

Addressing Crisis in Myanmar: The Role of NGOs in Promoting International Human Rights Standards

Ainna Khairunnisa*

Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

M. Ya'kub Aiyub Kadir**

Faculty of Law, Syiah Kuala University, Banda Aceh, Indonesia

Mahfud Mahfud***

Faculty of Law, University of Malaya, Kuala Lumpur, Malaysia

Abstract

The Rohingya people have been victims of alleged severe human rights violations committed by the Myanmar government. In response to this situation, the United Nations (UN) has adopted some measures, including a United Nations General Assembly Resolution (UNGAR) A/RES/74/246 of 2019 that, inter alia, determines Non-Governmental Organizations (NGOs) as one of the key players in implementing its mandate. In practice, the NGOs' lack of international legal standing resulted in challenges in their operation. This paper examines the legal standing of NGOs' operations under international law. Specifically, it investigates NGOs' contributions to implementing UNGAR 74/246 in dealing with human rights violations in Myanmar. This article is based on legal research that combines library study and field research. The result indicated that Article 71 of the UN Charter needs to clarify the legal standing of NGOs' operation in the international sphere, mainly to implement international human rights norms. In the context of the crisis in Myanmar, the NGOs have played a role as mandated by the UNGAR, including investigating gross human rights violations, providing gender-based protection and assistance, and assisting Myanmar in providing humanitarian assistance to all internally displaced persons within Rakhine. This paper recommends that all stakeholders cooperate to support the effectiveness of NGOs' contributions and peace-building efforts in Rakhine to achieve justice for all people in Myanmar.

Keywords: Human rights; Myanmar; Non-Governmental Organizations; Rakhine; United Nations General Assembly.

1. INTRODUCTION

After decades of repression against the Rohingya people since the passage of the 1982 Burmese Citizenship Act, the international community has increasingly turned its attention to assisting. Even though several diplomatic efforts have been made to put political pressure on the Myanmar government, the case's resolution has yet to find a clear end. This matter thus became an international law issue when Gambia, which was supported

* Email : ainna.k@yahoo.com

** Email/Corresponding Author: m.yakub.akadir@unsyiah.ac.id

***Email: lva170014@siswa.um.edu.my

by 57 members of the Organisation of Islamic Cooperation (OIC), filed an application before the International Court of Justice (ICJ).¹

The case application was lodged under Article IX of the Genocide Convention, which specifies that any state party of the convention may pursue the case before the ICJ.² Gambia claimed that the Government of Myanmar's wrongful treatment of the Rohingya people has allegedly been raised to genocide levels as it has breached and continues to breach Article 3 of the Genocide Convention regarding genocide committing, incitement, collusion, and genocide conspiracy in particular. Gambia also alleged Myanmar Government failed to prevent and punish genocide under Articles I, IV, V, and VI have been indicated.³

As the case remains ongoing and could take several years until its final decision, the Gambia requested provisional measures to the Court under Article 41 of the ICJ Statute to protect the Rohingya people while the judicial process continues. In response to Gambia's request, on January 23, 2020, the Court eventually stated that it had *prima facie* as the prerequisite competence to justify the order on provisional measures. The Court issued the decision on the request for interim measures indicating four of the six temporary measures requested by The Gambia, ordering Myanmar to

- a. duly comply with its obligations under the Genocide Convention;
- b. prevent the commission of genocidal acts by either its military or irregular armed units or organizations under its control, direction, or influence;
- c. prevent the destruction and ensure the preservation of evidence of wrongdoing under the Genocide Convention, notably invoking Article 78 of its Rules; and
- d. submit a report within four months on the measures undertaken to give effect to the order, and thereafter every six months until a final decision is rendered.⁴

¹ See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Judgment on Preliminary Objections (July 22, 2022), <https://www.icj-cij.org/public/files/case-related/178/178-20220722-JUD-01-00-EN.pdf>; Yordan Gunawan, Sonya Whisler Refisyanti, Aliza Mufida, Kukuh Derajat Takarub, and Aisah Nur, "Jurisdiction of International Court of Justice (ICJ) Over the Genocide Violations: With Special References to Rohingya Case," *Fiat Justisia: Jurnal Ilmu Hukum* 14, no. 4 (2020): 315-316; Abdul Ghafur Hamid, "The Rohingya Genocide Case (*The Gambia v Myanmar*): Breach of Obligations *Erga Omnes Partes* and the Issue of Standing," *International Islamic University Malaysia Law Journal* 29, no. 1 (2021): 31; Michael A Becker, "The Plight of the Rohingya: Genocide Allegations and Provisional Measures in *The Gambia v Myanmar* at the International Court of Justice," *Melbourne Journal of International Law* 21, no. 2 (2020): 429.

² ICJ Press Release, "Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)," <https://www.icj-cij.org/public/files/case-related/178/178-20200123-PRE-01-00-EN.pdf>, 3.

³ See International Court of Justice, Application Instituting Proceedings and Request for Provisional Measures Filed in The Registry of the Court on 11 November 2019. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia V. Myanmar), 56.

⁴ ICJ Press Release, *op. cit.*, 5.

In response to the decision concerning the provisional measures, the Myanmar Ministry of Foreign Affairs stated that no genocidal acts were conducted in the Rakhine State; thus, the ICJ decision was not based on actual merits.⁵ State Counsellor Aung San Suu Kyi appeared at the hearings representing Myanmar during the hearings on provisional measures. She rejected the accusations and stated that the Myanmar government did not have genocidal intent, so the claim should not be subject to the Genocide Convention.⁶ To date, Myanmar has been reported as not complying with the ICJ order on provisional measures, and it is unclear if Myanmar will start to adhere to the order before the final decision of the ICJ is made.⁷

Regarding this concern, ASEAN's involvement as the primary regional organization in Southeast Asia has been reaping criticism, particularly about its non-intervention principle, which causes the organization's main weakness in resolving the Rohingya crisis.⁸ Until today, the only regional body in ASEAN capable of dealing with the Rohingya crisis is the ASEAN Intergovernmental Commission on Human Rights (AICHR). Unfortunately, the AICHR cannot settle the Rohingya issue due to the non-intervention principle, in which ASEAN member States avoid discussing controversial regional matters.⁹ ASEAN also does not have the power to impose sanctions when member States breach international human rights duties.¹⁰

The ASEAN member states organized only two special meetings during the Rohingya crisis from 2012-2015. Firstly, the multilateral meeting between Thailand, Malaysia, and Indonesia was held in Putra Jaya in 2015. This meeting was held in response to international pressure to admit the stranded Rohingyas at sea into their territories. The three countries decided to admit Rohingya for one year period. The countries also called upon the international community to help bring the Rohingya crisis to a decisive

⁵ Anadolu Agency, "Myanmar Submits 2nd Report on Rohingya Genocide to the UN's Top Court," <https://www.dailysabah.com/world/asia-pacific/myanmar-submits-2nd-report-on-rohingya-genocide-to-uns-top-court>

⁶ BBC, "Myanmar Rohingya: Government Rejects ICJ Ruling," <https://www.bbc.com/news/world-asia-51229796>; Renata Christha Auli and Garry Gumelar Pratama, "The Failure of United Nations System Under International Law: Its Contribution to Calamity and Ruin of The Rohingya Case," *Padjadjaran Journal of International Law* 4, no. 2 (2020): 266.

⁷ Three NGO staffs of Muslim Aid United Kingdom (UK) and Padi Global Asia (PGA), "Situation of Human Rights of Rohingya Muslims in Myanmar from the Perspective of Human Rights NGO Staffs," Interview by Ainna Khairunnisa, Banda Aceh, January 27, 2021.

⁸ Bilveer Singh, "ASEAN, Myanmar and the Rohingya Issue," *Himalayan and Central Asian Studies* 18, no. 1-2 (2014): 11.

⁹ AICHR, Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights, para. 2.1 (b).

¹⁰ See Lailin Kovudhikulrungsri and Saovanee Kaewjullakarn, "What Legal Measures Should ASEAN Apply to help the Rohingya?," *South East Asia Journal of Contemporary Business, Economics and Law* 6, no. 4 (2015): 9.

ending. This measure shows that ASEAN seems interested in turning the Rohingya crisis into an international responsibility.¹¹

The role of the United Nations (UN) as an international organization is exceptionally significant and crucial to ensuring international peace and stability. Over the years, several resolutions have been delivered by the UN General Assembly regarding human rights in Myanmar. One of the most relevant exciting resolutions for this paper is the UN General Assembly Resolution (UNGAR) A/RES/74/246 on the Situation of Human Rights in Myanmar, officially published on December 27, 2019.

A growing number of people believe that confrontations with the government cannot effectively resolve the situation in the country. However, instead of working together to affect policy while striving to encourage and strengthen the capacities of civil society alongside the conventional opposition headed by Aung San Suu Kyi and her National League for Democracy (NLD). The new emergent civil society is a community of people determined to reform the structure, impacting the system from within rather than a cohesive movement. Consequently, the progressive ability of Non-Governmental Organizations (NGOs) to influence policymakers, gather information about onsite human rights abuses, and represent public opinion shall also be taken into account to support UNGAR's efficiency in ensuring compliance with ICJ decisions.

Furthermore, it is now becoming common knowledge that state compliance with international obligations also involves NGOs promoting and reviewing.¹² According to Oscar Schachter, the advancement of NGOs' engagement to monitor humanitarian, human rights, and environmental law has been detected since 1960.¹³ Support for collective enforcement efforts is one of the vital NGO functions. NGOs may also play a significant part in the local government framework to encourage the government to fulfill its obligations under a UN resolution.¹⁴ For instance, in the resolution of 2003 on Sierra Leone, the Security Council called on "States, international organizations and non-governmental organizations to continue to support the National Recovery Strategy of the Government of Sierra Leone."¹⁵ For instance, in the resolution of 2003 on Sierra Leone, the Security Council called on "States, international organizations and non-governmental

¹¹ Irawan Jati, "Comparative Study of the Roles of ASEAN and the Organization of Islamic Cooperation in Responding to the Rohingya Crisis," *IKAT: The Indonesian Journal of Southeast Asian Studies* 1, no. 1 (2017): 22.

¹² Steve Charnovitz, "Non-governmental Organizations and International Law," *The American Journal of International Law* 100, no. 2 (2006): 354.

¹³ Casey Jedele, "Domestic Restrictions on Non-Governmental Organizations and Potential Protections through Legal Personality: Time for a Change?," *Chicago Journal of International Law* 21, no. 1 (2020): 135.

¹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Judgment on Preliminary Objections (July 22, 2022), <https://www.ici-cij.org/public/files/case-related/178/178-20220722-JUD-01-00-EN.pdf>

¹⁵ United Nations Security Council Resolution No. S/RES/1470 (2003), 28 March 2003, para. 8.

organizations to continue to support the National Recovery Strategy of the Government of Sierra Leone.¹⁶

However, the legal status of the NGOs has yet to be established, although NGOs' participation in international law and global affairs has significantly increased.¹⁷ Despite the nonexistence of international NGOs' legal status, Article 71 of the UN Charter has acted as the basis of NGOs' operation. Following the charter, NGOs are granted consultative status merely for the United Nations Economic and Social Council (UN ECOSOC). The legal standing of NGOs is not a new notion. Since 1910, the consideration to promote the adoption of a convention granting international NGOs legal personality has been brought by the International Law Association and the Institute De Droit International.¹⁸ Unfortunately, until this day, the goal has yet to be achieved.

The paper initially discussed the absence of legal standing of NGOs to formally participate in the making process of UNGAR, considering their substantial role in implementing the resolution in Myanmar. Finally, this paper investigates to what extent the NGOs have contributed to UNGAR's implementation of the situation of human rights in Myanmar. It is a legal research that obtained data through both library and field research. The normative-empirical legal analysis is conducted with written provisions imposed on *in-concreto* legal events. This research combined two stages of study: (1) The submission regarding the applicable normative law; and (2) The application of events *in concreto* to achieve predetermined goals. This application can be realized through concrete actions and legal documents. The use of these two stages required secondary data and primary data. The researchers studied the formulation of the problem with applicable legal norms and rules, explained the data in detail, then provided legal solutions to the research. The researchers also obtain secondary data through interviews to deeply examine the research problem formulation.

2. RESULT AND ANALYSIS

2.1. The Eligibility of Article 71 of the UN Charter to Provide Legal Standing for NGOs Operation

Achieving consultative status is the first move to allow NGOs to launch a sequence of informal operations and behaviours that enable them to strengthen their position within the UN framework and gradually establish a dialogue with important bodies. The consultative status allows NGOs to participate and facilitate various events, including being part of special working groups and presenting written and oral statements to ECOSOC seminars and hearings. The NGOs have used this opportunity to develop

¹⁶ United Nations Security Council Resolution No. S/RES/780 (1992), 6 October 1992, para. 1.

¹⁷ Kerstin Martens, "Examining the Non-Status of NGOs in International Law," *Indiana Journal of Global Legal Studies* 10, no. 2 (2003): 5.

¹⁸ Steve Charnovitz, *loc.cit.*

utilizing an informal mechanism known as "learning to learn." The NGOs are learning to improve their persuasion skill to convince policymakers to change and adjust their projects.

Although the approach seems very slow, it will yield long-term sustainable outcomes.¹⁹ However, while Article 71 of the UN Charter gives the NGOs a way to work within the UN framework, the article also explicitly states that only under specific conditions are national NGOs considered.²⁰ Per Article 71, the UN ECOSOC Resolution 1996/31, which has governed the consultative relationship since 1996, sets forth some general requirements for NGOs.²¹ To be recognized under the UN, an NGO should meet six conditions. First, it must act to promote the UN objectives. Second, the shareholders, the headquarters, and the officers must be given equal representation. Third, the company should be non-profit. Fourth, it must refrain from any kind of violence. Fifth, it must refrain from interfering with states' internal relations. Lastly, it will not be formed through an intergovernmental treaty. But in fact, the UN introduced the term "NGO" solely to bring various international actors into one post, without defining it clearly. For instance, NGOs must represent large sections of the population, be representative within the particular field of their competence, or have a recognized standing.²² These criteria are the universal model international organizations use to govern their network with civil society organizations concerning peace and security areas.

After decades of the UN Charter signing, the scope of Article 71 has been significantly expanded by the ECOSOC by adopting authoritative interpretations of the provision and modifying and reviewing its Rules of Procedure. The consultative status of NGO under Article 71 of the UN Charter²³ has served two purposes: (1) Enabling ECOSOC and its subsidiary bodies to receive expert advice and information; and (2) Providing a forum for the international NGOs' participation to speak up about important issues on behalf of a wide range of countries.²⁴ Until today, Article 71 has acted as a blueprint and springboard for other international organizations to create a direct relationship with NGOs. For instance, the African Human and Peoples' Law Court allows NGOs under "observer" status to directly bring cases before the Court before the African Union. In addition, in 1999, the

¹⁹ Daniela Irrera, "NGO's Roles in Humanitarian Interventions and Peace Support Operation," *Multilateral Security and ESDP Operation* 19, no. 1 (2010): 71.

²⁰ George E. Edwards, "The United Nations and Human Rights Non-Governmental Organizations (NGOs) - Seventy-Five Years of Consultations, Collaboration, and Contributions (1945-2000)," *Pace International Law Review* 33, no. 2 (2021): 330-332; Martine Beijerman, "Practice what you Preach? Limitations to Imposing Democratic Norms on NGOs," *International Community Law Review* 20 (2018): 5-9; Melissa J. Durkee, "International Lobbying Law," *Yale Law Journal* 127, (2018): 1754.

²¹ United Nations, Economic and Social Council, Resolution No. E/RES/1996/31 on Consultative Relationship between the United Nations and Non-Governmental Organizations, para. 9-13.

²² Kerstin Martens, *loc.cit.*

²³ Shirley Gatenio Gabel and Ningning Yang, "Transnational Advocacy at the United Nations for Social Workers," *Journal of Human Rights and Social Work* 7, (2022): 419.

²⁴ Casey Jedele, *op.cit.*, 125.

Organization of American States (OAS) adopted The Guideline for the Participation of Civil Society in OAS Activities of Civil Society Organizations. The guideline establishes a framework for NGOs' participation in the OAS, similar to the UN's ECOSOC. Finally, the Organization for Security and Cooperation in Europe (OSCE) also adopted Article 71 of the UN Charter and the consultative status scheme to model their relationship to NGOs.²⁵

Despite the expanded scope, consultative status by Article 71 of the UN Charter is still fundamentally limited by the fact that the governments taken by ECOSOC's Committee on NGOs who decide on the applications, which include admission, classification, suspension, or withdrawal of the international NGOs are strongly influenced by political purposes.²⁶ NGOs' lack of international legal standing causes various problems about their representativity and legitimacy. Questions regarding the stance of the NGOs, their accountability, and how they are accountable have been arisen along with their increasing participation in the implementation of international human rights norms.²⁷ In other words, even with a century of movement towards its legitimacy, which has resulted in specific regulations guaranteeing their rights and responsibilities, it is undeniable that their unclear position in the international field has caused significant issues.

As a way out of this issue, in 2002, the panel appointed by the UN Secretary-General at the forum "Strengthening of the United Nations: An Agenda for further Change" had set out some specific recommendations to strengthen the current legal status and accreditation procedures, under three different guidelines. First, NGOs' participation in UN organs should be expanded by establishing consultative status in the General Assembly and formalizing current consultation practices with the Security Council. Second, to depoliticize and streamline the accreditation procedure, a standard accreditation framework for all UN forums and recognition of a more significant role of UN administration in the accreditation process shall be established. Third, promoting self-organization and self-regulation by supporting NGOs to develop self-policing mechanisms and draft codes of conduct and recognizing broader participatory rights to umbrella organizations and civil society network.²⁸ Unfortunately, the recommendations have not yet been established until today.

²⁵ C. Alihusain, "The Influence of NGOs on International Law," <https://perma.cc/JZ7U-9EBP>

²⁶ Rephael Ben-Ari, "The International Legal Status of International Non-Governmental Organizations: The Century-Long Normative Debate and its Future Prospects," *Cardozo Journal of International and Comparative Law* 23, no. 1 (2014): 12.

²⁷ Kerstin Martens, *op. cit.*, 17.

²⁸ United Nations General Assembly, Report of the Secretary General, No. A/57/387, 9 September 2002, para 134-137.

2.2. NGOs International Legal Standing Based on Other Juridical Approaches

The consideration of providing an international legal standing for NGO operations has been discussed for over a century.²⁹ Prior to the UN's recognition of NGOs, several proposals have been raised since the early 1920s to clarify the legal status of international non-governmental associations.³⁰ The issue was brought up in 1910 by Institute de Droit International at its session in Paris. It presented a draft convention on NGOs and proposed a study on "the juridical conditions of international associations." In 1912, a first draft treaty on the international legal personality of NGOs was developed.³¹ Another convention on the legal status of international associations was drafted by the Institute in 1923. However, again, the government did not accept this initiative, and the treaty never entered into force. Several NGO treaties have also failed due to states' lack of consent.³²

In order to voluntarily regulate themselves, NGOs have begun developing their own guidelines in recent years, resulting in the International Non-Governmental Association Accountability Charter and the Red Cross Code of Conduct that sets standards for several of the largest NGOs worldwide: Oxfam, CARE, PLAN, Save the Children, and World Vision.³³ However, despite their international character, their operation is generally governed by the state's national law, where the headquarters of the activities are located.³⁴

In addition to national law, international law provides NGOs with certain protection of legal rights. The NGO's rights under international law *per se* are not constituted in a single document but are generally derived from different treaties, norms, and practices. Some examples of NGOs' legal rights protected under international law are the right to protection, freedom of association, and participation. The right to protection is specifically regulated under the 1998 UN General Assembly Declaration on Rights and Responsibilities of Individuals, Groups, and Organs of the Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In general, the NGO's rights of protection can be found in several human rights treaties: Convention on the Elimination of Racial Discrimination (CERD), Convention on Economic, Social and Cultural Rights (CESCR), International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture (CAT), etc.

²⁹ Casey Jedele, *op. cit.*, 130.

³⁰ Idowu Mopelola Ajibade, "A Synopsis: Rights, Responsibilities and Roles of Human Rights NGOs under International Law," *Responsibilities and Roles of Human Rights NGOs under International Law* (2008): 3.

³¹ Kerstin Marten, *op. cit.*, 17.

³² Frits Hondius, "Recognition and Protection of NGOs in International Law," https://www.icnl.org/research/library/transnational_recognitionandprotectionofngos

³³ Noam Schimmel, "The International Human Rights Law responsibilities of NGOs," <https://ohrh.law.ox.ac.uk/the-international-human-rights-law-responsibilities-of-ngos>

³⁴ Jan Wouters and Rossi Ingrid, "Human Rights NGOs: Role, Structure and Legal Status," *KU Leuven, Institute for International Law Working Paper*, no. 14 (2001): 7.

In addition, NGO's freedom of association is guaranteed by international human rights instruments (e.g., Universal Declaration of Human Rights³⁵ and ICCPR³⁶) as well as regional human rights instruments (e.g., African Charter on Human and Peoples' Rights,³⁷ Article 11 of the European Convention on Human Rights and Fundamental Freedoms,³⁸ and Article 16 of the American Convention on Human Rights.³⁹ The Council of Europe (CoE) also recognizes the right to participation under The Committee of Minister Resolution 2003 on Participatory Status for International NGOs.

At the regional level, progress has yet to be made in codifying the personality of NGOs. One of the most noteworthy conventions is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations. The convention was adopted in 1986 and entered into force in 1991, ensuring the general recognition of NGOs legal personality in every state party to the convention.⁴⁰ Even so, it is still not a convention that ensures the NGO's international legal personality. The critical distinction is that every international NGO may conduct its activities without the need for new recognition from the state parties.⁴¹

2.3. NGOs Lack of International Legal Standing

Legal personality is critical in determining rights, immunities, and the NGO's standing before the courts.⁴² Hence, NGOs' lack of international legal standing causes various problems regarding their representativity and legitimacy. Questions regarding the stance of the NGOs, their accountability, and in what ways they are accountable have arisen, along with their increasing participation in implementing international human rights norms.⁴³ In other words, even with a century of movement towards its legitimacy, which has resulted in specific regulations guaranteeing their rights and responsibilities, it is undeniable that their unclear position in the international field has caused significant issues.

The most concerning issue is the practice of misusing designation, which seriously undermined the recognition of NGOs as respected global actors. This problem occurred on the UN system opening for national NGOs in 1996, which finally led to the limitation of NGO participation at the UN. The system allowed governments of human rights-violating states to take advantage and promote NGOs from their country to be granted consultative status. Consequently, increasingly questionable NGOs, so-called Government-Organized NGOs (GONGOs), from human rights violating states

³⁵ Universal Declaration of Human Rights, Art. 20.

³⁶ International Covenant on Civil and Political Rights, Art. 22.

³⁷ African Charter on Human and Peoples' Rights, Art. 10.

³⁸ European Convention on Human Rights and Fundamental Freedom, Art. 11.

³⁹ American Convention on Human Rights, Art. 16.

⁴⁰ The 1986 European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisation. Art. 2.

⁴¹ Noam Schimmel, *loc. cit.*

⁴² Steve Charnovitz, *op.cit.*, 355.

⁴³ Kerstin Martens, *op. cit.*, 18.

are gaining status and therefore being able to lobby on behalf of their governments at the UN.⁴⁴

Furthermore, the differences in the national law which govern the NGOs could be more problematic, mainly when NGOs operate across their national borders. National laws vary by country; thus, the status of NGOs also varies. Rights, duties, and recognition depend on each country's national legislation. The national juridical systems generally differ in the official recognition criteria and social association tax regulations. Difficulty also arises because globally operating NGOs with branches in many countries will come within the scope of various national law systems. At the same time, NGOs must respect domestic authority when participating at the international level because some IGOs, like the UN, demand the legal status of NGOs as the requirement to be granted consultative status.⁴⁵

Another challenge for the NGOs to operate in different countries, since they are not globally recognized, is that some countries see the participation of certain nationals or ethnic groups with great skepticism. There is a concern that the field-level program of such NGOs in the country could be interpreted as an intervention in domestic affairs or as coverage of politically subversive activity.⁴⁶ The suspicion might have worsened depending on the issue advocated by the NGOs. With such suspicion, human rights are undoubtedly one of the most challenging issues to implement in a field-level program.⁴⁷

2.4. NGOs' Contribution to the Implementation of the United Nations General Assembly Resolution on the Situation of Human Rights in Myanmar

Despite the setback caused by the lack of international legal standing, NGOs still implement UNGAR on the Situation of Human Rights in Myanmar. The noteworthy contribution of NGOs as one of the backbones of the international human rights norms implementation at the grassroots level has been recognized with appreciation by the UN bodies, including the General Assembly. Thus, the General Assembly encourages the NGOs, which are addressed as the UN's international partners, to keep working hand in hand with the UN Agencies to address the root causes of the conflict. Three critical elements of NGOs' contribution are mentioned in the operative clauses of Resolution 74/246. First, conduct investigations into the gross human rights violations in Myanmar. Second, provide gender-based protection and assistance to the affected population. Third, assist

⁴⁴ James A. Paul, "NGO Access at the UN," <https://archive.globalpolicy.org/component/content/article/177-un/31722-ngo-access-at-the-un.html>

⁴⁵ Kerstin Martens, *loc. cit.*

⁴⁶ A.J. Judge, "NGOs and Civil Society: Some Realities and Distortions," *Transnational Associations-Associations Transnationales*, no. 3 (1995): 156.

⁴⁷ Eduard Jordaan, "Worthy of membership? Rwanda and South Africa on the United Nations Human Rights Council," *African Human Rights Law Journal* 21, no. 2 (2021): 907.

Bangladesh and Myanmar in delivering humanitarian aid to internally displaced persons (IDP).⁴⁸ In keeping with the scope of this study, the discussion focuses solely on the assistance provided by NGOs in Myanmar to IDPs in Rakhine State. According to the interviewees, their organizations delivered service effectively, and their programs were positively impacted.⁴⁹

2.4.1. Investigation of the Gross Human Rights Violations

In terms of investigating gross human rights violations, their field access from the conflict breakout offers an advantage of independent investigation through field guidance and access to such material.⁵⁰ In addition, it will strengthen the evidence provided in the ongoing prosecution of Myanmar before the ICJ by the Gambia over the genocide case. The value of the evidence can be supported by human rights NGOs, which are widely regarded, mainly when multiple organizations have collected the material.⁵¹ However, they could not blatantly take measures to any investigated or collected documentation and evidence related to the gross human rights violation. Such action would be risky for their operation in the area since they are tied up to the Memorandum of Understanding (MoU), which prohibits them from interfering with any internal affairs of Myanmar, including the human rights sector.

Despite the inability to conduct the investigation directly, the NGOs can still act indirectly to contribute to analyzing gross human rights violations in two ways, first, by reporting to their headquarters. For instance, a staff of Muslim Aid UK may report any human rights violation to his/her headquarter in London. The headquarter then will collect the information and advocate it to more influential bodies, like the UN.⁵² Second, by sharing the information or data with the NGOs coordination forum in Rakhine. The discussion usually continues to the setup of a joint strategy or plan regarding the issue. The NGOs' contribution to the investigation process has been coming out in a report, joint statement, press release, and article, as follows.

⁴⁸ United Nations, General Assembly, Resolution No. A/RES/74/246 on Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar, operative p. 3, 15, 17.

⁴⁹ One NGO staff of Muslim Aid United Kingdom (UK) and Two NGO staffs of Padi Global Asia (PGA). "Situation of Human Rights of Rohingya Muslims in Myanmar from the Perspective of Human Rights NGO Staffs," (Their names are not revealed for confidentiality reasons) Interview by Ainna Khairunnisa, Banda Aceh, January 27, 2021.

⁵⁰ United Nations, Human Rights Council, Resolution No. A/HRC/RES/39/2 on Situation of Human Rights of Rohingyan Muslims and Other Minorities in Myanmar. 2018, operative p. 6, and Human Rights Council, Fifty-first session, A/HRC/51/4, on Report of the Independent Investigative Mechanism for Myanmar, 12 September–7 October 2022 Agenda item 4, Distr.: General 12 July 2022.

⁵¹ Richard Price, "Transnational Civil Society and Advocacy in World Politics," *World Politics* 55, no. 4 (2003): 579.

⁵² One NGO staff of Muslim Aid and two NGO staffs of Padi Global Asia, *loc.cit.*

Table 1 Several Investigation Outcomes by NGOs 2018-2021⁵³

NGOs	Topic/Title of Document	Type of Document
Human Rights Watch	Myanmar's Mass Detention of Rohingya in Rakhine State	Report
	Rakhine Demolition Map	Analysis
Amnesty International	Military Responsibility for Crimes against Humanity in Rakhine State	Report
	Myanmar: Open Letter to ASEAN and its Member States: Stop the Ongoing Human Rights Violations in Myanmar	Open Letter
	Myanmar: In Reverse: Deteriorating Human Rights Situation	Submission for the UN Universal Periodic Review, 37 th Session, 2021
Collective NGOs	Statement of INGOs in Myanmar on the Situation in Rakhine 2019	Statement
Asian Forum for Human Rights Development	Global Society Statement on Myanmar	Statement

Information provided in Table 1 reveals that four NGOs i.e. Human Rights Watch (HRC), Amnesty International (AI), Collective NGOs, and Asian Forum for Human Rights Development (AFHRD) chose various documents to address Myanmar's issues. Collective NGO and AFHRD only released statements, while HRW and AI composed reports. Besides the report, HRW also delivered an analysis titled Rakhine Demolition Map. It can be compared that AI became the most contributive NGO as it spread an open letter and made a Submission for the UN Universal Periodic Review, 37th Session, 2021.

2.4.2. Provision of Protection and Assistance to the Affected Population

Concerning the provision of protection and assistance to the affected population, as stated in the ninth operative paragraph of UNGAR 74/246, The condition of protection and assistance is targeted especially to women

⁵³ Information compiled by authors from various sources, among others, Human Rights Council Resolution A/HRC/51/4.

and girls.⁵⁴ In addition, the security and service mainly aim to support the victims of sexual and gender-based violence and human trafficking. According to one of the interviewees, their presence, directly and indirectly, protects the affected population. First, their presence has deterred potential abuse because they may witness such violations and expose the perpetrators to prosecution, internal sanctions, and political or moral judgments. Second, it would limit the possibilities of abusive conduct by reducing the abusers' political space. For instance, the potential abusers or perpetrators could be concerned about the reaction of their superiors, loss of international cooperation advantages, or harm to their political reputation. Third, it would reassure the affected populations since the representatives of the international community can directly witness and report their situation.⁵⁵

The direct impacts can be seen from their contribution to assisting in the field. The compiled data from the interview with three NGOs staffs⁵⁶ assigned in Rakhine and an assessment of gender profile for humanitarian action provided by (I)NGOs and CSOs in coordination with the UN Women and support from the United Nations Population Fund (UNFPA) and UN Office for the Coordination of Humanitarian Affairs (OCHA) showed effective NGOs contribution in the sector of protection, education, health, food security, nutrition, Water, Sanitation and Hygiene (WASH), camp coordination and camp management, shelter and non-food items, and livelihood, as follow.⁵⁷

⁵⁴ United Nations General Assembly Resolution A/RES/74/246 on Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar, operative p. 9.

⁵⁵ Liam Mahony. *Proactive Presence Field Strategies for Civilian Protection* (Geneva: Henry Dunant Centre for Humanitarian Dialogue, 2006), 21.

⁵⁶ One NGO staff of Muslim Aid and two NGO staffs of Padi Global Asia, *loc.cit.*

⁵⁷ Reliefweb, "Gender Profile for Humanitarian Action: Rakhine, Kachin and Northern Shan, Myanmar," <https://reliefweb.int/report/myanmar/gender-profile-humanitarian-action-rakhine-kachin-and-northern-shan-myanmar-volume-2>

**Table 2 Gender-Based Protection and Assistance
in Rakhine from 2019-2021⁵⁸**

Sector	Issues	Key Contributions
Protection	High reported prevalence of Gender-Based Violence (GBV)	NGOs provided services to women and girls centers in camps and villages across central Rakhine regularly.
Camp Coordination & Management (CCCM)	Low rate of women representation in the committee of CCCM.	NGOs provided GBV training to the committee of CCCM.
Education	Limitation of girls' education.	Ensure inclusive, child-centered, and gender-responsive teaching practices in IDP camps.
Health	Barriers to access to healthcare for women and girls due to safety and socio-cultural factors.	NGOs recruited, trained, and deployed 74 health volunteers, 50% female, to support sexual and reproductive health and rights.
Food Security	Exposure to sexual abuse and exploitation risks, including a child and forced marriage, due to lack of livelihood opportunities.	NGOs conducted consultation and timely communication for practical assistance.
Nutrition	Women and girls have a higher risk of malnutrition due to intra-household food distribution gender inequalities.	NGOs provided nutrition support to adolescent girls, pregnant and lactating women as one of the main targets.
WASH	There are no private toilets or shower facilities within the shelters.	NGOs applied a family-shared system with four families sharing one facility.
Shelter & Non-food Items	Lack of sense of safety and privacy due to small size and overcrowding shelter, particularly for the emergency ones.	In 2018, developed and implemented new shelters' resilience preventing gender and protection risks as well as harsh weather conditions.
Livelihood	Freedom of movement restrictions has limited women and girls' access to CFW activities and access to the market.	NGOs conducted studies and assessments of cash feasibility considering gender and protection risks.

⁵⁸ Information compiled by authors from various sources, among others Human Rights Council Resolution A/HRC/51/4.

Information provided in Table 2 reveals the concrete contributions of NGOs, which encompassed nine critical sectors, most of which are related to healthcare. Such contributions underscored the capability of NGOs to protect and empower the Rohingya women and girls, particularly by encouraging women's involvement in the camps while still ensuring their safety.

2.4.3. Assistance to Myanmar in Providing Humanitarian Needs to the Internally Displaced Person of All Communities within Rakhine

Since the beginning of 2020, the total demand for humanitarian assistance has significantly increased due to armed conflict escalation in Rakhine, with brutal combat regularly occurring within and around the inhabited areas. From 2012 until today, about 130,000 individuals, the vast majority of whom are Rohingya, have been displaced in Rakhine's center region.⁵⁹ In 2017-2018, over half the non-Muslim population from the affected townships have also been displaced. Destruction and violence have impacted ordinary villagers on all sides. The violence has been disastrous for Muslims, Buddhists, and others⁶⁰ Due to the significant population in certain townships and the fact that they are the main targets of military operations, Muslims are disproportionately affected in both numbers and severity.⁶¹ According to the interviewees, the majority of the displaced people live in camps or camp-like settings. Under those circumstances, a large number of the Rohingya people continue to suffer significant difficulty in obtaining education, healthcare, and livelihoods because of the freedom of movements limitation, inter-communal dispute, and other factors. The situation has resulted in increased dependence on humanitarian aid. Below is the compilation of NGOs' contributions, in collaboration with the UN and other CSOs, to providing humanitarian needs to the IDP within Rakhine from 2019-2021. The data is obtained from UN OCHA's interview and humanitarian update in collaboration with the Inter-Cluster Coordination Group and UNHCR.⁶²

⁵⁹ Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples–Myanmar/Burma: Muslims and Rohingya," <https://www.refworld.org/docid/49749cdcc.html>.

⁶⁰ Anthony Ware and Costas Laoutides. *Myanmar's' Rohingya's Conflict* (Oxford: Oxford University Press, 2018), 6.

⁶¹ *Ibid.*

⁶² UN OCHA, "Myanmar Humanitarian Update No. 7," <https://reliefweb.int/report/myanmar/myanmar-humanitarian-update-no-7-27-may-2021>

Table 3 Humanitarian Needs to the IDP in Rakhine from 2019-2021

Sector	Issues	Key Contributions
Protection	One hundred thirty thousand internally displaced people in Rakhine are restricted from their basic human rights.	NGOs collect, verify and analyze information on violations against the IDPs to be utilized as evidence in the advocacy effort to call for international human rights law compliance.
Education	Restrictions on IDP children's movement and security severely limit their access to education beyond primary school at TLCs.	NGOs consulted with the community regarding necessary assistance for the learning process at the TLC IDP camps.
WASH	Increasing need for a facility for temporary water and sanitation.	NGOs distributed drinking water to affected IDP camps.
Health	The Muslim population is restricted from accessing the nearest healthcare centers due to escalating conflict since 2020.	NGOs continue to deliver service by a mobile clinic with partially suspended and partially resuming activities.
Shelter/Non-Food Items/Camp Coordination and Camp management	The increasing population growth in the last eight years has caused shelters to over-loaded.	Conducted rapid assessment of necessities for protracted IDP camps shelters. Targeted to distribute 700 longhouses to provide weatherproofing for at least 28,000 individuals.
Nutrition	The insufficient supplies, facilities, and competent staff cause the low quality of nutrition services.	NGOs conducted nutrition screening for approximately 11,570 children and 3,200 pregnant and lactating women.
Food Security	The IDPs are still facing economic and physical access to food and livelihood impediments.	NGOs implemented CFW activities among the population and engaged approximately 660 people in Rakhine.

As seen in tables 1, 2, and 3, despite the gap in international law to protect their operation amidst the escalating crisis in Rakhine, NGOs continue to participate in three significant focuses as mandated by the UNGAR 74/246. First, they play a vital role in investigating the gross human rights violations in Rakhine, Myanmar. The presence of NGOs in the field enables them to collect data, documentation, and other evidence of gross human rights violations, which come from joint report statements, press releases, etc. It becomes a breakthrough of the lack of function of the

UN Fact-Finding Mission and the unwillingness of the government to conduct any investigation process. These findings would strengthen the evidence provided for the ongoing prosecution of the *Gambia v. Myanmar* before the ICJ. Second, they continue to provide gender-based protection and assistance in Rakhine, especially for women and girls. Third, they assist Myanmar in providing humanitarian needs to the IDP of all communities within Rakhine.

Although NGOs are one of the key players in promoting justice, prosperity, and equality amidst the crisis, they nevertheless continue to face challenges in ensuring humanitarian access in a timely and effective manner. The interviewees all agreed that several barriers have resulted in significant adverse effects and slowed the delivery of needed aid to the affected population in the Rakhine State. These situations hence decrease the effectiveness of NGOs' contribution.⁶³ In Myanmar, several legal instruments have been utilized to limit the freedom of speech and expression, strictly monitor projects related to the peace process implemented by human rights actors, and even suspend NGOs' activities against the Government of Myanmar. Some of the most used ones are the Unlawful Association Act of 1908, the Telecommunication Law of 2013, the Protecting the Privacy and Security of Citizen Law of 2017, and the Penal code section 505(a) and 505(b). The interviewees also stated that NGOs face several ethical problems in their operations in Myanmar. The most dilemmatic one is whether they can operate without giving indirect support to the repressive regime. Finally, one of the interviewees described that the Rohingya people face "vertical" problems, which are the oppression and unrecognition of citizenship by the government, and "horizontal" issues, which are the communal conflict that has been going on between them and the Myanmar people.⁶⁴ The socially and politically motivated people, especially the Arakanese, have deemed the Rohingya as state enemies who deserve to be deported from the country. This situation has affected NGOs' operations in Rakhine for the last 20 years. The role of the academician is also essential to ensure the promotion of the human rights of civilians and other stakeholders.⁶⁵

⁶³ One NGO staff of Muslim Aid and two NGO staffs of Padi Global Asia, *loc.cit.*

⁶⁴ *Ibid.*

⁶⁵ Stephen A. Rosenbaum, David Tushaus, Britane Hubbard, and Kaylee Sharp-Bauer, "The Myanmar Shwe: Empowering Law Students, Teachers, and the Community Through Clinical Education and the Rule of Law," *Indiana Journal of Global Legal Studies* 28, no. 1 (2021): 153-230. See also Brianne McGonigle Leyh, "The Role of Universities and Law Schools in Documenting Serious International Crimes and Advancing the Rule of Law," *Utrecht Law Review* 17, no. 2 (2021): 87-101.

3. CONCLUSION

The UN Charter and UN organs resolutions have enabled NGOs to play a formalized role in the UN system under a consultative status. The lack of NGOs' international legal personality and the domestic law jurisdictions applicable to NGOs' operations in a particular state often hamper them from achieving their missions in promoting international human rights norms and standards. This matter can be reflected in the situation in Myanmar, where the NGOs faced challenges in implementing mandates stipulated in the United Nations General Assembly Resolution A/RES/74/246 of 2019. In practice, the NGOs could have been more optimal in investigating an allegation of gross human rights violations, providing gender-based protection and assistance, and supporting the Government of Myanmar in providing humanitarian assistance to all internally displaced persons within Rakhine. For the future, the collaboration of NGOs with all stakeholders, i.e., the Government of Myanmar, the UN, international partners of the UN, and the international community, remains essential to the peace-building process in Rakhine.

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