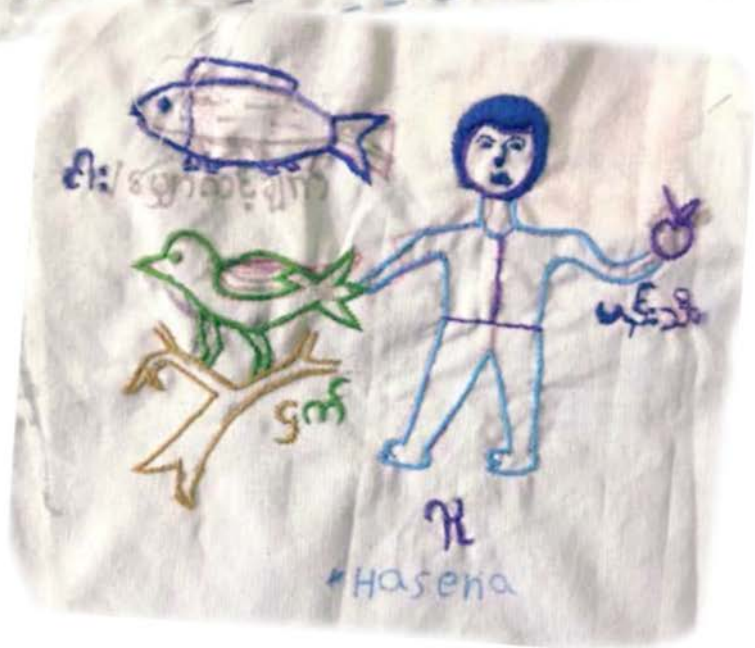


Quilting for Justice





Asia Justice and Rights
in collaboration with
Liberation War Museum



QUILTING FOR JUSTICE: An Illustrated Guide to Understanding the International Justice Mechanisms

Asia Justice and Rights
and
Liberation War Museum
2021

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Quilting For Justice: An Illustrated Guide to
Understanding the International Justice Mechanisms
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About This Book

Survivors of human rights violations have a right to justice. However, the journey to obtaining justice often comes hand-in-hand with complicated and confusing processes, especially when international mechanisms are involved.

In 2017, over 725,000 Rohingya refugees fled mass atrocities in Myanmar and were received by Bangladesh. The Liberation War Museum (LWM) and Asia Justice and Rights (AJAR) have been working with Rohingya women refugees to help them understand their rights and the various mechanisms that have been formed to facilitate victims' access to justice.

This book explains the different international mechanisms advancing justice for the Rohingya, by following a fictional character as she shares her story and information about the mechanisms with others in her community. When crafting this story, AJAR and LWM relied on their experiences working with female Rohingya refugees in Cox's Bazar. The images that accompany the story were taken from quilts produced by the women depicting their real-life memories and hopes.

AJAR and LWM would like to acknowledge and thank the Rohingya women survivors with whom they have been working. The women's stories and their desire to understand and promote justice inspired this book.



Years ago,
my dream was
to study law at
the university
in Sittwe.

But a calamity
took place.

My family and
I had to run
away in the
middle of the
night.

After walking for many
days, we crossed a river
and found safety.



Now, I live in a refugee camp.



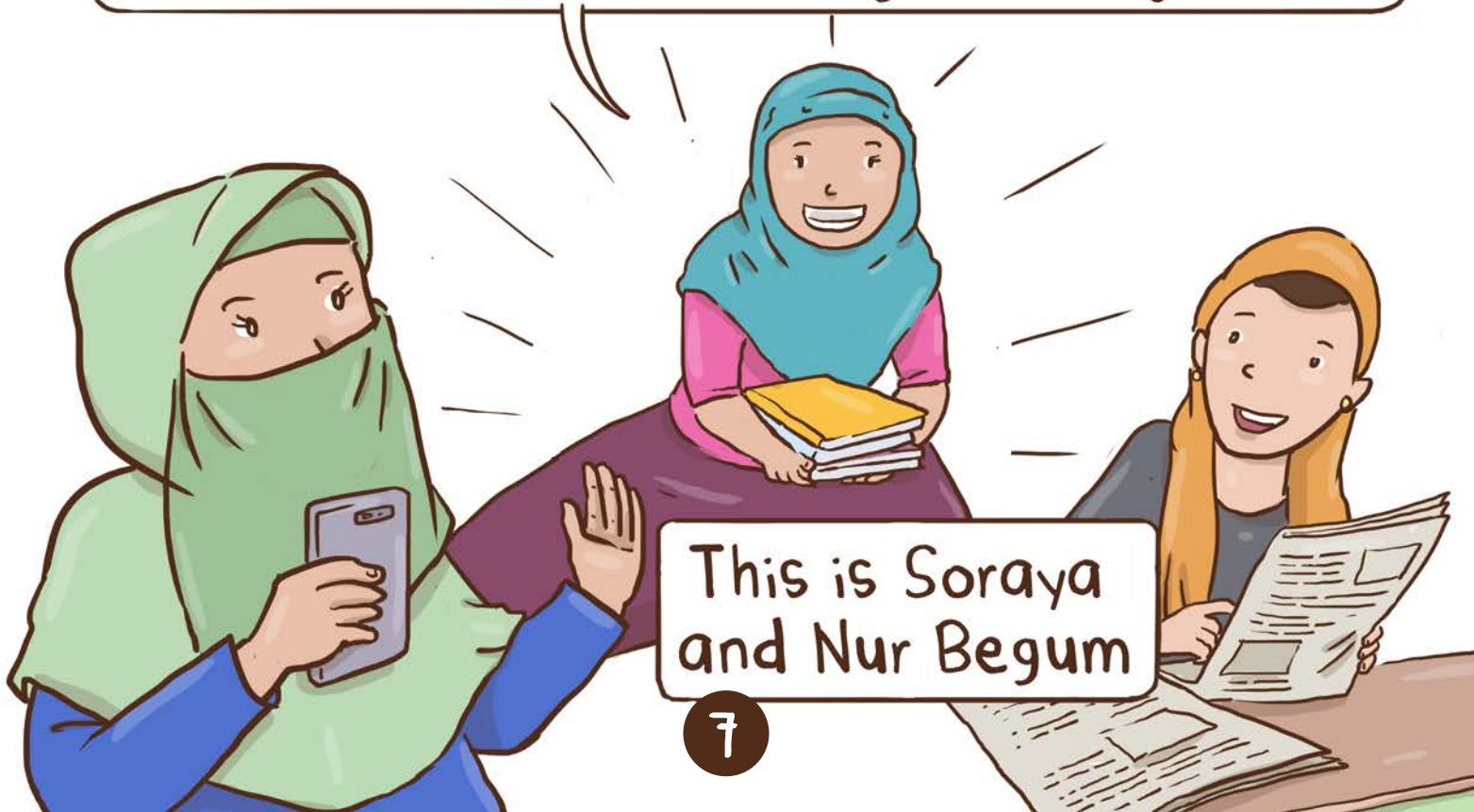
Life can be difficult, but I try to keep my dreams alive.

My father is a Mahji.

He often comes home with books and information about what is happening back at home and in other parts of the world.



My friends and I gather each day to discuss and learn about human rights and justice.



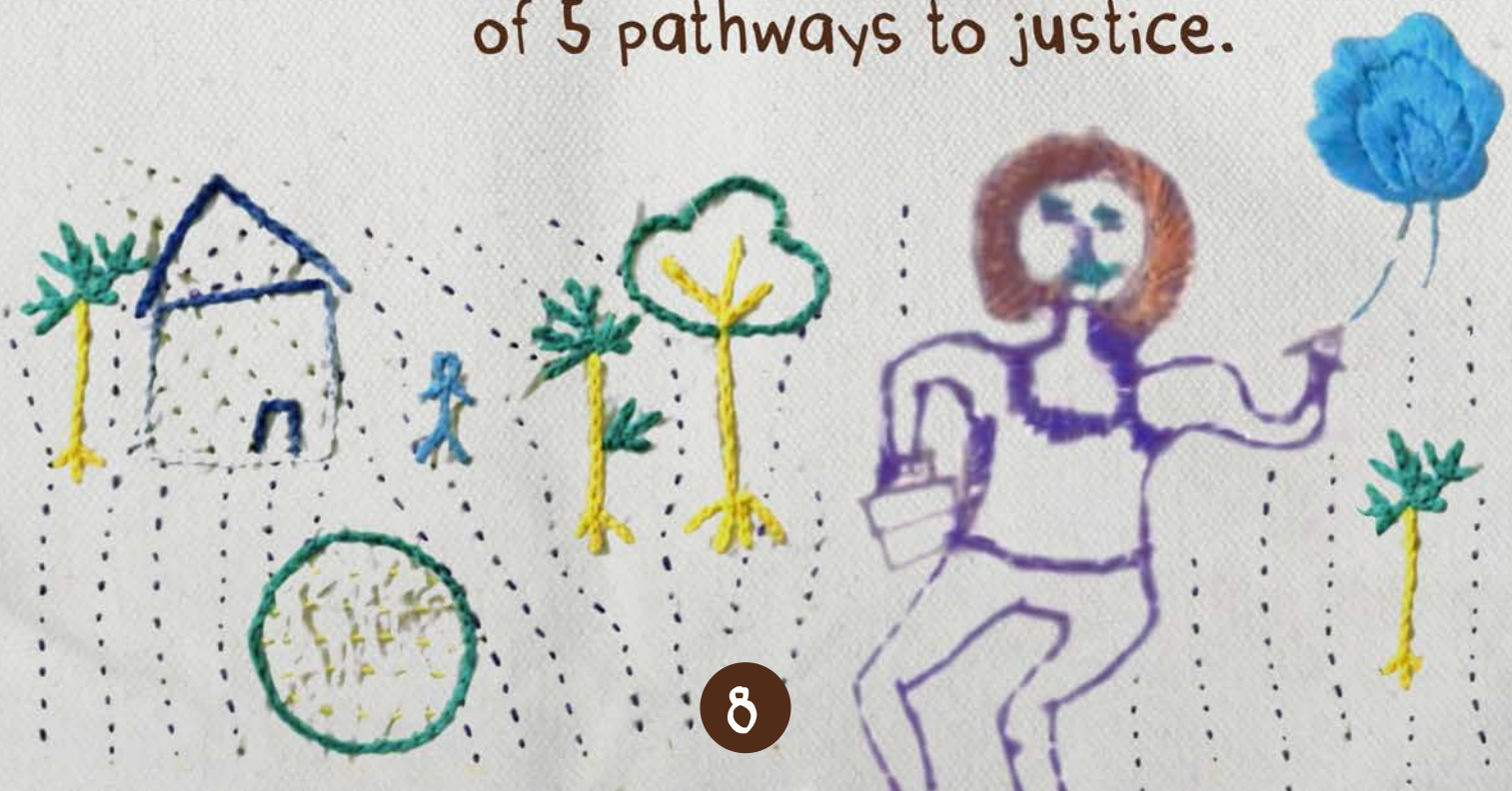
This is Soraya and Nur Begum

It's hard to understand,
but we are trying.

We decided to share what we
learned in a quilt.



Since the violence in Rakhine
in 2017, the world has taken some
steps to collect information about
what happened and push
for justice. They have made use
of 5 pathways to justice.



Some of the pathways include looking at crimes that are taking place in other ethnic areas in Myanmar.



We have learned that there are
5 different international
investigations or courts ...



FFM

Independent
International
Fact-Finding Mission
on Myanmar (FFM),
established by the
UN in 2017.

IIMM

Independent
Investigative
Mechanism for
Myanmar (IIMM),
established by the
UN in 2018.



ICC

International Criminal
Court (ICC), began
an investigation in
November 2019.

... looking at the crimes that took place in Myanmar.

Myanmar

ICJ

International Court of Justice (ICJ) hearing a case brought by The Gambia in November 2019.

Universal jurisdiction case filed in a court in Argentina in November 2019.



M N R

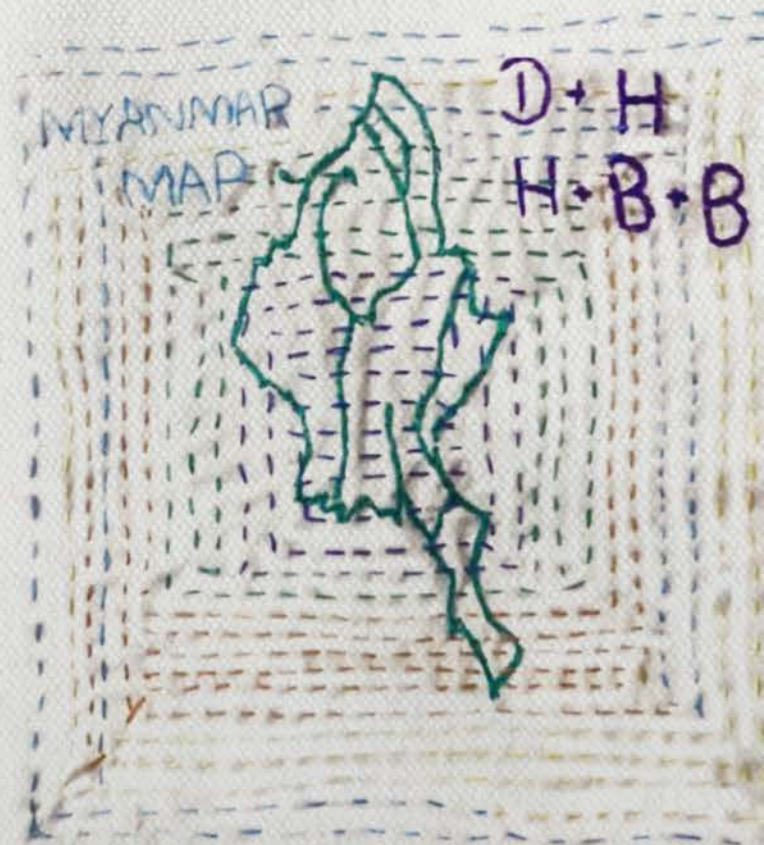
FFM (Fact-Finding Mission)

The FFM was created on 24 March 2017 by the UN Human Rights Council.



It ended in September 2019 and handed over its evidence to the Independent Investigative Mechanism for Myanmar (IIMM).

The FFM looked at human rights violations in Myanmar since 2011, in particular in Rakhine, Kachin, and northern Shan States, committed primarily by government security forces, but also by ethnic armed groups.





The Commissioners were Marzuki Darusman (chair) from Indonesia, Radhika Coomaraswamy from Sri Lanka and Christopher Dominic Sidoti from Australia.

The FFM report was published in September 2018 (444 pages).

In August 2019, the FFM published follow-up reports on the business ties of the Myanmar military and on sexual and gender-based violence in Myanmar.



A final report was published in September 2019.

KEY FINDINGS

The Tatmadaw committed genocide against the Rohingya in Rakhine State, and war crimes and crimes against humanity in Kachin, Shan, and Rakhine States.



In Rakhine State, the Tatmadaw conducted clearance operations that caused over 725,000 Rohingya to flee to Bangladesh and led to 10,000 deaths (a conservative estimate), mass killings and gang rapes.

The FFM also documented rampant hate speech in Myanmar.

The FFM identified by name six senior commanders as most responsible for the crimes.



The FFM documented the business ties of the military, as well as the use of sexual and gender-based violence in conflict.




The FFM called for:


The investigation and prosecution of Myanmar's Commander-in-Chief, Senior General Min Aung Hlaing, and his top military leaders for genocide, war crimes, and crimes against humanity in Rakhine, Kachin and Shan States .





The United Nations Security Council to refer Myanmar to the International Criminal Court (ICC), or to establish an ad hoc international criminal tribunal.




 The creation of an international Independent Investigative Mechanism for Myanmar (IIMM).

 Targeted individual sanctions, including travel bans and asset freezes.

 An arms embargo on Myanmar.

 The international community to cut off all financial and other support to Myanmar's military.

 The United Nations to create a trust fund for victim support.



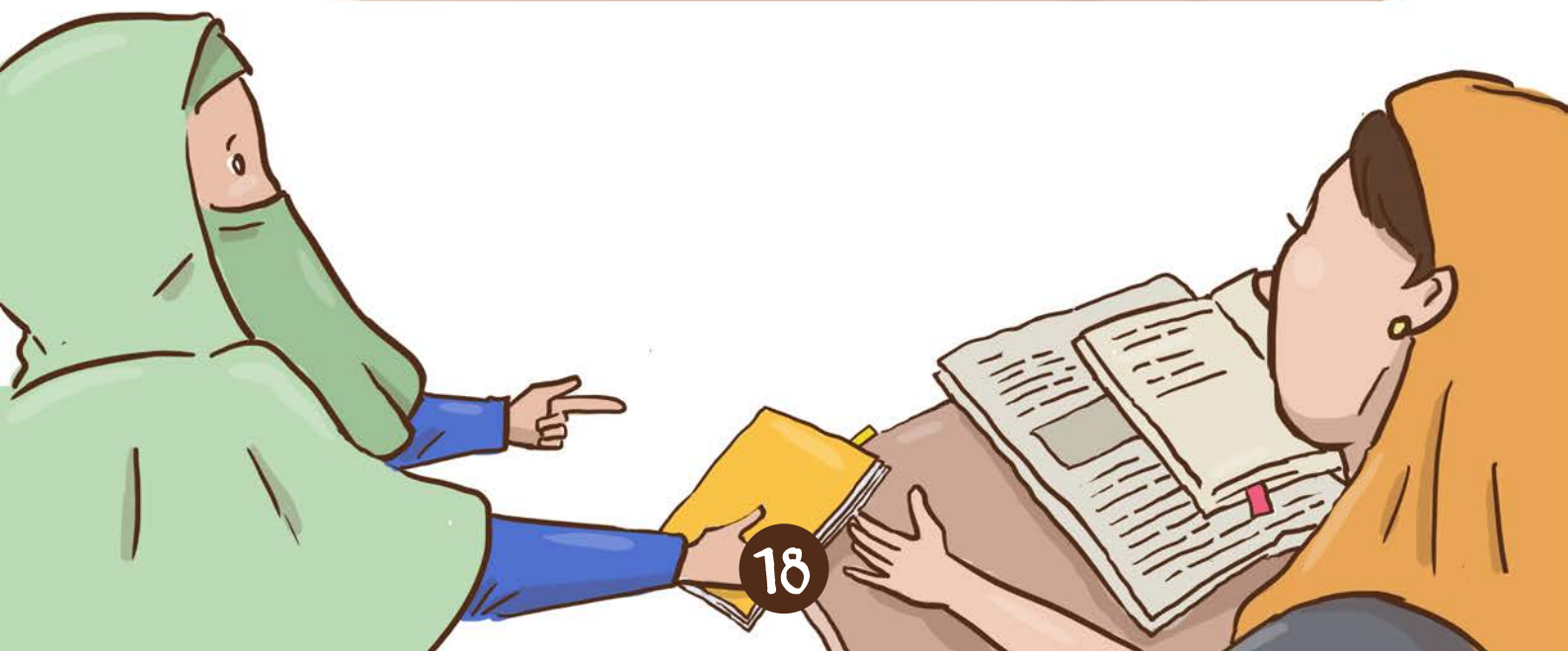
The FFM had some clear strengths:

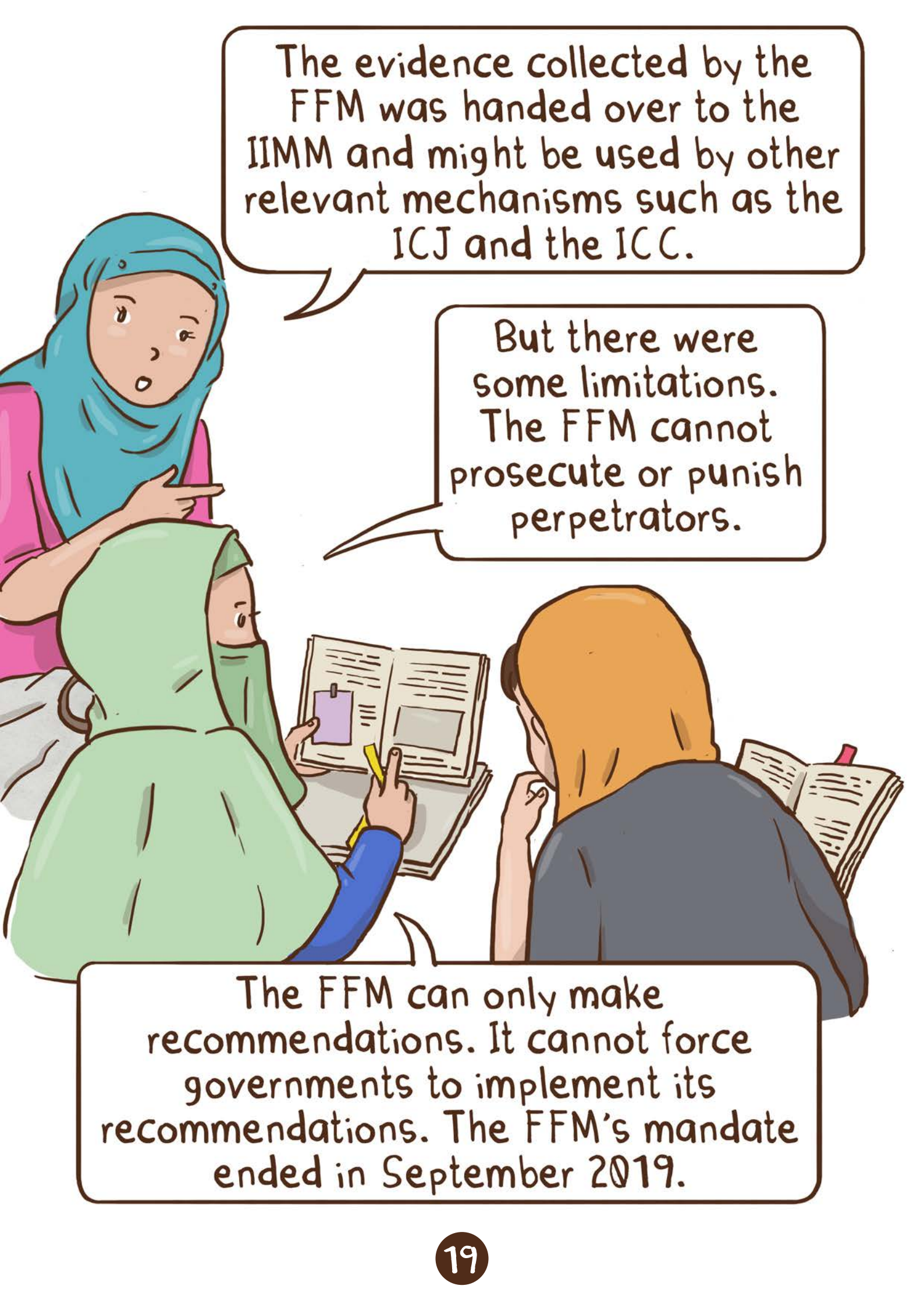
It did not focus only on individuals, but also looked at the Tatmadaw as an institution.

The main report highlighted patterns of violations.

The FFM's mandate allowed it to look at all of Myanmar, in particular in Rakhine, Kachin, and northern Shan States.

Independent Commissioners were the people in charge of the FFM.





The evidence collected by the FFM was handed over to the IIMM and might be used by other relevant mechanisms such as the ICJ and the ICC.

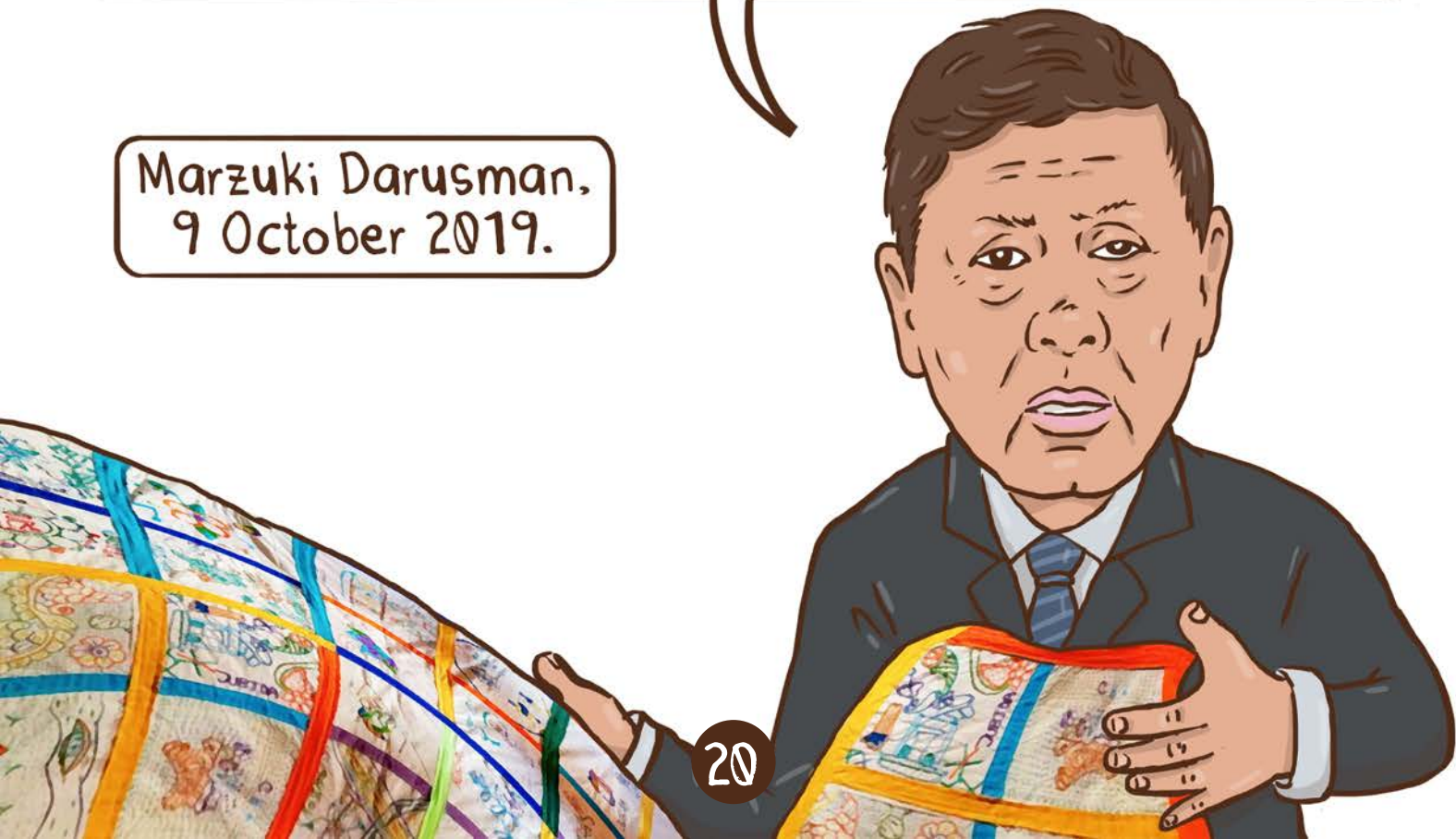
But there were some limitations. The FFM cannot prosecute or punish perpetrators.

The FFM can only make recommendations. It cannot force governments to implement its recommendations. The FFM's mandate ended in September 2019.

The chair of the FFM
Marzuki Darusman wrote this
after seeing our quilt.

"The first visit to Cox's Bazar brought us to the learning space for children at a UNDP facility. There we saw grim pictures of the genocidal helicopters (drawn by children). The pictures we see here now are so different, colourful, lively, expressing the beginning of hope. On my second visit, to thank the Rohingya Community for enabling us to report to the world, the womenfolk were at the forefront. An amazing rebound. I believe you will come through and persevere."

Marzuki Darusman,
9 October 2019.





As the FFM closed down,
the UN set up the IIMM.
IIMM (Independent Investigative
Mechanism for Myanmar).



The IIMM was created on 25 September 2018
and started its work in August 2019.
It is based in Geneva.

The IIMM will build on the work of the FFM.
The FFM handed over the information
it collected to the IIMM.

Nicholas Koumjian,
an international prosecutor from
the United States, is the Head of the IIMM.

Previously, he worked in courts in
East Timor and Cambodia.



The IIMM's team will include investigators, analysts, translators and lawyers.

The IIMM was established to:

Collect, consolidate, preserve and analyze evidence of the most serious crimes and violations of international law committed in Myanmar since 2011.

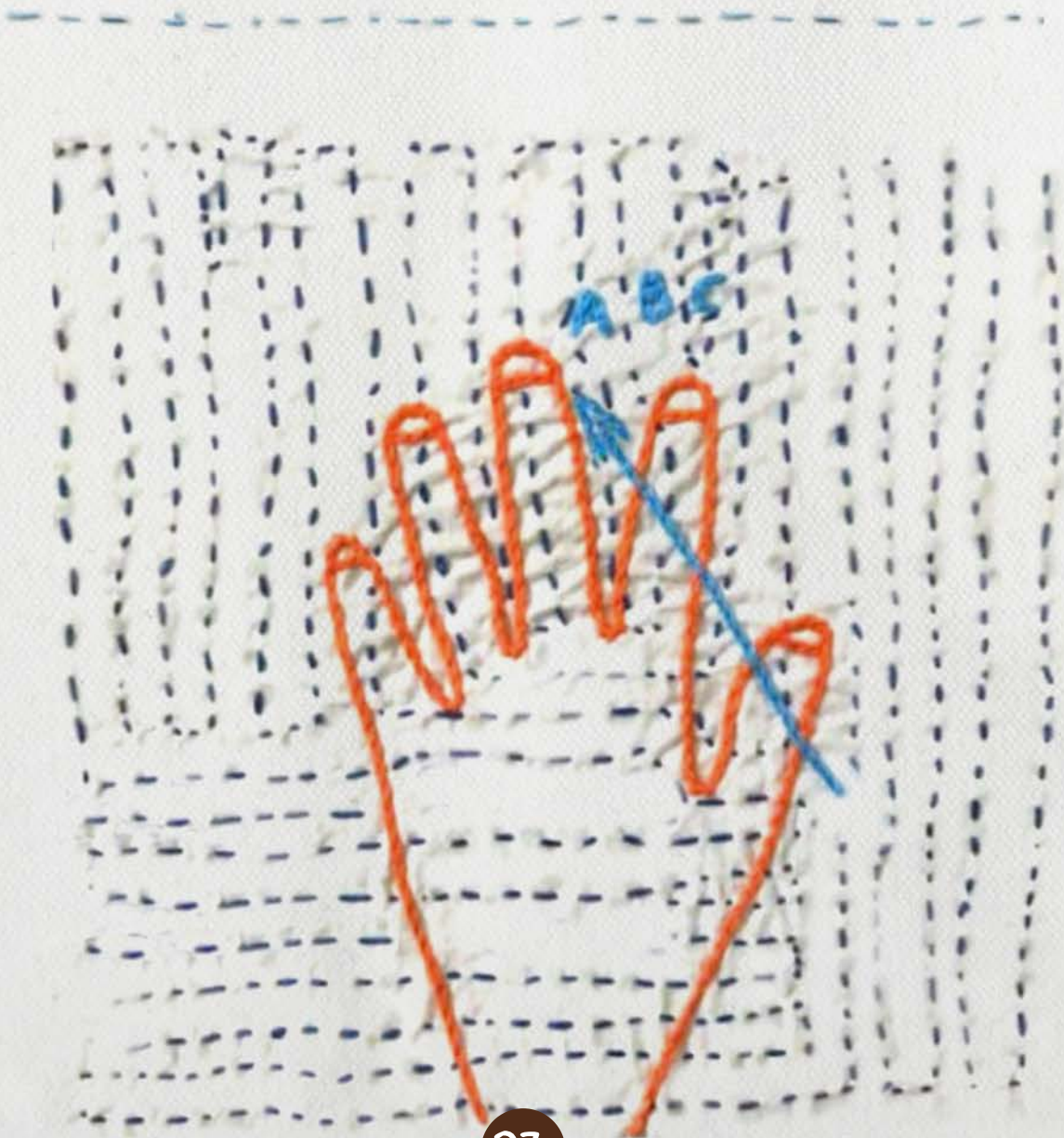


Military



And

Prepare files to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or, in the future, may have jurisdiction over these crimes.



Information collected for IIMM files should:

a b c d e f g h
i j k l m n o
p q r s t u
v w x y z



1. Focus on the individuals most responsible for the crimes.

2. Identify specific crimes committed by these persons.



I think the IIMM has some key strengths.

3. Specify the types of criminal responsibility (e.g. command or superior responsibility).



4. Include linkage evidence, which provides the connections between the crimes and the persons responsible.

The IIMM will make it easier to bring cases to court in the future, as it will prepare files with evidence for others to use.

The IIMM's mandate is ongoing, beginning from 2011 but continuing into the future. It will be closely monitoring events in Myanmar and can help ensure people are held accountable for future crimes, too.

The IIMM will build work of the FFM. The FFM handed over the information it collected to the IIMM.

The information collected by the IIMM can be used at the International Criminal Court (ICC) and other courts, including under the principle of universal jurisdiction (like in Argentina). It might also be used at the International Court of Justice (ICJ).

Civil society organizations can cooperate with the IIMM and provide information and documentation to it.



On the other hand,
we have to understand that:

The IIMM cannot
prosecute or punish any
perpetrators. It can only
gather evidence and
prepare files.



The IIMM is not a court or a
tribunal. It cannot hold a trial.
It will hand over its evidence to
tribunals that will prosecute
perpetrators in the future.

As of the summer of 2021,
the IIMM is still being denied
access to Myanmar.

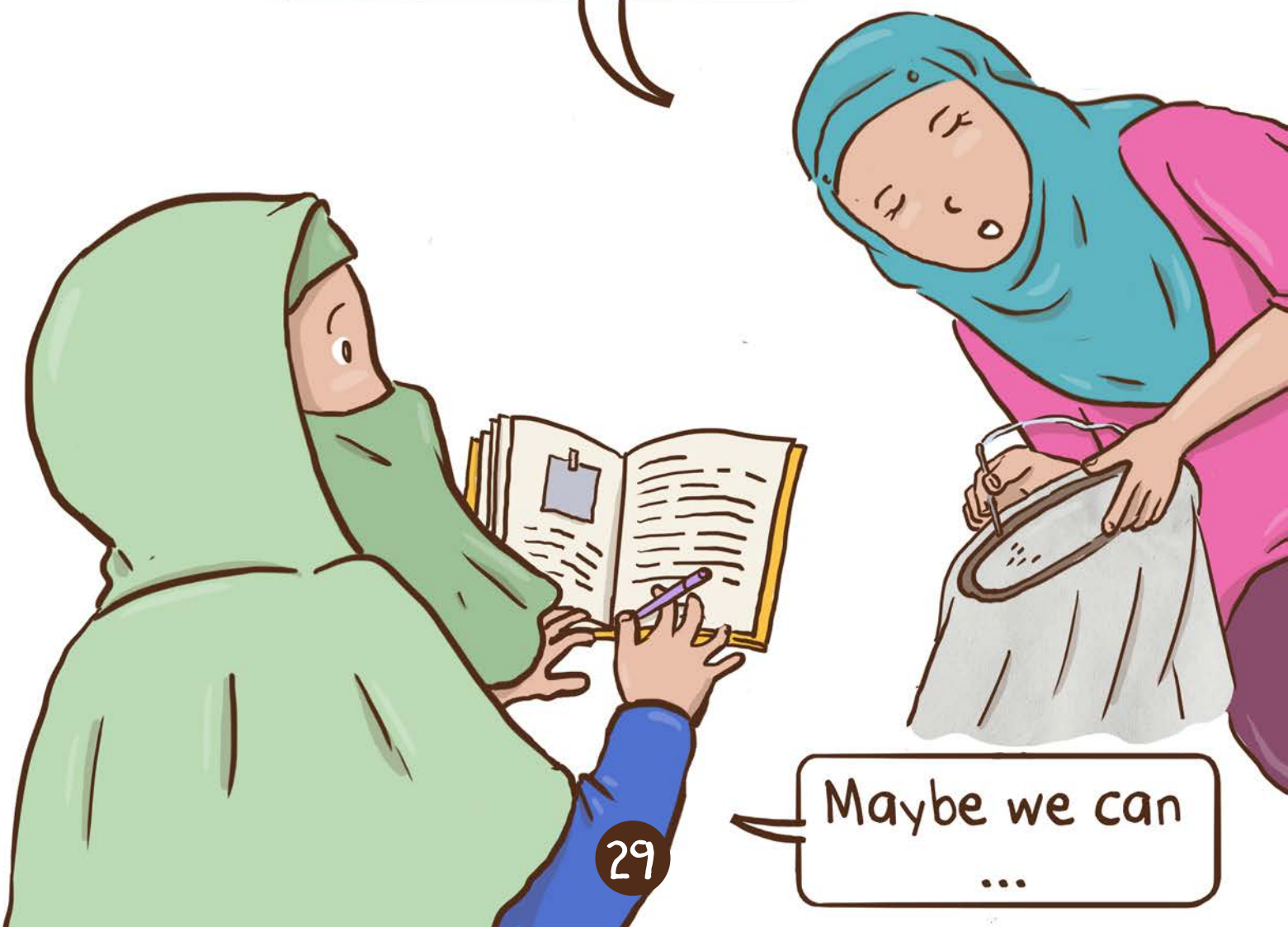
The IIMM's work might not be
entirely known to the public.

The IIMM must report on its
activities each year to the UN, but
it probably will not make detailed
reports about human rights
violations. (Its work is different
from the FFM in this way.)

The IIMM is unlikely to advocate for legal or policy reforms in Myanmar.

The IIMM's capacity to do outreach and inform the general public about its work might be limited.

What can we do to help the IIMM?



Maybe we can ...



1. Provide information and documentation to the IIMM.

2. Help victims and witnesses give evidence to the IIMM.

3. Help explain the work of the IIMM to the general public and manage victim's expectations.

Also, we can:

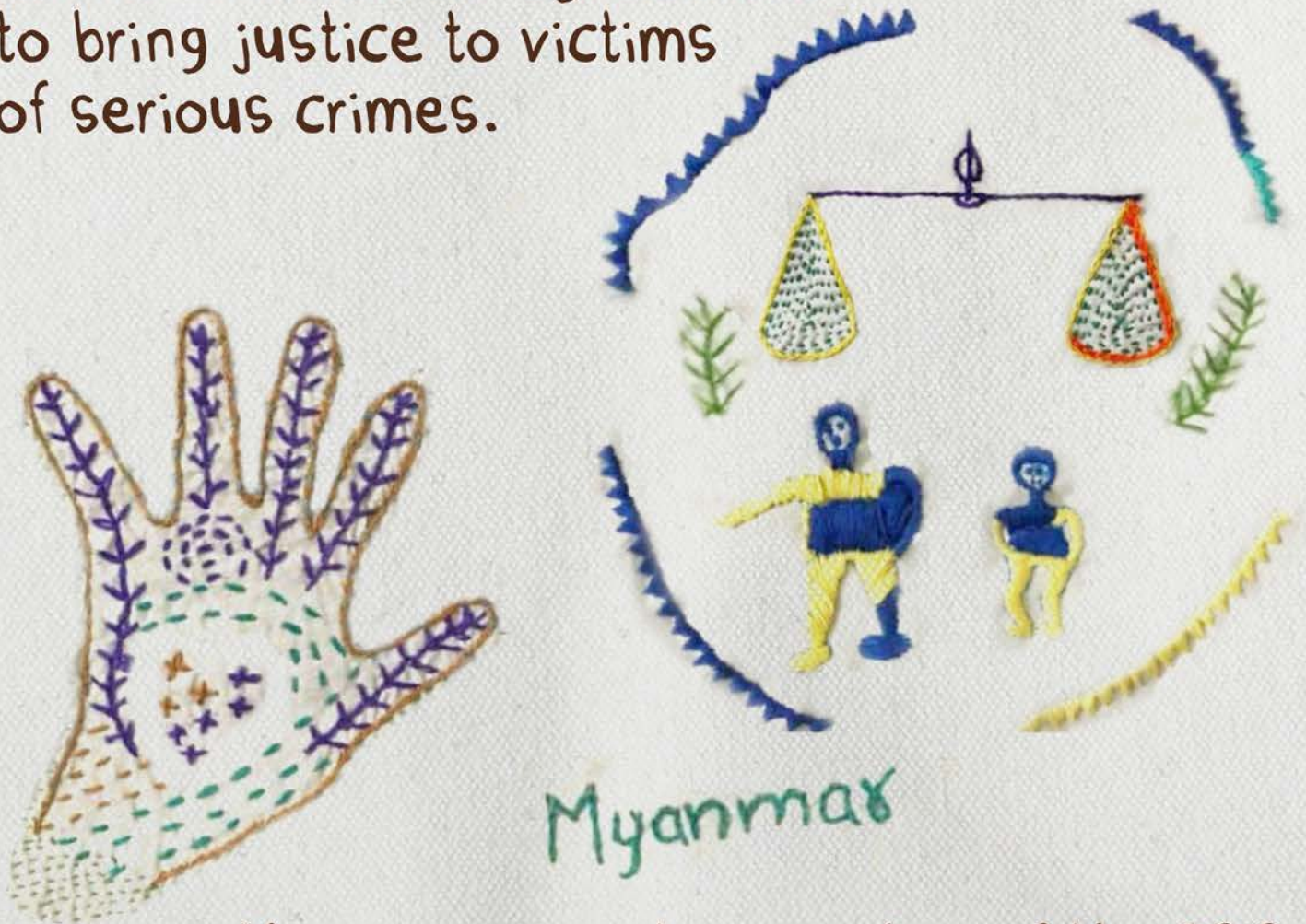
1. Lobby the UN and the Head of the IIMM to ensure that the IIMM includes staff with expertise in local ethnic contexts, cultures and languages, as well as experience in local efforts in human rights documentation. Also, lobby them to ensure representation of local ethnic groups in the IIMM.

2. Lobby the IIMM to ensure that vulnerable victims and witnesses who collaborate with the IIMM receive appropriate medical and psychosocial support.



ICC (International Criminal Court)

The ICC is a court located in The Hague, which is a city in a country called The Netherlands. It was established by countries that signed the Rome Statute, an agreement to bring justice to victims of serious crimes.



Myanmar is not a member of the ICC. It has not accepted the Rome Statute, which is the treaty creating the ICC. It is not a State Party to that treaty.

This means that Myanmar has not accepted the jurisdiction of the ICC.

Bangladesh has been a State Party to the ICC Rome Statute since 2010. It has accepted the jurisdiction of the ICC.

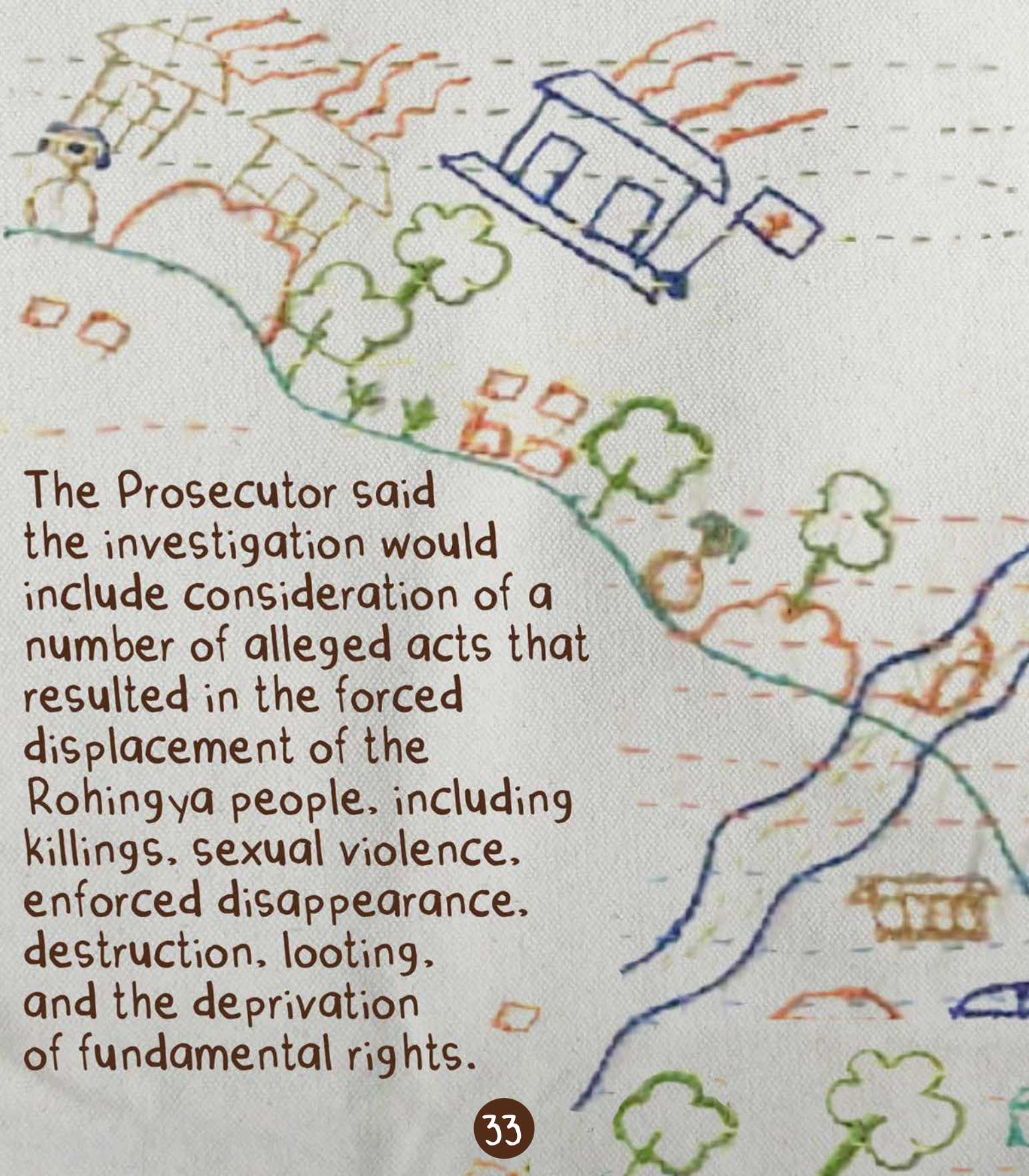


On April 2018, the ICC Prosecutor asked the ICC judges to clarify the ICC's jurisdiction over alleged crimes committed against the Rohingya. The Prosecutor argued that the crime of deportation committed against the Rohingya took place across the border with Bangladesh, a State Party.

On 6 September 2018, the ICC ruled that it may exercise jurisdiction over crimes committed against the Rohingya that occurred in part in Bangladesh, such as the crime of deportation, because Bangladesh is a State Party to the Rome Statute.

On July 2019, the Prosecutor asked the judges to authorize an investigation into the crimes against the Rohingya, including crimes against humanity, that were sufficiently linked to Bangladesh.

The Prosecutor said the investigation would include consideration of a number of alleged acts that resulted in the forced displacement of the Rohingya people, including killings, sexual violence, enforced disappearance, destruction, looting, and the deprivation of fundamental rights.



On November 2019, the ICC judges authorized the Prosecutor to proceed with an investigation in relation to any crime, including any future crime, as long as it is within the jurisdiction of the ICC and it is committed at least in part on the territory of Bangladesh.



Why is the ICC not investigating other crimes in Myanmar?



Myanmar is not a member of the ICC. It has not accepted the Rome Statute, which is the treaty creating the ICC. It is not a State Party to that treaty. This means that Myanmar has not accepted the jurisdiction of the ICC.

According to the law governing the ICC, when crimes are committed in a country that is not a State Party, that country can accept the ICC's jurisdiction for that particular situation. If the country is unwilling to accept the court's jurisdiction, only the UN Security Council can refer the situation to the ICC.

For political reasons, a UN Security Council referral is not possible at the moment.



Some Security Council countries, like China, have made it clear that they would veto it.

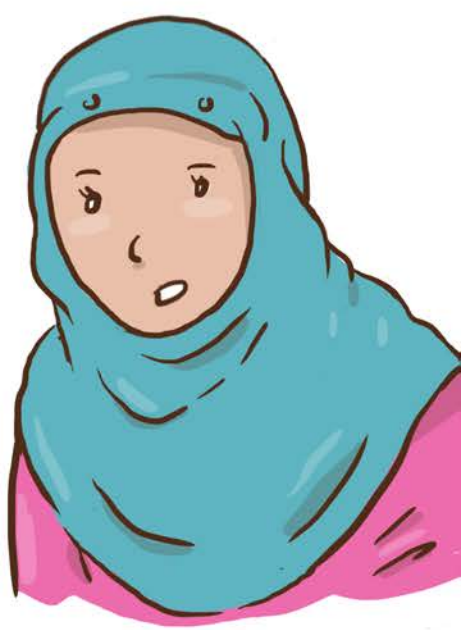


How long will the ICC take to complete its investigation?


Once the Prosecutor opens a formal investigation, there is no deadline for finishing it, and it may take several years. The Prosecutor will collect evidence and decide if there is enough evidence to bring a case against one or several perpetrators. If yes, the Prosecutor will apply for one or more arrest warrants.



What is an arrest warrant?



An arrest warrant is a document issued by the judges asking States to arrest a suspect (that is, a person suspected of having committed crimes). The arrest warrant might be public or secret (that is, filed under seal). This means that even if there is an arrest warrant, the public might not know about it.



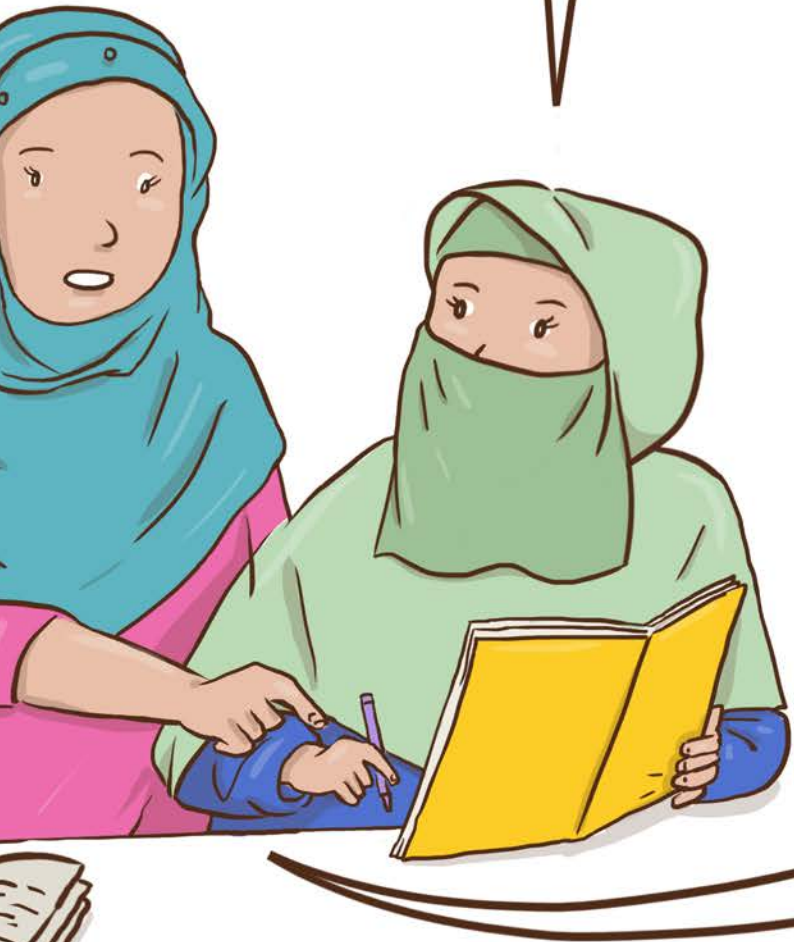
And remember the ICC has no power to arrest people. Only States (governments) can arrest suspects.

If a suspect named in an arrest warrant travels to a country that is a State Party to the ICC, that State should arrest the suspect, but in the past, that has not always happened. Nevertheless, it is unlikely that the suspects will take the risk to travel to such countries.



If the suspects are not arrested, there will be no trial. The ICC does not have any trials without the person accused of the crimes being present. It is therefore very possible that there will never be any trials, unless (or until) the political situation changes drastically.

What can we do to help the ICC?



We can:

1. Help explain the ICC to the general public, including its limitations and benefits.
2. Provide information and documentation to the Prosecutor.
3. Help victims and witnesses give evidence to the ICC (including via the IIMM), and help make sure they understand the process clearly.

We can also:

1. Think about asking the Prosecutor to make arrest warrants public as a form of accountability of perpetrators.
2. Lobby the ICC to do outreach and provide public information to all Myanmar communities.
3. Lobby the ICC Trust Fund for Victims to start assistance programs for the Rohingya.



ICJ


(International Court of Justice)

1945

The ICJ was established in 1945, as a court of the United Nations.



Its mandate is:

 To settle legal disputes between two or more countries, for example, a dispute about the application of an international treaty or convention.



To give advisory opinions on legal questions referred by UN agencies.

Myanmar is a member of the UN
and State Party to
the Genocide Convention.

Under the Convention, if a State Party
(that is, a country who signed the Genocide
Convention) believes that another State
Party is not upholding the Convention,
it may file a complaint to the ICJ.



This means that another country who signed
the Genocide Convention is able to ask the
ICJ judges to make a decision about
Myanmar's responsibility for genocide
against the Rohingya or against other ethnic
or religious minorities. And that is exactly
what has happened!

On 11 November 2019, an African country, The Gambia, filed an application at the ICJ against the State of Myanmar for violating obligations under the Genocide Convention.



This included the allegation that Myanmar committed genocide and failed to prevent and punish those who were involved in the crimes.

An initial hearing took place at the ICJ in The Hague (in The Netherlands) on 10-12 December 2019, to discuss issues of jurisdiction and provisional measures.

Provisional measures are actions that the ICJ can order the parties to urgently take while the case is working its way through the ICJ process.

PROVISIONAL MEASURES



On 23 January 2020, the ICJ judges issued an order to Myanmar to implement certain provisional measures.

Currently, it is unknown when the court will take its next action in relation to the case, and it may be years before a final judgement is issued.



The judges explained that they were ordering Myanmar to implement provisional measures because there was a serious risk of genocide.

The decision was unanimous. In other words, all the judges on the panel agreed, including the judge appointed by Myanmar.

The ICJ ordered that:

1. Myanmar must take all measures to prevent acts of genocide against the Rohingya, such as killing and causing serious harm.
2. Myanmar must ensure that the military and other armed forces under its control and influence do not commit acts of genocide.



3. Myanmar must preserve the evidence of genocide.

4. Myanmar must report to the ICJ within 4 months and then every 6 months until there is a final decision in the case.

According to the Charter of the United Nations (UN), the decision is legally binding on Myanmar. Myanmar must comply with the order.

The decision will be transmitted to the UN Security Council which has the power to take action if the order is not implemented.

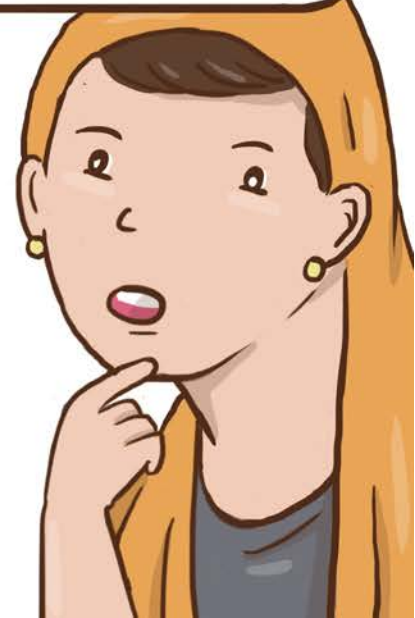
So what is the difference between ICJ and ICC?



The ICJ resolves legal disputes between countries. It looks at the responsibility of governments, and not at the responsibility of individual perpetrators.

The ICC puts individual people on trial. It looks at individual criminal responsibility.

So what happens next?





The ICJ has not decided on the main issues raised by The Gambia when it filed the case (that is, the merits of the case). It may take years for the ICJ to reach a decision on the main case (that is, the merits).

There will be a long procedure before that.



When it does make a decision, the court can make a finding about whether Myanmar committed genocide or not, and it can order Myanmar to provide reparations and make sure that these crimes are not repeated.



Universal Jurisdiction

Usually, national courts can prosecute:

- Crimes committed in their country
- Crimes committed by their nationals outside of their country
- Crimes committed against nationals outside of their country. But this is rare.

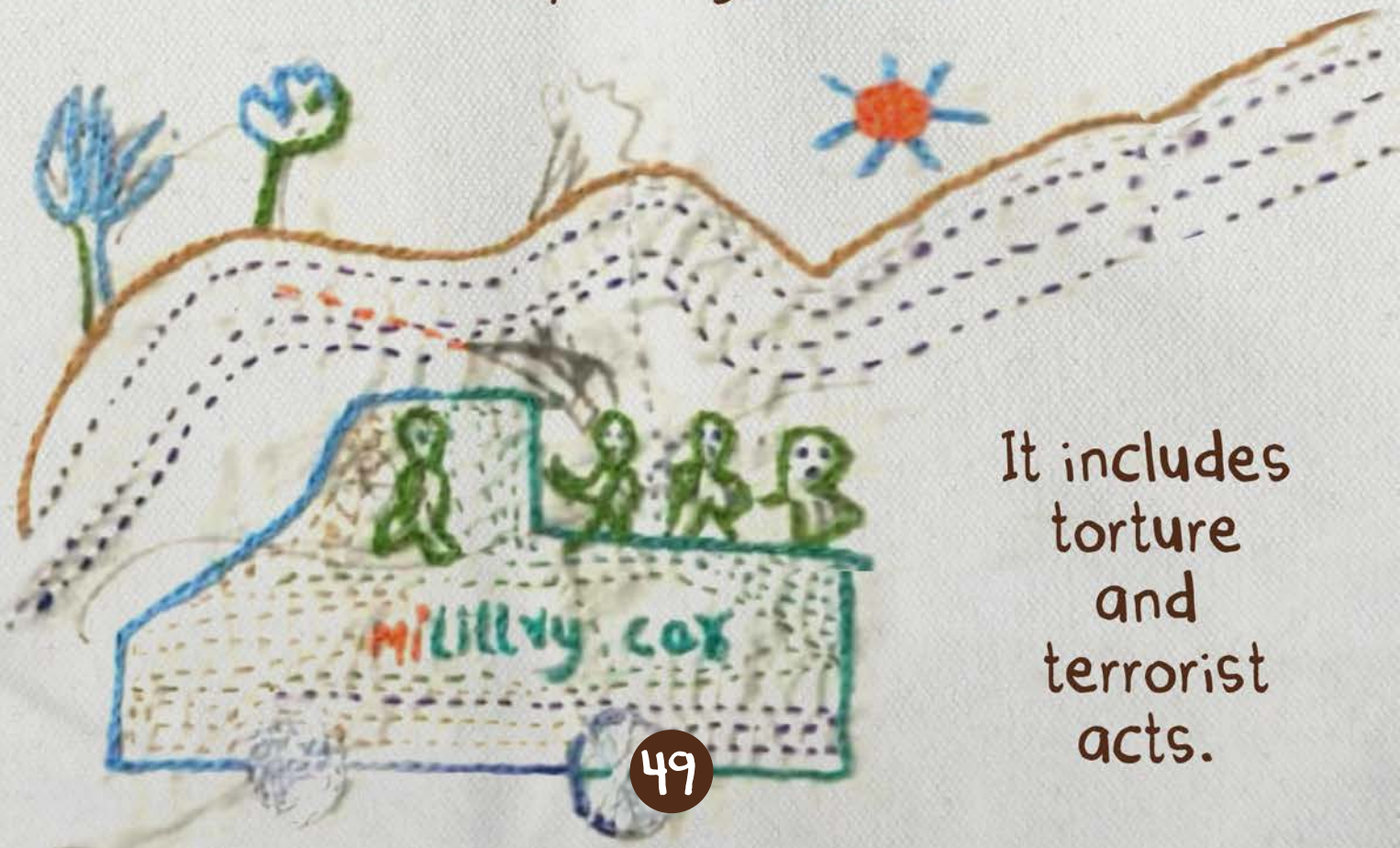
In some countries, national courts can prosecute certain serious crimes even if the crimes did not take place in their country and even if the perpetrator is not a national of their country. When they do this, they are exercising universal jurisdiction.



The concept applies only to very serious crimes – crimes that are so serious they are considered crimes against the whole international community and are therefore of universal concern. For these crimes, it is believed that any State should have jurisdiction to ensure justice.



The concept of universal jurisdiction was initially used to address crimes of piracy and the slave trade. Nowadays, it applies to the most serious international crimes, such as war crimes, crimes against humanity and genocide.



It includes torture and terrorist acts.

Many countries have adopted legislation recognizing universal jurisdiction and allowing cases to be filed in their courts on that basis.

Such countries include Belgium, Germany, the UK, Spain, Australia, and Argentina.



Universal Jurisdiction: Argentina

Human rights groups filed a criminal lawsuit in a court in Argentina on 13 November 2019, alleging that the government and military of Myanmar have committed crimes against humanity and genocide against the Rohingya.

It was possible to file the case because the principle of universal jurisdiction is included in Argentinean law, including in Article 118 of the Constitution.

In the past, Argentinean courts have taken up other cases using universal jurisdiction, including in relation to the Falun Gong movement in China and ex-dictator Francisco Franco's rule in Spain.




The complaint filed in 2019 demands that top Myanmar military and political leaders be investigated and prosecuted for potential crimes against humanity and genocide.

Individuals named in the complaint include Senior General Min Aung Hlaing and other military leaders, as well as State Counsellor Daw Aung San Suu Kyi, President Win Myint, and former presidents Htin Kyaw and Thein Sein.

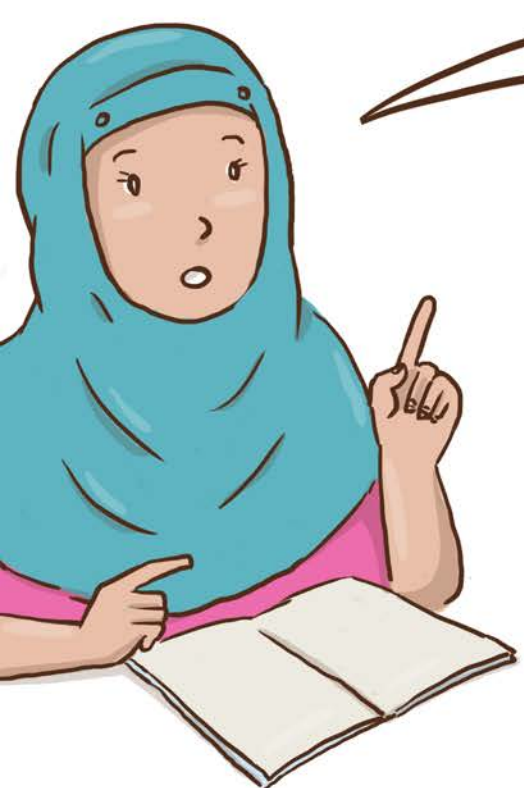
It also lists several civilians, including the monk U Wirathu and politician Nay Myo Wai.



The case is about these individual's personal criminal responsibility, as perpetrators, accomplices, and cover-ups of the crimes. It is not about the responsibility of the State of Myanmar.



So, how does this fit in with the other courts and investigations?



The case in Argentina is about individual responsibility (while the ICJ case is about State responsibility). It deals with crimes against the Rohingya committed on the territory of Myanmar (while the ICC case is limited to crimes committed in part on the territory of Bangladesh).

The court in Argentina can request the Independent Investigative Mechanism for Myanmar (IIMM) to provide evidence collected by both the Fact-Finding Mission (FFM) and the IIMM. This would make the work of the court much easier.

If the case in Argentina moves forward, it will put pressure politically on Myanmar. The case might act as a deterrent against further abuses. If the court in Argentina issues arrest warrants for those military and civilian leaders, the case could potentially limit their capacity to travel abroad.



However, as of July 2021, we still don't know if the Argentina court will agree to proceed with the case.

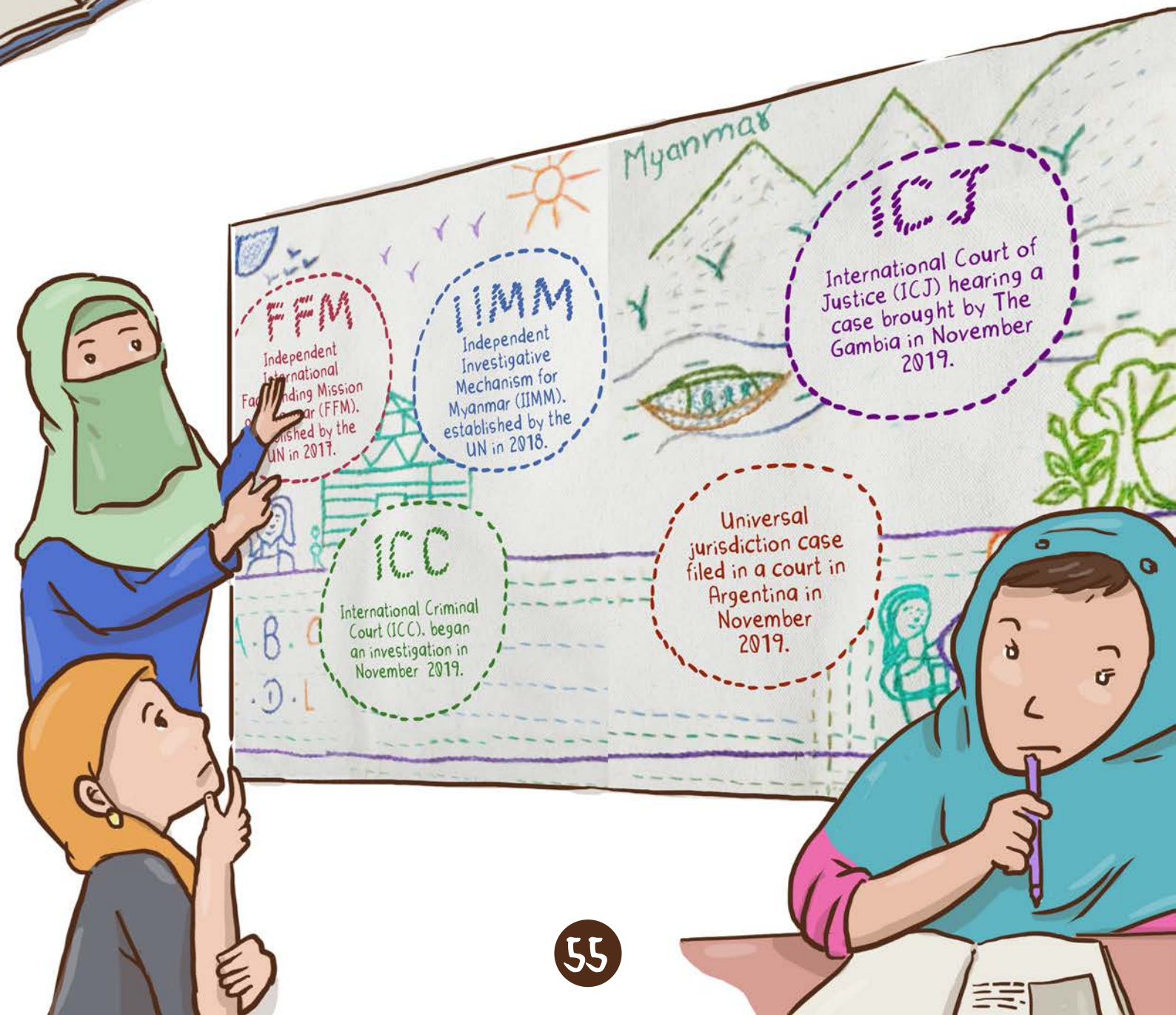
Prior to the coup in Myanmar, the Myanmar government rejected the court's jurisdiction and said it would not respond to the allegations.

Lack of cooperation by Myanmar would likely make it more difficult for further investigation and evidence collection.



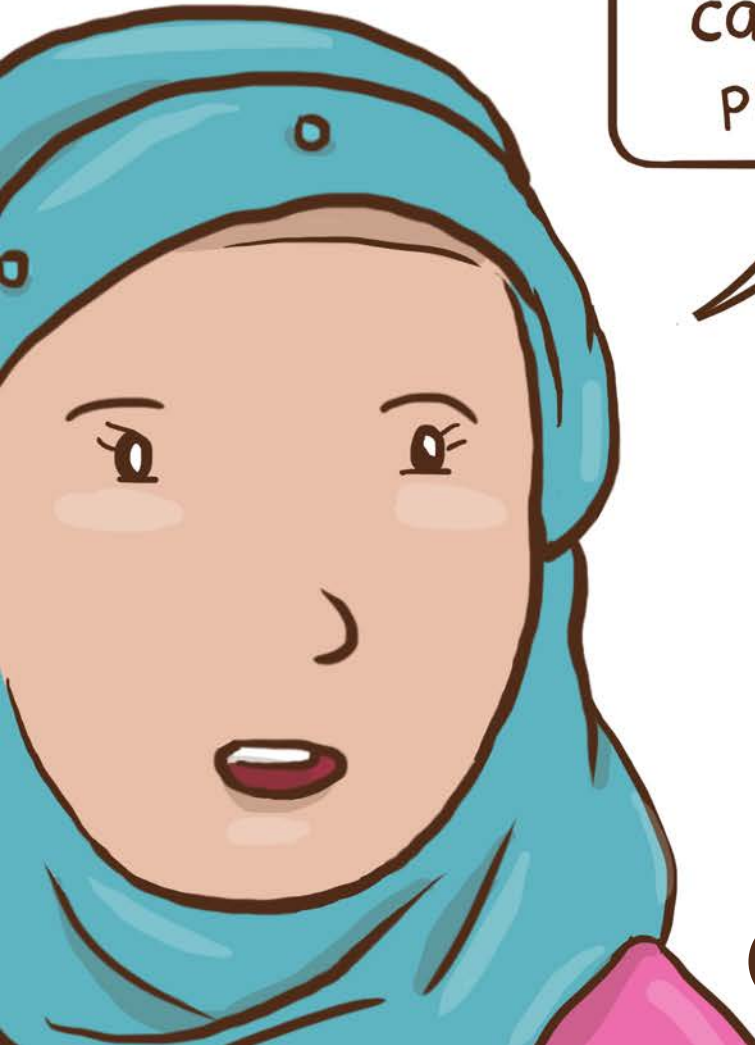
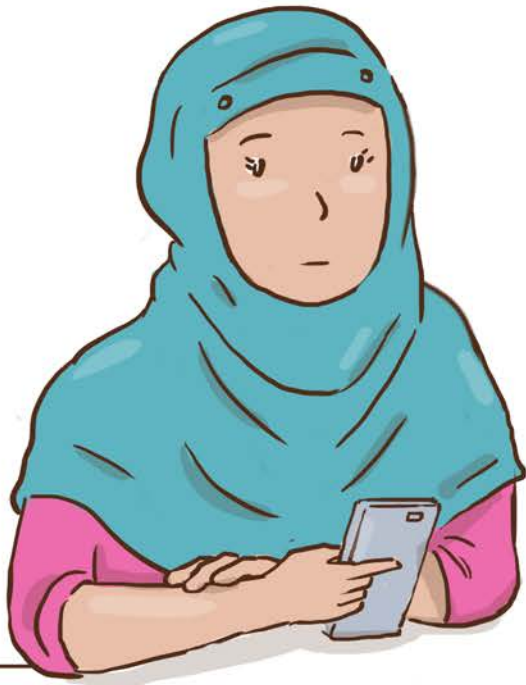


It would likely be difficult to get the suspects to appear before the court in Argentina (e.g. obtain extradition), and therefore it might not be possible to hold a trial.





Hmm ...

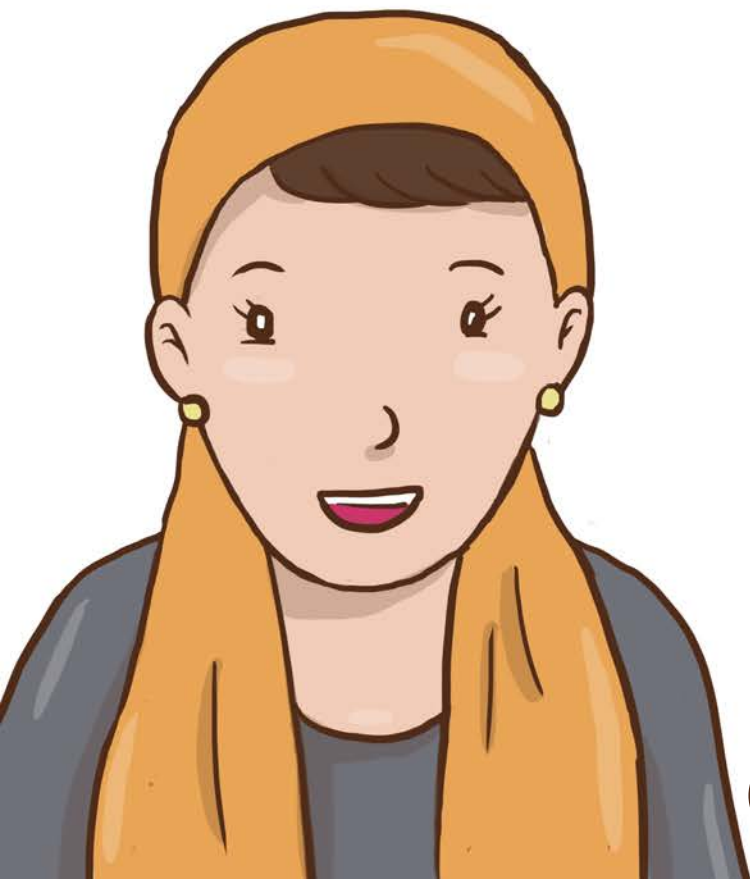


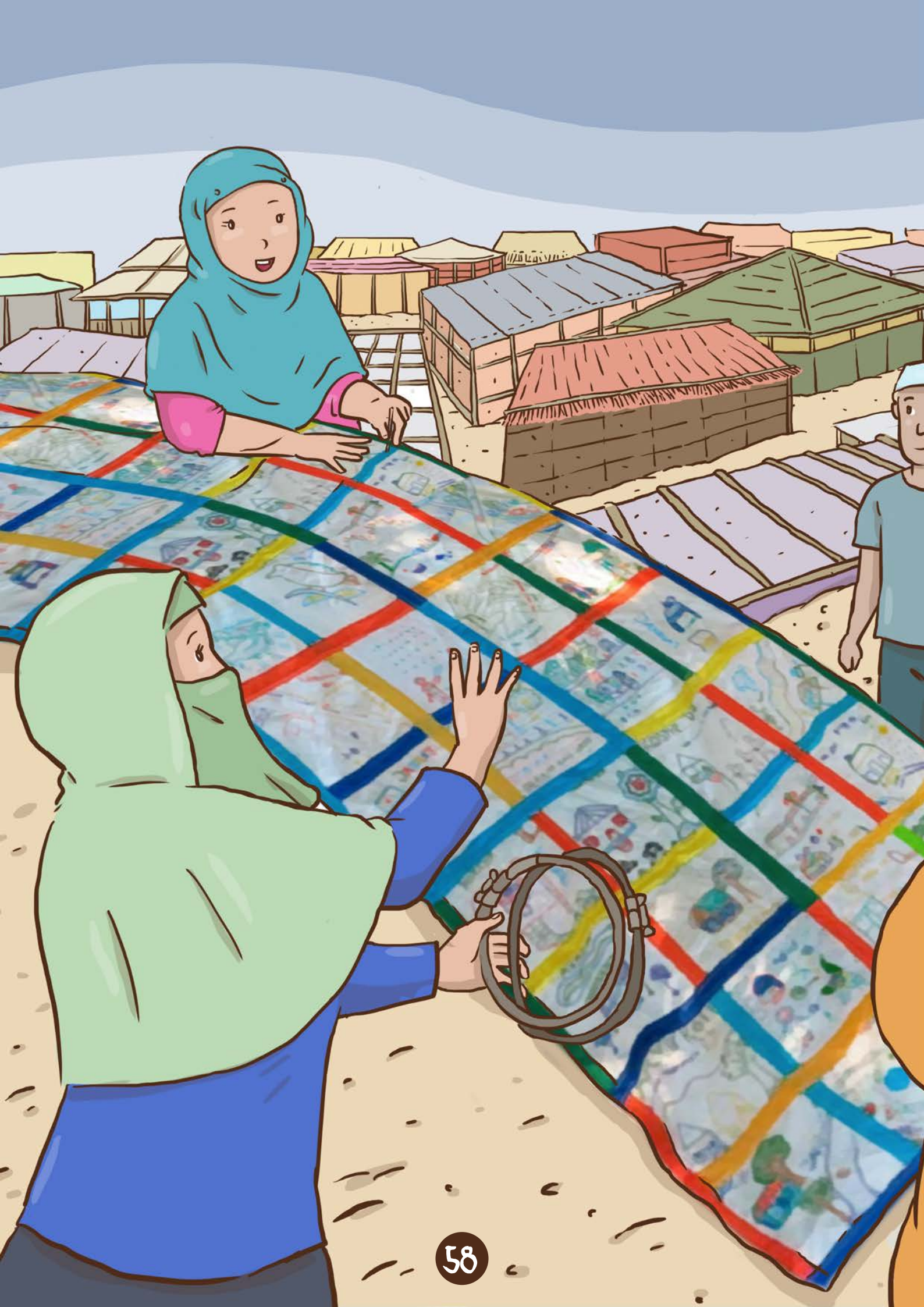
Let's find a way that we can help move these processes forward.

We can spread the information that we've learned so that more people in our communities understand.



We can help gather information, and make sure people who experienced or saw key events can speak out.







Together, we can
make a difference!
We can promote
justice!





 **AJAR**
ASIA JUSTICE AND RIGHTS


Liberation War Museum
Bangladesh