supra* note 11 at 2; in that context, she views legal empowerment as "the process through which refugees and refugee populations become able to use the law and legal mechanisms and services to protect and advance all of their rights and to acquire greater control over their lives, as well as the actual achievement of that increased control": *ibid* at 85, 99.

<sup>58</sup> *Ibid* at 117–18.

<sup>59</sup> *Ibid* at 99; McConnachie, *supra* note 11 at 104 ("the value of local dispute resolution is not restricted to an immediate case but includes the benefits gained from community participation in establishing shared values through rule definition and enforcement"); Annett Bochmann, "The Power of Local Micro Structures in the Context of Refugee Camps" (2018) 32 J Refugee Stud 63 at 79–80; see also UNHCR, *Operational Protection*, *supra* note 24 at 13.

<sup>60</sup> Purkey, *supra* note 11 at 120–22; McConnachie, *supra* note 11 at 104, 123.

<sup>61</sup> Purkey, *supra* note 11 at 95.

<sup>62</sup> *Ibid* at 120.

<sup>63</sup> *Ibid*.

In short, in contrast to traditional approaches to the administration of justice in displaced persons camps, an approach that emphasizes legal empowerment fosters first and foremost the active participation of the displaced persons themselves, encouraging capacity-building, bottom-up structures and informal justice mechanisms. The next section describes the front-line justice model and how it builds on this approach.

## 2. Front-Line Justice: Model and Examples

Front-line justice was developed more than a decade ago. Since then, it has served as the conceptual foundation for several justice interventions in post-crisis contexts. In this section, we summarize the model's history and main features (2.1), before examining its implementation in Haiti and Mali (2.2) and the lessons learned from these two cases (2.3).

### 2.1 History and Features

Front-line justice rests on the image of a justice shelter “which represents present justice as lived by its community: [...] tactile, engaged, and local”.<sup>64</sup> This shelter, a “kind of judicial Red Cross”,<sup>65</sup> is “a rapidly deployable core of essential legal dispute-resolution mechanisms designed to restore a working framework of legality” by addressing everyday legal disputes.<sup>66</sup> Its deployment is made “in such a way as to build organically on indigenous institutions and values, rather than replacing them”.<sup>67</sup>

Front-line justice is based on three areas of intervention: (1) informational justice; (2) safeguard justice; and (3) mediational justice. The informational justice area is the first and more visible, where jurists triage cases to determine the appropriate recourse. Cases deriving from the crisis (mass killings, sexual abuse, torture, expulsion, etc.) are beyond the reach of justice shelters and may be referred to other dispute resolution mechanisms—we mentioned transitional justice mechanisms earlier, for example—but other cases arising from everyday life in camps should fall within their mandate. Jurists in the triage area should be able to resolve many, but not all, simple matters by providing legal information and advice.<sup>68</sup> For more complex cases or those requiring urgent measures, they should refer the parties to one of the two other areas of the justice shelters.

The safeguard area, staffed with local judges or people having the same authority, should deal with cases requiring urgent relief such as *habeas corpus*, interim releases, injunctions, and other similar measures. These orders should be granted

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<sup>64</sup> Otis & Reiter, *supra* note 3 at 679.

<sup>65</sup> *Ibid* at 694.

<sup>66</sup> *Ibid* at 679, 693.

<sup>67</sup> *Ibid* at 692.

<sup>68</sup> *Ibid* at 695–96.

quickly because of their urgency, but for a limited renewable term only. Judges should be domestic actors experienced in the applicable law, supported by international actors. While policing is also crucial for addressing these types of urgent issues, especially when violence is involved, the possibility of quickly accessing a judge for safeguard orders makes sure that these situations are not viewed only through the lens of policing, but also as a step towards the reconstruction of justice and public confidence in it.<sup>69</sup>

Whether they go through the safeguard area or not, cases that are too complex to be resolved in the informational justice area should be referred to experienced mediators available quickly and free of charge.<sup>70</sup> This mediation service should be designed and explained using traditional or community dispute resolution mechanisms and mediators should be “local members of civil society who have credibility and who have been carefully trained in mediation techniques by international resource personnel”.<sup>71</sup> Importantly, the mediators should not impose solutions but facilitate negotiation between the parties. A three- or four-hour session should be sufficient in most cases.<sup>72</sup> However, not all cases are prone to mediation: disputes involving violence, power imbalances, and other similar characteristics, should be referred to adjudicative methods.<sup>73</sup> Importantly, front-line justice shelters are precisely that—a front line—and should not be seen as an all-encompassing solution to all justice issues arising in post-crisis contexts.

For cases amenable to it, mediation presents significant advantages. More flexible and less procedural than formal adjudication, it usually reduces delays and costs in resolving disputes.<sup>74</sup> Additionally, since mediation is based on reconciliation, it helps the community “mov[e] away from the adversarial mindset that generates and characterizes crisis”.<sup>75</sup> It also performs an essential pedagogical function: since the participants directly take part in the resolution of their conflicts, they usually learn conflict-resolution skills that they can then apply in their daily lives to prevent further disputes.<sup>76</sup>

This model reflects the goals of legal empowerment, including participation and the reinforcement of local capacities. To that end, the people providing services in justice shelters, including jurists, should be drawn from the local populations and the law applied in the informational and mediational justice areas should be flexible

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<sup>69</sup> *Ibid* at 697–98.

<sup>70</sup> *Ibid* at 698.

<sup>71</sup> *Ibid* at 699; on training, see Otis & Reiter, “Mediation by Judges”, *supra* note 4 at 367.

<sup>72</sup> Otis & Reiter, *supra* note 3 at 699–700.

<sup>73</sup> *Ibid* at 702.

<sup>74</sup> *Ibid* at 700–01.

<sup>75</sup> *Ibid* at 701.

<sup>76</sup> *Ibid*.

enough to reflect the legal pluralism present in the camps. This openness to bottom-up structures and multiple overlapping legal and quasi-legal orders, central to front-line justice,<sup>77</sup> is crucial for the system to gain acceptance and legitimacy in the eyes of the people living in the camps. This success also depends on appropriate training being provided to those who operate justice shelters, covering both the techniques relevant to their area of intervention but also the official and unofficial law that they should apply.

The recognition of legal pluralism embodied in the model of front-line justice, while reflecting recent trends towards legal empowerment, is grounded more deeply in the Canadian origins of that model. Front-line justice emerged as an extension of the successful implementation of judicial mediation in the province of Quebec.<sup>78</sup> While led by judges—actors recognized in their communities—judicial mediation follows a mix of official law and unofficial norms and expectations to find solutions tailored to the parties' relationship. It allows the parties, with the help of an experienced mediator, to construct their own legal space in true pluralist fashion, an impulse that is also reflected in front-line justice.

While the pluralist and informal ethos of mediation is not unique to Canada, the confluence of legal traditions—including common law, civil law and indigenous legal orders—characteristic of our country's legal landscape may have been a contributing factor in the successful implementation of judicial mediation in Quebec, at the turn of the 21<sup>st</sup> century.<sup>79</sup> This same ethos provides fertile ground for the development of front-line justice and appears particularly apposite in the context of refugee camps. As Nicholas Kasirer noted, the confluence of legal traditions allows us to focus on their points of encounter and untether ourselves from the territorial confines of the law.<sup>80</sup> In the context of refugee camps, that approach opens the door to the construction of a legal landscape that reflects, beyond the territoriality of laws coming from the home and host states of refugees, the multiple orders and norms to which they are subject.

## 2.2 Recent Experiences: Haiti and Mali

Front-line justice has served as a conceptual basis for at least two post-crisis interventions, which we survey in this section: the front-line justice projects implemented in Haiti after the 2010 earthquake and in Mali during the ongoing political crisis that developed around 2011. This analysis is far from exhaustive and

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<sup>77</sup> *Ibid* at 702–03.

<sup>78</sup> See *ibid* at 699–700.

<sup>79</sup> Otis & Reiter, "Mediation by Judges", *supra* note 4 at 357–58, 402; see also Jean-Pierre Bonafé-Schmitt, "La médiation: une alternative à la justice?" in Nicholas Kasirer & Pierre Noreau, eds, *Sources et instruments de justice en droit privé* (Montreal: Éditions Thémis, 2002) 141 (arguing that mediation represents an increasing acceptance of legal pluralism).

<sup>80</sup> Nicholas Kasirer, "Legal Education as *Métissage*" (2003) 78 Tul L Rev 481 at 492–93.

the two overviews we provide are succinct.<sup>81</sup> The objective is to give a general idea of the concrete operation of front-line justice in two different contexts and to draw some lessons for the adapted model we put forward in the last section.

### 2.2.1 Haiti

On 12 January 2010, Haiti was struck by a powerful earthquake. Countless lives were lost, and even more people lost their homes. The country's institutions were shattered, including the justice system which was profoundly affected by the death of officials and by the destruction of courthouses and other important buildings. Lawyers Without Borders (LWB), who was already on the ground at that time, decided to develop and implement a front-line justice program in collaboration with other international and local organizations.

The system was not designed to replace the official justice system. It did not seek to obtain coercive dispute resolution powers and was instead aimed at helping people navigate the official system while also providing information, advice and assistance in collaboration with local organizations.<sup>82</sup> The problems addressed by that system were identified with the help of local organizations as well. The most important one was to provide people with identity papers, the destruction of which impaired the ability of relatives to access the bank accounts and other property of deceased persons.<sup>83</sup> Another important issue was SGBV, which affected many women and girls after the earthquake.<sup>84</sup>

The first response was to send interdisciplinary teams in IDP camps to identify pressing needs and, if possible, to help people resolve their legal issues on-site. The members of these teams were mostly local lawyers and social workers who received training from international and non-governmental organizations.<sup>85</sup> In parallel, LWB sought to establish a more permanent front-line justice center. The implementation took a few months due to limitations resulting from the crisis, including the unavailability of materials and the difficulty in finding available land. In

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<sup>81</sup> It should be noted that only limited documentation is available on these two initiatives. Therefore, these documents have been completed by an interview with Pascal Paradis, Executive Director of Lawyers Without Borders Canada, an organization that actively participated in both initiatives. The interview took place on 9 November 2018.

<sup>82</sup> Lawyers Without Borders, "Projet 'Justice de première ligne' en Haïti – Sommaire et résultats du projet" (April 2013) at 3 (on file with the authors).

<sup>83</sup> *Ibid* at 1.

<sup>84</sup> *Ibid* at 3.

<sup>85</sup> Lawyers Without Borders Canada, "Rapport d'activités 2010-2011" at 13, online (pdf): <[https://www.asfcanada.ca/uploads/publications/uploaded\\_asf-rapport-annuel-2010-2011-web-pdf-18.pdf](https://www.asfcanada.ca/uploads/publications/uploaded_asf-rapport-annuel-2010-2011-web-pdf-18.pdf)>.

2011, LWB finally established a center in front of the largest camp located on Champ de Mars, the biggest public park in the downtown area of the capital, Port-au-Prince.<sup>86</sup>

The center, while relatively small, was structured with a reception and triage area where initial discussions with participants could take place. That same area also served to provide legal information and advice. In some cases, the lawyers providing advice considered that the participants had to be assisted further, for instance by accompanying them and representing them in court. This service was mostly provided in cases of SGBV, although it was not formally restricted to that type of case. In parallel, teams continued to go into the camps and began offering services in Delmas and Tabarre. These mobile services were focused on information and advice, but informal mediation was also provided in appropriate cases.<sup>87</sup>

Contrary to the initial model of front-line justice, safeguard orders were not offered through the local system. Haiti's justice system was still somewhat operational and the front-line justice shelters did not have the required powers to implement that aspect which, in any event, did not appear to be of central concern to local communities.

Throughout the project, one of the most important features was the training and empowerment of local agents.<sup>88</sup> The services offered in the front-line justice center were almost exclusively provided by local personnel, and the international assistance was limited to offering training and advice to these employees. The public's opinion also had an important impact on the design of the front-line justice center. The feedback of local organizations was that justice shelters installed in tents—as initially envisaged by the front-line justice model—would signal that the services were of poor quality. Therefore, despite the inherent difficulties in building a more permanent center, that solution was ultimately adopted.

### 2.2.2 Mali

The crisis in Mali was much different. For many years, the population had criticized the government and specifically the corruption plaguing the justice system, in addition to the lack of resources. In 2011 and 2012, armed groups and militia took control of some regions, including northern Mali. In some cases, justice institutions were replaced by illegal tribunals, some of which applied a radical interpretation of Islamic law. In that context, a consortium of international organizations united their forces to

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<sup>86</sup> Lawyers Without Borders Canada, "Rapport d'activités 2011-2012" at 13, online (pdf): <[https://www.asfcanada.ca/uploads/publications/uploaded\\_rapport-d-activites-asfc-2011-2012-final-pdf-36.pdf](https://www.asfcanada.ca/uploads/publications/uploaded_rapport-d-activites-asfc-2011-2012-final-pdf-36.pdf)>.

<sup>87</sup> Interview with Pascal Paradis, Lawyers Without Borders Canada, 9 November 2018.

<sup>88</sup> *Ibid.*



develop a comprehensive front-line response to the crisis, which formed part of a program called JUPREC (*Justice, Prévention et Réconciliation*).<sup>89</sup>

The front-line system addressed multiple types of cases. Some lawyers worked on emblematic cases of human rights violations, including cases of SGBV. Other services were aimed at providing advice and information to participants regarding their ordinary legal needs. An overarching goal was to provide training to local teams in order to support their services.<sup>90</sup> These services were channeled through local organizations, to which international organizations provided support and help. As a result, programs and services were implemented through various institutions and actors, including law clerks (*parajuristes*), who were more present than lawyers in rural Mali.<sup>91</sup>

As was the case in Haiti, the services offered to the population were primarily information, training, and advice. In some cases, mostly of SGBV, assistance and representation services were also provided. Interestingly, some organizations also engaged in policy support to reinforce the capacity of the local system. For instance, organizations helped in designing codes of ethics for local institutions, and to identify and prevent corruption. Mediation and safeguard services were not offered as part of the program, although informal mediation may have been provided in some cases. The focus was truly on information, advice, assistance, and representation within existing structures.

### 2.3 Lessons Learned

These two examples, while only briefly surveyed, suggest a few lessons. One essential aspect that was frequently mentioned in reports is the importance of local input and empowerment. In Haiti, local input was central in defining the services to be offered and the physical appearance of the justice center. In Mali, it was central in defining the nature and scope of the response. Importantly, all services were provided by local teams and the contribution of international organizations was limited to offering support, advice, and training. These aspects were instrumental in ensuring that the system would be efficient and accepted.

Another important feature of both systems is the interdisciplinarity of their services. The teams sent in Haitian camps were composed not only of lawyers but also of social workers and other professionals. These teams noticed that the problems experienced by the populations they served intersected with each other and that legal issues could not be isolated from other needs such as housing, food and water supplies. Psychological support often went hand in hand with legal support.

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<sup>89</sup> Lawyers Without Borders Canada, “Accès à la justice au Mali : Une réalité à bâtir” (Ottawa: CECEI, 2017) at 11, online (pdf): <<https://www.ceci.ca/data/fr-asf-juprec-mali-acces-a-la-justice.pdf>>.

<sup>90</sup> *Ibid* at 39.

<sup>91</sup> *Ibid* at 37.

In addition to considering local input, any response must take into account the limitations resulting from the context in which the intervention takes place. For instance, in Haiti, the unavailability of resources was particularly problematic; while the population was unable to satisfy their basic needs, the front-line justice system similarly had problems in accessing sufficient resources to continue operating. In the same vein, other justice institutions must be considered. The integration of these institutions with front-line justice is essential to avoid duplication and to leverage the strengths of other mechanisms, for example some policing or adjudicative institutions, where front-line justice is not capable to act. These lessons should be kept in mind when designing and implementing new front-line justice mechanisms.

### **3. Front-Line Justice for Rohingya Camps in Bangladesh**

The model of front-line justice and the above-mentioned examples were designed having in mind crisis situations in which people lost access to their own justice system. The situation of refugees living in camps is much different, since their lack of access to a proper justice system stems not from the collapse of their own country, but from their isolation in host states and the fact that in many instances the host state may adopt measures limiting their access to formal justice institutions. These two types of situations present differences that require an adaptation of the model of front-line justice to fit the reality of refugee camps.

The last section of this article builds on the initial model of front-line justice, the above-mentioned examples, as well as the documented reality of Rohingya camps in Bangladesh, to suggest an adapted model of front-line justice for these camps. It describes the main features of that system (3.1) before turning to the hurdles it could face (3.2). Lastly, we discuss the potential long-term contribution of front-line justice for the Rohingya (3.3).

#### **3.1 Main Features**

##### **3.1.1 Mandate, Powers, and Implementation**

An eventual justice system for Rohingya camps should focus on the legal needs voiced by camp members themselves. As such, SGBV should be central to its mandate. Of course, these cases may not be amenable to mediation, but justice shelters can still serve as helpful front-line institutions welcoming survivors of SGBV, providing them legal information and advice on their situation, referring them to appropriate dispute resolution mechanisms and, perhaps, providing them with safeguard orders when necessary. In the same vein, the front-line justice system should adapt its processes to protect women and girls, for instance by making sure that their perspective can be heard and ensuring that a victim does not have to confront the perpetrator if that is not her wish.

Beyond SGBV, front-line justice shelters should be able to deal with most ordinary legal issues arising from the life in camps, including theft and other minor

offences, property disputes, and issues of discrimination. Ideally, the system should also deal with reports of corruption. The main exception to the mandate and powers of the front-line justice system should be with respect to crimes pertaining to the conflict in Myanmar. The system should focus on everyday legal issues arising in camps and should leave these other issues to either a transitional justice system, international tribunals, or the domestic justice system.

The implementation of the system, from a material and a human resources perspective, should take into account the current structure and organization of Rohingya camps. From a material perspective, the existing physical configuration of camps could serve as a starting point. Centers have already been established to provide safe spaces for women or to provide services to the population,<sup>92</sup> and the 2020 *Joint Response Plan* clearly expresses a preference for “offering counselling and legal services in single locations, in order to facilitate access for Rohingya refugees and ensure the most effective utilization of limited space within the camps”.<sup>93</sup> Contrary to the prototypical front-line justice system, which would use tents to quickly deploy in the aftermath of a crisis, a front-line justice system in Rohingya camps should leverage that existing infrastructure to offer its services, in order to align with the JRP. Concretely, the system should benefit from a designated and well-identified space in these centers. This integration would also foster collaboration between different types of professionals and therefore encourage the type of interdisciplinarity that proved crucial in previous iterations of front-line justice. This integration, however, should not prevent the development of other services, such as mobile teams of lawyers and social workers which could provide legal information and advice elsewhere in the camps.

The system should also take advantage of existing communication infrastructure to publicize its services and provide general legal information. For instance, the system could benefit from the emerging popularity of Radio Listening Groups, “where groups of refugees gather in safe public spaces to listen to the radio”.<sup>94</sup> Interestingly, UNHCR and partners already underwent training by BBC Media Action “on radio programming with a focus on sexual and gender-based and intimate partner violence”.<sup>95</sup> This programming could be expanded to provide legal information on SGBV and other related topics.

The system should also leverage the camps’ existing structure from a human resources perspective. The majhi system, for instance, consists of “Rohingya community representative[s], [who are] primarily responsible for information dissemination, coordination of distributions, estimating population numbers, and

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<sup>92</sup> See e.g. the General Infrastructure Maps contained in REACH, “Profiling: Round 3”, *supra* note 42.

<sup>93</sup> 2020 JRP, *supra* note 32 at 19.

<sup>94</sup> UNHCR, “Bangladesh Operational Update” (March 2019), online (pdf): <<https://reliefweb.int/sites/reliefweb.int/files/resources/68914.pdf>>.

<sup>95</sup> *Ibid.*

linking the needs of Rohingya to humanitarian aid”.<sup>96</sup> In 2009, facing allegations of corruption, this system was replaced by elected Camp and Block Committees, but majhis were eventually reintroduced alongside them. While instances of corruption are still being reported,<sup>97</sup> majhis remain one of the refugees’ most trusted sources of information and their primary point of contact to report legal issues.<sup>98</sup> The majhis also play a central role in the informal resolution of disputes. They function “as an interlocutor who may work to resolve conflicts or escalate them to higher authorities”, and as such they form part of an informal justice system which “follows a conciliation model where community leaders attempt to resolve conflicts”.<sup>99</sup>

In fact, Rohingyas clearly rely on and prefer informal mechanisms to the Bangladeshi justice system,<sup>100</sup> despite concerns for the representativeness of informal mechanisms and their potentially harmful effect on gender dynamics.<sup>101</sup> These community leaders, whether they be majhis or members of committees, are therefore central to the success of a potential front-line justice system. They are trusted local actors who could legitimately take part in the justice system and act, for instance, as mediators or triage agents. They could also be helpful in disseminating legal information and publicizing the services offered, considering that they remain one of the most trusted sources of information in camps. In that sense, front-line justice has the potential to anchor the system in the legitimacy of local dynamics while providing guarantees, notably for fundamental rights.

It is important to emphasize that the system should be driven as much as possible by members of the Rohingya community, ideally those who enjoy great legitimacy and respect such as elders, social workers, nurses, teachers, doctors, medical and legal practitioners, or others. The role of international organizations should be to train and support them. In addition to encouraging adhesion from the community, having Rohingya people at the helm would provide employment to these people, which would inject additional resources in the camps’ economy.

### 3.1.2 Triage, Information and Training

The justice shelters should be divided into three areas. The first and most visible should be a triage area in which selected and trained members of the community would welcome refugees to discuss their legal needs. With proper training and support, these triage agents would provide information and basic advice, with a view to resolving the

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<sup>96</sup> International Rescue Committee, *supra* note 39 at 16.

<sup>97</sup> *Ibid*; REACH, “Profiling: Round 6”, *supra* note 39 at 12.

<sup>98</sup> REACH, “Profiling: Round 6”, *supra* note 39 at 12.

<sup>99</sup> International Rescue Committee, *supra* note 39 at 4.

<sup>100</sup> *Ibid* at 5.

<sup>101</sup> *Ibid* at 4–5.

great majority of cases. In a sense, this would be similar to legal clinics found in many jurisdictions.

Importantly, the triage and information area should not simply be a reception desk. The jurists operating in that area should be skilled and trained to resolve cases. They should also be able to identify quickly whether a case is prone for mediation, or whether it requires safeguard measures. These jurists will also be confronted with many queries that will not be within the jurisdiction of the justice system, and they should be able to redirect people towards appropriate services. They should contextualize the system and explain why it is not able to deal with grievances emerging from the conflict in Myanmar.

Due to concerns of corruption that appear to be prevalent within camps, files should not necessarily be documented at length at the outset. Otherwise, there may be concerns that the details of a person's case documented in the system's records may be accessed for improper motives by corrupt officials. Information and advice could be provided without opening a file. However, as soon as a case requires a follow-up or a transfer to the mediation or safeguard areas, it should be properly documented to ensure continuity of service. In any event, anonymized data should be gathered to ensure the efficiency of the system and to adapt it as necessary.

Lastly, another function of the triage and information area should be to provide public training and information sessions. These sessions could be open to all or to specific constituencies within the camps and would allow them to gain greater knowledge about their rights and obligations. This would serve a preventive function.

### **3.1.3 Mediation**

For cases that are not particularly urgent, mediation should be considered as the primary dispute resolution mechanism. This approach ties into current efforts made in camps, where mediation training has already been provided.<sup>102</sup> Not all cases will be prone to mediation, however, and cases involving serious crimes or violence, for instance, will often not be amenable to it. In any event, victims of SGBV should not have to face the perpetrator if they do not want to.

Whenever possible, mediation should be designed and explained using terms and processes connected to the traditional dispute-resolution mechanisms of the Rohingya. It should adapt to their local and cultural traditions in order to seamlessly integrate with their community. In the same line of thought, mediation should be provided by locals trained by international support staff, in order to ensure that the focus of the process remains local. Should an insufficient number of locally-trained mediators be available, additional mediation services could temporarily be provided by international staff, but training should continue in parallel to establish a local capacity.

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<sup>102</sup> 2020 JRP, *supra* note 32 at 95.

The mediation sessions themselves should be brief and flexible, and the parties should be in control of the process, with the mediator simply facilitating their negotiation. Follow-up sessions may be organized if a solution cannot be reached or if remaining issues need to be addressed at a later stage.

### 3.1.4 Safeguard

Safeguard justice is not an aspect of front-line justice that has been implemented in Haiti and Mali, and its relevance in the Rohingya context should be explored further with actors on the ground. The current relative stability achieved in camps may be an indication that safeguard orders are not necessary at this stage. However, the safeguard justice area could still help in addressing the most urgent matters in a context where Rohingya living in camps appear to have little to no access to the court system in Bangladesh. In the absence of adjudicative functions, safeguard orders could be useful.

To respect the jurisdiction over camps, these orders could be rendered by Bangladesh judges if the government prefers that option. Otherwise, with its approval, adjudicative functions for matters that stay within the confines of camps could be delegated to Rohingya judges or to members of the international community. For cases that require the intervention of local courts, the justice system could offer some degree of assistance. In that sense, the front-line justice system could be complemented by other initiatives, including for instance mobile courts which have been successful in other refugee camps.<sup>103</sup>

### 3.1.5 Local Focus and Applicable Law

An overarching focus and concern of the justice system should be to involve and empower the Rohingya, taking primarily a bottom-up approach. It is worth repeating that international organizations and staff should remain confined to training and support. Local actors are best placed to know the situation in the camp, the stories behind the cases that are brought before them, and the people involved in them. While mediators should remain independent and impartial, their link to the community is an important factor of success.

This brings us to the issue of the applicable law, which is of particular importance for all areas of the justice shelters. In line with the legal empowerment approach, the justice shelters should be flexible in the law they apply.<sup>104</sup> While international instruments such as the *1951 Convention* and the *1967 Protocol* provide

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<sup>103</sup> Purkey, *supra* note 11 at 125; Elizabeth Rose Donnelly & Viknes Muthiah, “Protecting Women and Girls in Refugee Camps: States’ Obligations under International Law” (London, UK: Centre for Women, Peace and Security, 2017) at 41, online (pdf): <<http://www.lse.ac.uk/women-peace-security/assets/documents/2019/LSE-WPS-refugees-camp.pdf>>; Jacobs et al, *supra* note 11 at 21; village courts in Bangladesh could be empowered to sit in camps, which could alleviate some of the barriers that currently prevent Rohingyas from accessing the formal justice system: International Rescue Committee, *supra* note 39 at 31.

<sup>104</sup> Otis & Reiter, “Front-Line Justice”, *supra* note 3 at 710.

that refugees are subject to the law of the country in which they find themselves, except for personal status issues such as questions of marriage,<sup>105</sup> Bangladesh has yet to adhere to these instruments. As a result, in many respects, the Bangladesh government has decided to remove the refugee camps from the jurisdiction of local laws, and to replace them with specific rules, regulations and restrictions.<sup>106</sup>

While these rules and restrictions imposed by the host state may make sense in cases where refugees have legal issues with people outside the camps—for example if they have a dispute with a Bangladeshi employer or if they have a land-related dispute with Bangladeshi owners around the camps—situations that strictly involve Rohingya people living in camps may not need this external set of rules and may be resolved according to other norms, in pluralist fashion. The justice system, and especially its mediation area, should be flexible enough to allow for the application of the laws, rules and customs prevailing among the Rohingya. Front-line justice can be an important vector for the expression of this pluralism.

Lastly, while these main features are those that we currently foresee for a potential justice system in Rohingya camps, they remain preliminary. They should be flexible enough to accommodate the reality on the ground and the evolving needs of the local population. In the same line of thought, we turn now to important considerations that should be kept in mind to ensure the success of that new justice system.

### 3.2 Potential Hurdles

Several hurdles may jeopardize the success of a justice system and should therefore be considered in establishing and operating it.

First, cultural considerations are key. Building a new system of justice comes with inherent tensions and resistance that tends “to crisscross, with the interests of local, regional, and national political authorities, religious and ethnic groups, and individuals”.<sup>107</sup> Therefore, “[r]ebuilding a justice system [...] requires a high degree of cultural sensitivity: to language, to indigenous attitudes towards law and dispute resolution, to local legal traditions and institutions, and to the role of religion and other values in law”.<sup>108</sup>

The main risk with such interventions is that the creation of a new system of justice be perceived as “a form of ideological imperialism or neo-colonialism”.<sup>109</sup> An important way to avoid this perception, as mentioned previously, is to place local

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<sup>105</sup> 1951 Convention, *supra* note 6, arts 2, 12.

<sup>106</sup> Farzana, *supra* note 2 at 146.

<sup>107</sup> Otis & Reiter, “Front-Line Justice”, *supra* note 3 at 711.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

actors at the center of the justice system and to confine international actors to a supervisory role. International actors may also be empowered to preserve a limited number of unnegotiable principles such as the guarantees set out in international human rights instruments.<sup>110</sup>

Second, corruption has been mentioned as a significant issue by many refugees living in camps. That issue has several implications. On the one hand, the initial reaction of refugees towards a new system implemented in their camps could be tainted by their fear of corruption. Using trusted local actors with existing legitimacy should help alleviate those concerns, but it is also necessary that the system itself be protected from corruption and appearance of corruption. International staff bringing support to the system should be aware of this issue and should be able to intervene whenever they see corruption arising.

On the other hand, the existence of corruption will most certainly lead many people to bring corruption-related issues to the justice system. If the justice system is not empowered to deal with corruption—since it may not have jurisdiction over the officials concerned or since the power imbalance may make these cases unfit for mediation—it should redirect people towards an efficient mechanism or it should take these complaints and submit them directly to the appropriate forum, for example a whistleblowing program.

### 3.3 Long-Term Perspective

Finally, an important point in the initial front-line justice model was the long-term help that it could bring to the people concerned. The initial model discussed the potential of a transition between the front-line justice system and the new permanent justice system to be rebuilt by the state in the aftermath of a crisis. However, that goal presumes that the rebuilding of the justice system takes place locally, at the same place where the permanent justice system will be established. In the context of displaced persons settlements, the reality is much different, since camps are meant to be temporary and the ultimate goal is to dismantle them when the displaced will safely return to their home country. Still, a front-line justice system has much to offer in the long run, even in that context. It may even help in ensuring a peaceful return.

First, considering that many of the people living together in camps will eventually return to Myanmar—although such return remains uncertain at this stage—the prevention and early resolution of conflicts between them may prevent these conflicts from growing and replicating themselves in the future. Some conflicts that arise in camps may persist over time if they are not resolved, and if the persons involved live in the same community after their return, these conflicts could hamper their peaceful resettlement. Second, providing information and training on rights and obligations may help the Rohingya to understand their situation better, and it may provide them with tools that will be helpful after their return. Lastly, exposing the

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<sup>110</sup> *Ibid* at 712.



Rohingya to mediation may hone their ability to resolve some conflicts themselves, skills that will be transferrable to their communities when they return to their home state.

## Conclusion

At first, the justice needs of displaced persons living in camps may not seem to be a primary concern, with health, sanitary, food and water issues rightly being at the forefront of humanitarian efforts. Still, everyday legal problems arise in camps as they do in every society and leaving them unaddressed has serious consequences on other aspects of the life within camps, in addition to hampering the successful and peaceful return of displaced persons in their home state. The current efforts made in the Rohingya camps in Bangladesh recognize the importance of this issue, expressing a will to “expand protection-oriented alternative dispute resolution mechanisms [...] to enhance access to justice”.<sup>111</sup>

The lessons learned in other countries such as Haiti and Mali show that it is possible to design temporary, front-line justice institutions to provide legal services to those who need them. These efforts may in turn increase the level of security in camps, bring down the interpersonal tensions inherent to such crowded environments and ensure the peaceful settlement of disputes. While in contrast with a post-crisis context located in a single country, front-line justice institutions may serve as a basis for a long-lasting justice system, the peaceful settlement of disputes within camps may contribute to a harmonious return of displaced persons in their home state and may also contribute to the maintaining of peace after their return.

Issues such as the political stance of the host state, the availability of funding, the political reality of camps—including the potential corruption of individuals in situations of power—as well as the cultural background of camp inhabitants, are all potential hurdles for front-line justice. Taking these into consideration when designing a system for a particular situation may however help in ensuring that the endeavor is successful.

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<sup>111</sup> 2020 JRP, *supra* note 32 at 19.