

Sexual and gender-based violence

As recognized by the Rome Statute of the ICC and UN Security Council Resolution 1820 (2008), widespread and systematic can constitute war crimes, crimes against humanity and acts of genocide. In this regard, the main situation of concern in the Asia Pacific region remains Myanmar, where strong evidence exists of SGBV as a systematic element of atrocities against the Rohingya community. The 2018 UN Fact-Finding Mission (FFM) found that Myanmar's armed forces (Tatmadaw) had committed atrocities against the Rohingya with 'genocidal intent' including widespread sexual violence, sometimes in public and followed by the murder or mutilation of victims. In fact, the Mission found that "rape and other forms of sexual violence one of the hallmarks of Tatmadaw operations".ⁱ The FFM found that in addition to genocide committed against Rohingyas, there is evidence of atrocities amounting to war crimes and crimes against humanity committed against non-Rohingya civilians: "...rape and other sexual violence have been a particularly egregious and recurrent feature of the targeting of the civilian population in Rakhine, Kachin and Shan States since 2011".ⁱⁱ Evidence of widespread SGBV in Myanmar is supported by the report of the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms Pramila Patten, which made note of "accounts from almost every woman and girl of patterns of rape, gang rape, forced nudity and abduction for the purpose of sexual slavery during military campaigns of slaughter, looting and the razing of homes and villages."ⁱⁱⁱ SGBV is not only used to hurt, humiliate and dehumanize women and girls—Amnesty international has documented SGBV against Rohingya men and boys have been detained were subjected to sexual violence and genital mutilation as a form of torture.^{iv}

The physical and psychological impact of sexual violence is long-lasting. Exacerbating the trauma in the Rohingya case, was the lack of immediate medical expertise and restrictions on women's freedom of movement, limiting access to health care, as well as stigma and rejection of women and girls who have been subjected to sexual violence. The situation for women who have become pregnant as a result of rape is especially precarious, and indeed there was a spike in pregnancies in the refugee camps in Bangladesh and reports of up to 60 births per day that may have resulted from rape.^v The Myanmar Government has officially denied the use of SGBV, for instance in its report to CEDAW in March 2019, in which it stated "Despite repeated accusations that Myanmar Security Forces committed a campaign of rape and violence against Muslim women and girls residing in Rakhine State, there is no evidence to support these wild claims."^{vi}

As well, SGBV continues in post-conflict situations such as refugee camps. The April 2018 report of the Secretary General on Conflict Related Sexual Violence stated that "Women and girls who manage to flee to Bangladesh may confront new risks, including forced marriage, sexual exploitation and trafficking." That report found that services had been provided to over 2700 survivors of SGBV but that a lack of health care remained a serious problem for survivors in the camps.^{vii} This was echoed by the Assistant Secretary General for Human Rights who said that in Bangladesh's Cox's Bazar, women and girls (who constitute 80% of the camp population), are experiencing a lack of protection and care,^{viii} and by Doctors Without Borders which reported camp residents "are constantly exposed to risk—with no locks on doors, no lights after dusk, and no protection when they have to go into the forest alone to collect firewood."^{ix}

Although Myanmar has ratified the Genocide Convention, it has not incorporated genocide, war crimes or crimes against humanity into its domestic laws, and the provisions for rape under the Penal Code are restrictive. In 2016, the UN Committee on the Elimination of All Forms of Discrimination against Women recommended that Myanmar "repeal all laws that perpetuate impunity for sexual violence committed during and after conflict and expedite the investigation and prosecution of crimes of sexual violence perpetrated by the military and armed groups".^x

There are other areas of prevalence or risk of SGBV in the Asia Pacific region that require monitoring, such as the Philippines and Indonesia.

The rise of ISIS-inspired local non-state groups in Southern Philippines represents a significant regional threat. The ideology of ISIS specifically fosters a culture of sexual violence and enslavement of women,^{xi} as evidenced in its genocide of Yazidis in Iraq in 2014.^{xii} In 2017, conflict erupted in Marawi between government forces and ISIS-linked groups, the conflict exacerbating existing SGBV in the region. The UNFPA reported a rise in SGBV including trafficking, and the problem of long-term stigma for victims of sexual violence.^{xiii} Sexual enslavement of women in Marawi was also reported and this could represent an early indicator of planned attacks on particular groups of women and girls by ISIS-affiliated militants.^{xiv} Although the fighters were defeated in Marawi, a church bombing in January 2019 has raised fears of a resurgence. The bombing came against the backdrop of a referendum to create a new autonomous region in the Muslim-majority south.^{xv} The UNFPA in conjunction with local agencies has established a Women and Children Protection Unit in Marawi City, however the ongoing risk of SGBV in areas where ISIS-inspired groups are active, is high.

The broader context of gendered hate speech in the Philippines should also be noted. President Duterte has made several public comments condoning sexual violence against women which contributes to a culture of impunity for perpetrators.^{xvi} Under his leadership, The Philippines has demonstrated a wider lack of respect for the rule of law and human rights, with state-sanctioned violence against segments of the population such as drug traffickers.

Finally, crimes against LGBTIQ individuals are of increasing concern. Amnesty has reported violence against LGBTIQ activists in Bangladesh,^{xvii} while a backlash against LGBTIQ rights in Indonesia since 2016, promoted by some government officials and implemented by local police, has been reported by various human rights organisations.^{xviii}

Indonesia has also seen a sharp increase in reports of SGBV against women, many of which occurred in domestic violence contexts. While Indonesian law prohibits domestic violence, its patriarchal culture affects women's ability to report these crimes or to seek protection. The National Commission on Violence Against Women found domestic violence to be the most prevalent type of violence against women in Indonesia,^{xix} while a nationwide survey supported by UNFPA reported over 40% of Indonesian women had experienced physical, sexual, emotional or economic violence.^{xx}

Recommendations

The government of Myanmar must:

1. Take immediate steps to fulfil its legal obligations by ending atrocity crimes including SGBV and preventing their recurrence.
2. Ensure the full and prompt investigation of allegations of atrocity crimes, including SGBV.
3. Implement the recommendations of the FFM including to “cease the perpetration of sexual and gender-based violence by Myanmar security forces against women, girls, men and boys” and issue instructions that it is prohibited, and to acknowledge the role of the Tatmadaw and other security forces in committing SGBV.
4. Review legislation and the Penal Code to ensure that SGBV is adequately covered under Myanmar law and that victims have legal recourse.

The Government of the Philippines should:

1. Immediately cease the use of gendered hate speech and the condoning of sexual violence against women.
2. Ensure the use of SGBV by non-state groups is monitored and prioritise the protection of women and girls in areas where ISIS-linked groups are active.

The Indonesian Government should:

1. Develop programmes to reduce violence against women such as gender equality awareness projects.
2. Provide support to victims of domestic violence including protection, legal and medical assistance, and job training.
3. Cease official discrimination and hate speech against LGBTIQ people.

The international community should:

1. Support efforts to raise awareness of SGBV and to hold perpetrators accountable. The UN Security Council should refer the Myanmar situation to the International Criminal Court or establish an investigatory mechanism and criminal tribunal.
2. Exert diplomatic influence on the Myanmar government to fulfil its obligations to prevent atrocity crimes, protect vulnerable populations and dismantle the culture of impunity for SGBV.
3. Support humanitarian aid for Rohingyas in refugee camps in Bangladesh, including health care and psychological support for survivors of sexual violence, and improve the safety conditions in the camps.
4. Increase the number of humanitarian visas available and ensure timely processing of refugee applications from survivors of SGBV in Myanmar.
5. Support women's human rights defenders and LGBTIQ rights groups to promote acceptance and equality, review existing laws with a view to incorporating SGBV into domestic legislation, and ensure perpetrators of violence are held accountable under the law.

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<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E>

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<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E>

iii <https://www.un.org/sexualviolenceinconflict/digital-library/reports/sg-reports/>

iv <https://www.amnesty.org/en/documents/asa16/8630/2018/en/>

v <https://www.un.org/sexualviolenceinconflict/press-release/one-year-into-the-rohingya-crisis-special-representative-patten-calls-for-accountability-for-sexual-violence-crimes/>

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https://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1190&Lang=en

vii <https://www.un.org/sexualviolenceinconflict/press-release/one-year-into-the-rohingya-crisis-special-representative-patten-calls-for-accountability-for-sexual-violence-crimes/>

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<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23012&LangID=E>

^{ix} <https://www.doctorswithoutborders.org/rohingya-refugees-still-searching-safety>

^x CEDAW Concluding observations on the combined fourth and fifth periodic reports of Myanmar, 25 July 2016 CEDAW/C/MMR/CO/4-5

^{xi} International Commission of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis (Human Rights Council, Thirty-second session, Agenda item 4, Human rights situations that require the Council’s attention, A/HRC/32/CRP.2, 15 June 2016)

^{xii} “The Revival of Slavery Before the Hour,” Dabiq 4: The Failed Crusade, October 2014, 14–15, <https://www.clarionproject.org/news/islamicstate-isis-isil-propaganda-magazine-dabiq#>.

^{xiii} <https://philippines.unfpa.org/en/news/women-come-together-address-gender-based-violence-marawi-philippines>

^{xiv} <https://www.straitstimes.com/asia/se-asia/isis-linked-terrorists-sexually-enslaving-women-forcing-civilians-to-fight-and-loot-in>

^{xv} <https://www.theguardian.com/world/2019/feb/08/the-fight-is-not-over-fears-of-isis-resurgence-in-philippines>

^{xvi} <https://www.abc.net.au/news/2019-01-01/rodrigo-duterte-says-he-sexually-assaulted-a-maid/10677124>

^{xvii} <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/>

^{xviii} <https://www.hrw.org/news/2018/10/29/indonesia-fresh-wave-anti-lgbt-rhetoric-arrests>; <http://asaa.asn.au/indonesian-tolerance-under-strain-as-anti-lgbt-furore-grows/>; <https://www.thejakartapost.com/news/2018/11/18/moral-panic-targets-indonesias-lgbt-community.html>

^{xix} <http://theconversation.com/why-stigma-against-victims-of-domestic-violence-persists-in-indonesia-103177>; <http://evaw-global-database.unwomen.org/en/countries/asia/indonesia>

^{xx} <https://www.unfpa.org/news/new-survey-shows-violence-against-women-widespread-indonesia>