



**POLICY FRAMEWORK ON ECONOMIC, SOCIAL AND  
CULTURAL RIGHTS IN THE SITUATION OF THE  
ROHINGYA CRISIS IN MYANMAR 2018**

**Action for ESCR: Change is Now**

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## Summary:

This document provides a policy framework on Economic, Social and Cultural Rights (ESCR)<sup>1</sup> in the current context of the Rohingya crisis in the Republic of the Union of Myanmar. Looking into the gross violations of international humanitarian and human rights law that Rohingya Muslim people have been facing constantly, and the predominant violations of ESCR, the objective of this policy framework is to provide recommendations including measures designed to promote justice, accountability, gender-justice, reparations and guarantees of non-recurrence. It calls upon the participation and efforts of international actors, civil society, victims, minority groups, and youth in such processes, taking into account the local context and other relevant factors like inclusivity and gender sensitivity.

## Introduction

### *Myanmar Rohingya crisis context: ‘Struggles from the past remain the present challenges’*

1. After five decades of autocratic military rule, Myanmar initiated a transformation to a representative democracy. Open national elections were held in November 2015 for the first time in 25 years. A civilian government, under the leadership of Aung San Suu Kyi assumed power in March 2016. However, it has been pointed out that the political influence of the military remains strong and coercive. The new civilian government has stated its intention to pursue reconciliation between the different ethnic groups of Myanmar. Nevertheless, in the national elections of November 2015 Muslim candidates were not allowed to participate, resulting in a Parliament with no Muslim representation. The government has also opposed calls to grant the Rohingya Muslim minority citizenship. Various regional and national tensions threaten the already tenuous transition. The Rohingya crisis and precarious security structures pose a great threat to the nation’s stability.
2. The Rohingya Muslims, an ethnic group living mostly in Rakhine State of Myanmar, are considered to be the world’s most persecuted minority and the largest stateless group.
3. The Rohingya Muslims have recurrently been denied Myanmar citizenship since the country gained independence in 1948, under the 1982 Myanmar Citizenship Law, and most recently, under the 2008 Constitution which denied Rohingyas as citizens of Myanmar. As a result, for decades, their

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<sup>1</sup> The Economic, Social, and Cultural Rights, in this policy paper, refer to a set of rights as set forth under the International Covenant on Economic, Social and Cultural Rights, including, *inter alia*, the right to food, housing, education, healthcare, work, and social security.

economic livelihood has been dismantled. Moreover, without obtaining identity cards, the Rohingya have also been denied access to healthcare and education services, the right to vote and even forced into internal refugee camps. Land owned by the Rohingya has been confiscated. Rohingya males have been exploited in forced labour, and the Rohingya do not have a right to start a family freely as they need permission from the government and pay a fee to marry, and they are restricted to have more than two children.

4. Apart from the Rohingya Muslims in Rakhine State, the same levels of discrimination are being experienced by Rohingya Muslims in the Kachin and Shan States of Myanmar, and by other minorities in Myanmar.

***Current situation in Rakhine State and in Bangladesh border***

5. The Rohingya situation in Rakhine State has changed dramatically since the 9th of October 2016 events, when insurgents from the Arakan Rohingya Salvation Army (ARSA) reportedly attacked Myanmar border posts at the Myanmar-Bangladesh border. Myanmar security forces retaliated by conducting what they referred to as the “*area clearance operations*”, where they claimed to have targeted militant Rohingya groups in the northern part of Rakhine State, aimed at expelling them from Myanmar. This operation is still ongoing.
6. Since August 2017 Myanmar authorities have driven out more than 740,000 men, women and children from the region, torching their homes, crops, and villages, and preventing them from returning. Many of those fleeing have crossed the border into neighbouring Bangladesh. The violence against Rohingya men, women, and children includes grave human rights violations, mass rapes, targeted killings, torture and the destruction of civilian property.
7. Currently, one million Rohingya Muslims refugees - men, women and children reaching the Cox’s Bazar region of Bangladesh with barely any belongings - have sought shelter in these areas, setting up camp wherever possible in the difficult terrain and with little access to aid, safe drinking water, food, shelter or healthcare. The situation is currently deteriorating, as the effect of monsoon rains and cyclones is threatening refugees that are living in the camps in potential flooding or landslides areas.
8. Of the more than 700,000 Rohingya who fled to Bangladesh in the last 12 months, around 450,000 are children. Before fleeing Myanmar, Rohingya children struggled to attend school, with those able to study doing so in overcrowded classrooms with very few facilities. Only very young Rohingya

children receive basic education in the refugee camps with older children receiving little or no access to formal schooling.

9. Despite the efforts of Bangladesh State, the difficulties to provide immediate humanitarian assistance for the Rohingya refugees have been described as dramatic, in the Bangladeshi most vulnerable and economically backward coastal area, due to the dense population, limited resources, and shortage of habitable land.
10. There has been a failure in addressing socioeconomic, educational, and healthcare needs to Rohingyas and providing them with special care and protection. Moreover, the lack of educational and employment opportunities, due to Bangladesh restrictions on access to employment, training and education, have played a great role in the continued poverty and vulnerability of the Rohingya refugees.
11. The situation of Rohingyas Muslims remains uncertain, considering the failed implementation of the repatriation agreement between the governments of Bangladesh and Myanmar on the repatriation of Rohingya people. The Myanmar authorities have failed to guarantee the safety and sustainable return of the refugees, providing housing and restitution of land to the victims of forced evictions and refugees.

### ***Steps toward accountability***

12. According to the Facts-Finding Mission (FFM) Report<sup>2</sup>, the Myanmar security forces operations constituted systematic human rights violations and civilian Rohingya were intentionally targeted. This Report has identified and even listed the names of some of the military responsible for the atrocities. But, the Government of Myanmar, the Myanmar military and security forces have repeatedly denied these allegations.
13. Besides, the authorities in Yangon have consistently refused to allow the international community, including the UN Special Rapporteur on the situation of human rights in Myanmar and the FFM to enter the country.
14. Myanmar is not a party to the Rome Statute and given the current circumstances it is unlikely that the Government of Myanmar will accept the jurisdiction of the ICC in near future.

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<sup>2</sup> The FFM was created and mandated by the Human Rights Council in March 2017 to establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses committed by non-state actors and armed groups, in Myanmar. Its final report was submitted to the Human Rights Council in September 2018.

15. The International Criminal Court (ICC) Prosecutor has launched a preliminary examination into force deportations of Rohingya Muslims from Myanmar to Bangladesh. However it addresses one specific issue of deportation. Accountability must also be established for the widely reported ‘serious violations of international human rights and humanitarian law including extrajudicial killings, enforced disappearances, destruction of property, torture and inhuman treatment, rape and other forms of sexual violence, forced labour, recruitment of children into armed forces, and indiscriminate or disproportionate attacks’ against Rohingya people.
16. On September 2018, Human Rights Council decided to establish an independent mechanism to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings.
17. While acknowledging the authority of the Security Council under the Charter of the United Nations, including the authority to refer the situation in Myanmar to the ICC, the Human Rights Council also expressed the urgent need to ensure that “all those responsible for crimes related to violations and abuses of international human rights law are held to account through credible and independent national or international criminal justice mechanisms”.

***Justification, scope and objectives Action for ESCR: a policy framework on the situation of ESCR of the Rohingya Muslims***

18. With the Rohingya crisis current context in mind, *Action for ESCR* developed this policy framework on the situation of ESCR of the Rohingya Muslims, which is shaped by the “visible” sufferings of the Rohingya people. Being present in Myanmar since the end of military rule in 2011, raising public awareness on the violations of ESCR, aiming to promote accountability and to provide mechanisms for reparations, we are aware that other ethnic and marginalised groups in Myanmar are being subject to similar types of violation and discrimination. Still, taking into account our capabilities, limited means and resources, promoting the rights of one of the most vulnerable and “in need” group in Myanmar - the Rohingya Muslims - would serve as a focal starting point to advocate for the ESCR protection, promotion and respect for other groups in Myanmar.
19. Our policy is embedded by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Right of the Child, the Convention on the Elimination of All Forms of

Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination, and other relevant international human rights law. Being built on a strong conviction that all human rights are interdependent and indivisible, and that ESCR concern essential values for a life of dignity and freedom - work, health, education, food, housing and social security.

20. In the design and implementation of our programs and activities, our policy is guided by the focus on local ownership, inclusivity, gender sensitivity, promoting the participation of civil society, victims, persons belonging to minority groups, women and youth. These are addressed in the following Guiding Principles: our programs and activities are determined according to the context, based on thorough analysis and consultation; our programs and activities are participative, consultative and include outreach; our programs and activities are in compliance with international norms and standards; our programs and activities promote and encourage a victim-centred approach and integrate a gender dimension.
21. Our policy is extended through the consideration of a set of strategic and intersectional activities, called our pillars of action, which support the implementation of: a) Documentation of ESCR violations committed by the State and other relevant actors in conflict; b) Strategic litigation and legal interventions to enforce ESCR; c) Advocacy and raising awareness locally and internationally for ESCR violations and abuses d) Network and cooperation with civil society and other relevant actors and organisations.

## **Recommendations**

22. We recommend a set of combined measures and activities, in five main specific considerations, namely (1) gender sensitivity; (2) security and protection; (3) documentation; (4) participation of victims and (5) reparations.
23. Three preliminary notes: first, we are aware that the current status of the crisis, being an ongoing conflict, complicates our implementation and poses new demands and challenges on the mechanisms to use, reaffirm the need of short, medium and longer goals; secondly, having in mind a practical and feasible approach, we stress the need to preserve some flexibility while conducting our activities in order to respond effectively to the evolving challenges and demands of our ongoing conflict situation. Finally, the recommendations proposed in our policy do not limit the ways in which ESCR can be addressed.

### ***Gender Sensitivity***

Considering the fact that in the Rohingya crisis, men, women, boys and girls all have endured sexual violence<sup>3</sup>, a gender-sensitive approach should be taken into account at all times. Moreover, *Action for ESCR* acknowledges the intersectionality of gender-based crimes to be rooted in violations related to Economic, Social, and Cultural Rights, and therefore adapts an intersectional method to this gender sensitive approach.

When taking this gender sensitive approach into account with regards to the context of Myanmar's current situation, we strongly recommend:

24. ***To conduct a strategic assessment*** as proposed by the outcomes of the Independent International Fact-Finding Mission (IFFM) on Myanmar<sup>4</sup> to gain more insight into the violations suffered by the Rohingya people. This could be achieved through the continuation of quality and in-depth interviews, and the distribution and collection of surveys. Experts in the field of gender sensitive issues should be consulted in the creation of these measures;
25. ***Strategic decisions*** need to be made in advance with regards to where to conduct the research, taking into account the means available and where those affected are able to participate in the research without endangering their lives;
26. ***We call to continue the mapping*** of actors and their needs through this assessment for use in future Transitional Justice mechanisms. Due regard must be paid to peoples with disabilities, indigenous women, elderly people, LGBTI people, and children, to shed light on their gendered crimes suffered in relation to Economic, Social, and Cultural rights;
27. ***To advocate for a gender sensitive approach on local, national and international levels*** using the following approaches;
28. ***To strategically emphasise the rooted link*** between ESCR violations and gender based violence to shed light on the importance of addressing these violations and thus using a holistic approach worthy of donations for interested actors;
29. ***Including those affected and make a direct link to interested international actors*** could clarify the importance of these matters. This connection could be made through video messages or online interviews, supported by a competent translator;

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<sup>3</sup> Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar - A/HRC/39/CRP.2, 18 September 2018.

<sup>4</sup> See results Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar - A/HRC/39/CRP.2, 18 September 2018.

30. **To promote communication and community mobilisation** as a means to change attitudes and behaviour towards gender issues and we encourage active participation from civil society to support women's rights and gender equity<sup>5</sup>. We can support this development by providing financial means or the delivery of training (materials) on gender mainstreaming, combating gender-based violence, trafficking in human beings, and gender in relation to property rights, healthcare, and education;
31. **To identify options for outreach activities and social media publications**, such as round table discussion and online storytelling, promoting gender equality and inclusion in line with the United Nations Security Council Resolution 1325. Looking to reach the international community, including NGOs, UN bodies, and state bodies, to raise awareness about the conflict and importance of inclusive resolution seeking;
32. **To apply a security approach** that includes the creation and maintenance of safe houses and accessible spaces to receive psychosocial needs and to serve the purpose of conducting documentation<sup>6</sup>. The actions should enable all parties to participate in the different mechanisms provided by *Action for ESCR* and avoid further harm doing. We recommend cooperation with present bodies on the ground to be established and/or continued through;
33. **To hold thematic working groups** that should be established that address and pose opportunities to document different difficulties experienced by different vulnerable groups<sup>7</sup>. These themes must also focus on other ill-protected groups including men, LGBTI communities, and illiterate peoples. Considering the context, the themes addressed during these working groups should include the following; access to food and nutrition, access to healthcare and reproductive rights, access to education and, land and property rights, and sexual violence;
34. **We develop models** of laws and policies and other technical tools to support the State of Myanmar on the promotion of women's rights and the achievement of gender equality. Specialists on these topics will be approached and their views incorporated;
35. **We promote cooperation** activities with the state of Myanmar to develop legislation and policies through the examination of their current legislative framework and by analysing the impact of laws and policies on gender equality. We will advise and support them where possible to make the aforementioned frameworks more gender sensitive and include a more intersectional approach.

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<sup>5</sup> For further information please refer to the section on Victims' participation.

<sup>6</sup> For further information please refer to the section on Security and Protection.

<sup>7</sup> As earlier defined by *Action for ESCR* vulnerable groups including; such as children, (pregnant) women, elderly people, malnourished people, and people who are ill or immunocompromised.

**Security and protection**

*Action for ESCR* believes that security is an immediate and permanent concern in our activities in the Myanmar context. For that reason, in order to ensure the safety of those involved, our field workers, the victims and other actors that participate or collaborate in our actions, we constantly assess the security and the risks of the situation and recommend the following:

36. ***To conduct a continuous assessment of the latest security and political developments***, considering the purpose of justice and preventing further damages. To achieve this we conduct scenario planning related to the likely future status of the security situation;
37. ***To develop security regulations, safety procedures and rules of conduct***, incorporating expert's perspectives to ensure compliance with them, and address violations for the further justice related process;
38. ***To provide our digital platform Re-Action!*** with protection measures and an initial response system. The collected information on the platform will lead to a situational threat and risk assessment. The remedies have substantial character and importance for the further justice related process. Furthermore, the platform gives access to security standards and educational resources;
39. ***To elaborate policies concerning relevant records and archives*** of States and non-State actors, including private businesses, so as to maximize effective management and access of these records by the truth commission;
40. ***To examine concerns arising out of investigations resulting*** from the reported attacks and, therefore, provide feedback information relating to the conduct of the associated investigations and policy developments, taking into account our short and long time goals;
41. ***To distribute educational videos and leaflets*** with the basic principles of personal information protection. The need for a holistic approach towards protection includes safe use of telecommunication equipment during field operations where the involvement of civil society, victims and witnesses representatives, and their collaboration are at high risk;<sup>8</sup>
42. ***To provide an internal alarm and information channel*** that flows in all directions - between ourselves and other collaborators, between headquarters and the field. It is crucial to keep alert of any signs or hints that the security situation is deteriorating;

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<sup>8</sup> More information on the promotion of safety and security values in monitoring, reporting and documenting activities are available in the section on Documentation.

43. *To advocate for the broad protection of documentation*, securing documentation methods. Interested victims and witnesses of the structural violence of ESCR are encouraged to contribute to the created by our digital platform *Re-Action!* in an anonymous and representative way;
44. *To call* for local and regional NGOs and humanitarian groups working in the field to facilitate an **emergency hotline**, available to all Rohingya people in order for them to report and circulate data promptly should they face any threats;
45. *To promote the advocacy approach to address the psychological and physical needs and concerns* in the field. Developing standards for the protection of basic human rights of Rohingya population both in Myanmar and in neighbouring countries, together with an evaluation of the damages associated with ESCR that leads to having cooperation between the actors on the ground. Frequent theft and extortion from the authorities, confiscation of land, forced labour and relocation to local Buddhists should be distinguished from the ordinary infringements;
46. *To address and emphasize the importance of advocacy* for the structural physical and psychological violence. It is important to cover the regional structural violations of ESCR in an impartial and independent way;
47. *To recommend training workshops given to the local intermediates*; community leaders, religious leaders, representatives of vulnerable groups such as women, children, people of disabilities and ethnic minorities;
48. *To recommend the creation of archival laws*, freedom of information legislation, data protection legislation and transparency requirements within other laws, which take into account the right to information, the right to know the truth, and the specificity of the records dealing with violations of human rights and of international humanitarian law;
49. *To call international, regional and local actors to dispense the fundamental information* about ESCR in the region in order to anticipate possible risks and prevent or minimize the harms;
50. **On the long term, to advocate and lobby** with regional and national institutions, international organizations, including ASEAN, governments and civil society, **for the establishment of a regional-based Human Rights protection system**, which includes the promotion, protection and respect of ESCR;
51. *To recommend developing a common standard on protective measures* and cross-organization systems to facilitate assessment of security risk. For example, a security risk assessment and management system which is based on two components of risk: the likelihood of an incident occurring and the impact if such an event were to occur;

52. ***To assist international actors*** with a complex approach to the analysis of structural violations of ESC rights in Myanmar, promoting dialogue and cooperation with victims and witnesses of the conflict. The whole process should not underestimate the security mechanisms available for each involved actor;
53. ***We develop***, with the support and assistance of national and international expertise, provisions and measures to secure and preserve national archives, including by building effective and sustainable record management and archival systems, which include, i.a. secure and adequate premises and clear appraisal policies;
54. ***To suggest and promote cooperation*** between the respective regional civil society actors and international actors prioritizing security and protection purposes in a secure manner for every actor. The mentioned measures will also support the relocation of victims and witnesses who are at risk if necessary.

### **Documentation**

The range of human rights violations during the Myanmar Rohingya crisis is extensive. The lack of access to Myanmar, while restricting our work, demands imperatively the continuation of documentation of allegations of violations and abuses against Rohingya Muslims. There is an equal need to consolidate, map, and analyse evidence of human rights violations and abuses. Having an effective warning function while the conflict continues through the exposure of the violations that have been committed, contributes to the sense of accountability. Documentation will eventually serve the purpose of justice in the future, including reparation and restitution measures and other justice-related processes, including mechanisms to address complex issues such as land restitution claims and civil status, especially for the refugees and other vulnerable victims of the conflict. In order to align and coordinate the documentation efforts on the Rohingyas ESCR violations, *Action for ESCR* recommends:

55. ***To call all relevant actors in the field***, including civil society, individuals, activists, journalists, local, national and international community, ***to continue to collect information through interviews and verification*** on allegations of violations and abuses of international humanitarian and human rights law committed against the Rohingya Muslims. These must include violations of ESCR, forced displacement, forced labour, violations of property rights, obstruction of the right to education, forced marriage, forced prostitution, human trafficking amongst other violations, amongst other violations;

56. ***To conduct a mapping evaluation prior to commencing the monitoring and documentation work***, to understand existing efforts made by various stakeholders in information collection, verification and documentation and resume interviews with victims and witnesses who suffered violations and abuses of human rights and violations of international humanitarian law; these mapping exercise should include research, fieldwork, interviews and questionnaires distribution, in order to identify the victims and to assess their situation, the situation of the rights more commonly violated, the security context and also to identify key organisations and other civil society actors to establish further partnerships;
57. ***To encourage all relevant human rights organizations, activists and civil society actors to directly participate in the documentation process***, uploading data of ESCR violations collected on the ground to our digital platform *Re-Action!*, which provides a secured open source software, strengthening their cooperation, collaboration, engagement and coordination, in a way to grow meaningful human rights violations documentation; and ***To build on our digital platform Re-Action!***, in order to consolidate all the information collected, undertake comprehensive analysis of the information and evidence collected in order to ensure that this information can be used in an eventual justice mechanism;
58. Through our *Re-Action!* platform, ***to build a registry system to provide a registration for individual persons and their land claims*** for future reparation purposes (both to claim the citizenship, land titles and property rights access);<sup>9</sup>
59. ***To fully support and care for victims while collecting information about the violations and abuses***, preventing the re-victimisation and providing basic support including psychosocial, livelihood and other support at the minimum for their basic needs and ensure that they are not harmed;
60. ***To share and to use uniform rules, legal and practical standards and good practices in the documentation activities***, and training for all relevant civil society actors particularly on how to conduct documentation and how to effectively document and assess the evidence in order to establish a violation of International law;
61. ***To ensure a proper management of the human rights violations data and evidence collected*** through the utilisation of our common database, ensuring the consolidation and preservation of crucial evidence for possible future prosecution and reparations;

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<sup>9</sup> Please see our recommendation 77 in Reparation section.

62. *To fully collaborate with IIIM<sup>10</sup> established by the Human Rights Council* in the fulfilment of its mandate, including to collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011;
63. *To conduct multiple trainings for documentation purpose*, providing to all relevant civil society actors training sessions and workshops on human rights documentation, international human rights legal system, film shooting/editing, interview techniques, advocacy and also training of trainers on documentation and human rights data management;
64. *To engage in joint-advocacy campaigns and programs*, organization of events and meetings with civil society and other relevant actors to update them on the ESCR situation and to encourage them to actively participate in the documentation process;
65. *To develop analyses, research and process data on ESCR violations* into regular reports and briefings, shared on our website and social media, as a way to advocate for justice and accountability;
66. *To advocate and lobby* in the international treaty bodies special procedures and other available mechanisms to integrate ESCR violations in their inquiries in a more systematic and comprehensive way;
67. On the long term, *to advocate and to promote community building*, strengthening state capacity in dealing with ESCR, through the analysis based on the gathered evidence and documents and the identification of the root causes and consequences of violations of ESCR.

### **Participation of victims**

Increased victim participation at this early stage of ongoing conflict is crucial, as it reduces the possibility of further subordination and discrimination in ESCR as well as contributing to a victim-centred designation of TJ mechanisms. *Action for ESCR* is working to ensure an inclusive victims approach and community-based participation. Special attention should be paid to the participation of the most marginalized groups such as women, children, victims of sexual violence, ethnic minorities to avoid (further) harmdoing and retraumatization to those groups. In ensuring this highly delicate section of victim participation, *Action for ESCR* suggests the following:

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<sup>10</sup> The Human Rights Council in September created International Impartial Independent Mechanism for Myanmar (IIM), through the resolution A/HRC/39/L.22, 25th of September, 2018.

68. ***To identify victims and their needs through participation***, by our participatory documentation platform *Re-Action!* which allows victims, civil society and other relevant actors to contribute and participate. We are aware that documenting activities will help to identify the respective groups of victims as well as what is concerning them the most;
69. ***To encourage inclusive ways of reporting and expressing views***, such as community-based story-telling activities, reporting on social media, use of personal mobile devices, or digital video surveillance systems;
70. ***To promote the mobilization and the empowerment of the victims*** as a group by organizing get-together meetings for victims, facilitating dialogues between different groups of victims living at camp sites in Bangladesh, thereby allowing them to interact and build a widespread civil society network on their own capacity;
71. ***To include local intermediaries*** (ie. community and religious leaders, representatives of particular groups, such as women etc.), who act as a bridge between ourselves and individual victims, to make sure no one is left behind in the participation process while covering the needs of as many victims as possible. We facilitate constant dialogues with the intermediaries to listen to victims' diverse concerns, and suggest ways to reconcile if conflicting needs arise;
72. ***To provide training and workshops*** on the importance of victim participation for the peacebuilding process, as well as for the process of transitional justice, and the method of effective participation. In this regard, we design booklets with easy-to-understand text and pictures and audio-visualized tools as well as radio programmes, for our workshops to reach wider audience, especially low-education, illiterate victims and children.
73. ***To take particular account of avoiding retraumatizing*** victims of the most marginalized and vulnerable groups such as women, children, including child soldiers, victims of sexual violence, amongst others, by providing education and training on trauma and retraumatization for outreach staff such as statement-takers, translators; training survivors and victims to providing healing therapy to their own group of survivors, with a view to giving dignity and a new role to survivors, encouraging other intimidated victims to come forward while not causing further stigma;
74. ***To encourage coordination*** between various actors that are already working with the victims, including local and international organizations such as humanitarian agencies, NGOs, UN bodies, likewise the UN Fact-finding Mission, and the IIIM.

75. *To facilitate dialogues between victims and the donors* in our platform *Re-Action!*, for donors to understand victims' needs and concerns, as well as their role in building a lasting peace; and for victims to understand the possible tensions between their and donors' interests, thereby managing their expectations.

### **Reparations**

*Action for ESCR* recognizes the Rohingya victims' - whose economic, social and cultural rights have been systematically violated - right to reparation and calls for an adoption of a comprehensive package of measures regarding the fulfilment of this right. Furthermore, it is crucial to design and implement reparation programmes, which fully reflect the voices and demands of the Rohingya people. Among many requests of Rohingyas, the main ESCR issues concern but do not end with the limited access to life-saving care, the destruction and expropriation of their property, places of worship, cemeteries, infrastructure and other commercial or residential buildings, denial of education and equal employment opportunities, which are mostly a consequence of the denial to grant citizenship to the Rohingya people. The current situation of ongoing conflict poses great limitations for the implementation of an extensive reparations programme. Therefore, in this policy paper, *Action for ESCR* will set a groundwork of general principles that should be taken into account for possible reparations in the future:

76. *To advocate for the amendment of the 1982 Citizenship Law of Myanmar* and for the government of Myanmar to grant the Rohingya minorities citizenship as an initial reparatory measure. Citizenship is the "right to enjoy other rights", therefore in order to fulfil other ESCR, the issue of Rohingyas' legal identity and status should be addressed at the first place. Steps to be taken for the amendment are 1) removal of a race as a criterion of citizenship and base citizenship on objective criteria such as descent; 2) abolishment of the hierarchy of citizenship through different categories such as "full citizen", "associate citizen" and "naturalised citizen";
77. *To establish special registries* where all the names of the refugees and newborns will be registered as a response to the fact that majority of Rohingyas' have not been registered at birth and/or have been arbitrarily deprived of their nationality and identity documents. Proof of their legal identity is a big challenge for many victims of human rights violations. This registries will be established in the refugee camps of Bangladesh with a purpose of registering the Rohingyas' names (providing them basic identity documents) and their land claims, which will serve the goal of maintaining legal citizenship and aid in the future processes of reparations. This measure should be carried out in

cooperation with other organizations present on the ground and we seek to collaborate with the UN more specifically, in order to provide legally recognised identification record for everyone<sup>11</sup>;

78. **To advocate for the Myanmar Government's active involvement** in providing reparations to Rohingya victims of ESCR violations. Reparation is a legal duty of the State of Myanmar, and its active engagement is particularly important as a symbol of acknowledgement of its responsibility;
79. **To urge for the removal of movement restrictions** that reduce access to education and abolishment of the discriminatory practices that hinder the students without citizenship to get higher education;
80. **To call for The Myanmar and Rakhine State Government to ensure an equal access to health treatment** irrespective of religion, ethnicity, race, gender or citizenship status. Furthermore the health facilities should be "safe zones" that provide a protected atmosphere for the people;
81. **To seek to collaborate with the international organisations** working on the ground in order to establish and continuously follow the different forms of reparations claimed by the victims;
82. **To prioritize collaborations with ESCR victim groups** to be in line with their needs and demands<sup>12</sup>. We will furthermore express those needs to the international community actors and advocate for an early establishment of programs for reparations;
83. **To advocate for long term reparations** - in order to bring restorative justice to the victims, we recognize the necessity of the following reparation measures:
  - **Compensation** - through monetary compensation or restitution of land in order to increase victims' economic capacity, providing them educational scholarships or increased access to health services;
  - **Rehabilitation** - through medical and psychological care; legal and social services in order to deal with the long-term psychosocial effects of the experiences they had to live through;
  - **Satisfaction** - through acknowledgment of the atrocities committed against the Rohingya population; search for whereabouts of the missing or disappeared people; memorials, commemorations and tributes to the victims.
84. **To establish concrete Transitional Justice mechanisms**, as recommended by *Action for ESCR*:
  - Establishment of an administrative large-scale Reparations Programme addressing the ESCR issues identified in this paper.

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<sup>11</sup> See our recommendation 58 in Documentation section.

<sup>12</sup> Please refer to the Victim Participation Section.

- Establishment of a Truth Commission - led by representatives of all ethnic groups present in the community, with a mandate on the investigation of both ESCR as well as CPR violations;
- Criminal trials against the most responsible perpetrators in the pursuit of retributive justice for victims through strategic litigation;

## Sources

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5. The Economic, Social, and Cultural Rights, in this policy paper, refer to a set of rights as set forth under the International Covenant on Economic, Social and Cultural Rights
6. Security Council Resolution 1325, 8, U.N.Doc.S/RES/1325, 31 October, 2000.
7. Human Rights Council Resolution A/HRC/39/L.22, 25th of September, 2018.
8. Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar - A/HRC/39/CRP.2, 18 September 2018.

**Appendix**

**Overview of the areas of intervention - Key Recommendations and activities**

<b>Approach</b>	<b>Recommendation</b>	<b>Activities</b>
<b>Gender sensitivity</b>	<ol style="list-style-type: none"> <li>1. <i>Strategic assessment of needs.</i></li> <li>2. <i>Advocate for gender sensitive approach on local national and international level.</i></li> <li>3. <i>Collaborate in gender sensitive security measure.</i></li> <li>4. <i>Aid to improve legal and policy measures to promote gender equity</i></li> </ol>	<ol style="list-style-type: none"> <li>1. In depth/quality interviews; surveys</li> <li>2. Online interviews/messages, providing training materials; storytelling</li> <li>3. Creation/maintenance of safe spaces/houses</li> <li>4. Research; include legal experts on drafting legal laws/policies</li> </ol>
<b>Security and Protection</b>	<ol style="list-style-type: none"> <li>1. <i>Risk assessment and prevention</i></li> <li>2. <i>Witness and victim information</i></li> <li>3. <i>Psychological and physical support</i></li> <li>4. <i>Cooperation with local authorities and Government</i></li> <li>5. <i>Cooperation with international community</i></li> </ol>	<ol style="list-style-type: none"> <li>1. Creation of platform including; regulations; procedures; rules of conduct</li> <li>2. Examine security and political developments; distribute videos and leaflets; create internal alarm and information channel</li> <li>3. Installation of emergency hotline; Advocacy for the psychological and physical needs and concerns</li> <li>4. Create database platform; data protection; archival laws</li> <li>5. Develop guidelines for protection; security standards through community outreach</li> </ol>
<b>Documentation</b>	<ol style="list-style-type: none"> <li>1. <i>ESCR violations Documentation</i></li> </ol>	<ol style="list-style-type: none"> <li>1. Mapping through research and questionnaires distribution; Digital platform creation; Provide guidelines on effective assessment</li> </ol>

	<ol style="list-style-type: none"> <li>2. <i>Training for documentation purposes for relevant civil society actors</i></li> <li>3. <i>Advocacy for ESCR documentation</i></li> </ol>	<ol style="list-style-type: none"> <li>2. On: Human Rights Documentation; International Human Rights Legal System; Film Shooting/editing workshop; Interview techniques</li> <li>3. Joint-advocacy campaigns and programs; organization of events and meetings with relevant actors; reports shared on our website and social media; Advocate and lobby in the international treaty bodies to integrate ESCR violations in their inquiries in a more systematic and comprehensive way</li> </ol>
<b>Victim Participation</b>	<ol style="list-style-type: none"> <li>1. <i>Identifying victims and their needs through participation</i></li> <li>2. <i>Victim empowerment and early outreach</i></li> <li>3. <i>Cooperation with international community</i></li> </ol>	<ol style="list-style-type: none"> <li>1. Victim-led documentation: community-based story-telling activities; reporting on social media</li> <li>2. Get-together meetings; constant dialogues for victims and local intermediaries; training and workshops</li> <li>3. Communication between donors-victims through our online platform</li> </ol>
<b>Reparations</b>	<ol style="list-style-type: none"> <li>1. <i>Advocacy for amending the 1982 Citizenship Law of Myanmar</i></li> <li>2. <i>Recognizing Rohingyas' legal identity and land claims</i></li> <li>3. <i>Urging for Myanmar government's active role</i></li> <li>4. <i>Long term reparations and Transitional Justice mechanisms</i></li> </ol>	<ol style="list-style-type: none"> <li>1. Advocacy campaigns for removal of a race as a criterion of citizenship and abolishment of the hierarchy of citizenship in the Law.</li> <li>2. Special bureaucratic registries for creating legal identification record of Rohingya people and registering their land claims (in cooperation with the UN)</li> <li>3. Ensurance of an equal access to health treatment and education; to reverse and abandon other discriminatory policies regarding the ESCR.</li> <li>4. Compensation, rehabilitation, satisfaction; Supporting an administrative reparations programme, establishment of Truth Commission, Criminal trials.</li> </ol>