

Sexual and gender-based violence

Myanmar and Bangladesh

In November 2019, Gambia (backed by 57 member states of the Organisation of Islamic Cooperation) filed a case against Myanmar at the International Court of Justice (ICJ). The case relates to the acts of genocide allegedly committed during the 2017 “clearance operations” against the Rohingya community. Thousands were killed, hundreds of thousands displaced, and the use of sexual and gender based violence reported to be endemic.

On 23 January 2020, the ICJ ordered Myanmar to “take all measures within its power” to protect the Rohingya population from genocide.ⁱ It also noted evidence provided in the Fact-Finding Mission including of “mass killings, widespread rape and other forms of sexual violence, as well as beatings, the destruction of villages and homes, denial of access to food, shelter and other essentials of life.” The Myanmar government continues to deny the crimes that have been documented in the FFM and by human rights agencies, including the systematic use of SGBV against the Rohingya.

While sexual violence is recognised as a constituent act of genocide, prosecution of sexual crimes as part of genocide has been limited to date. It has been suggested that what sets the Rohingya ICJ case apart is the extent to which the ICJ may rely on evidence of sexual violence committed by Myanmar’s military against Rohingya civilians in evaluating the genocide charge.ⁱⁱ

Meanwhile however, violence against ethnic minorities continues in Myanmar, including the use of gendered tactics. Amnesty’s October 2019 report on Shan State published new evidence of the torture of men and boys as well as forced labour, villagers displaced multiple times (with women often disproportionately affected) and the ubiquitous use of sexual assault by military officers.ⁱⁱⁱ And the danger continues for the Rohingyas, with women and children using “once-dormant smuggling routes to escape refugee and displacement camps in Bangladesh and Myanmar.”^{iv} Many are attempting to reach countries where an arranged marriage has been set up for them, such as Malaysia. Partly the impetus to attempt escape, which carries its own substantial risks, is the lack of safety in refugee camps and ongoing risk of sexual assault.

In Bangladesh, 16 people were sentenced to death for the murder of a 19 year old student. She had made a complaint of sexual assault by her school principal, and after refusing to drop the complaint, was burned to death. While the holding of perpetrators accountable is a positive development, rates of sexual abuse of women and children, as well as child marriage, remain high in Bangladesh.^v

In its 2019 overview, Amnesty International reported a sharp increase in gendered violence in Bangladesh, with “at least 17,900 reported cases of violence against women, including 5,400 reported rape cases. At least 988 women and girls (including 103 minors aged between 7-12 years) were murdered after rapes, attempted rapes, sexual and physical tortures, acid violence, and dowry-related violence.”^{vi}

Indonesia and Malaysia

Indonesia has recently increased the minimum age for marriage to 19 (with parental consent). Child marriage has long been associated with a range of physical and mental health effects, and associated higher risks of domestic violence, for example.^{vii} Rates of sexual assault and harassment continue to be high in Indonesia,^{viii} however Parliament has not passed a longstanding draft bill on sexual violence, and the definition of rape in the criminal code remains narrow and outdated.

The proposed new Criminal Code contains a number of provisions that will be detrimental to women, and LGBT people.^{ix} This includes censorship of contraception options, punishment of extramarital sex by up to one year in jail, and a range of provisions that could be used to target LGBT people.

Similarly, LGBT people are institutionally and legally discriminated against in Malaysia, according to both Amnesty International and Human Rights Watch.^x HRW states that homosexual acts are punishable by up to 20 years in prison and mandatory whipping, while transgender people are regularly arrested in some states. The country's leadership has made a number of statements that the country will not accept rights for LGBT people.

Papua New Guinea

In the October 2019 Regional Outlook, the Centre noted the gendered nature of outbreaks of violence in PNG during 2019. This was reflective of high rates in general of SGBV in PNG, and a broader culture of impunity. According to Amnesty International, few perpetrators were brought to justice during 2019, with some paying compensation to victims instead of facing trial.

The former head of mission of the ICRC^{xi} in PNG has raised concerns about the severity of tribal violence with the spread of modern weapons, and noted that the violence sometimes targets women and children. The need for health care and trauma assistance for survivors of such violence is high.

Recommendations

The Government of Myanmar should:

1. Comply in full with the ruling of the ICJ to take all measures to protect its population from genocide.
2. Investigate and prosecute sexual and gender-based violence, including as crimes under international law and issue explicit official orders to Tatmadaw officers prohibiting sexual violence and mandate training for officers, especially for those operating in areas of armed conflict, such as Shan and Kachin states.
3. Review legislation and the Penal Code to ensure that SGBV is adequately covered under Myanmar law and that victims have legal recourse.
4. Develop formal agreements with neighbouring countries to prevent trafficking of women and children from Myanmar.

The Government of Indonesia should:

1. Ensure the proposed Criminal Code does not discriminate against or withhold rights from particular groups such women and LGBT people.

The Government of Papua New Guinea should:

1. Ensure laws against sexual and gender based crimes are upheld and perpetrators held accountable.
2. Provide adequate and sensitive medical and psychological treatment for survivors of SGBV.

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- ⁱ Top UN court orders Myanmar to protect Rohingya from genocide,
<https://news.un.org/en/story/2020/01/1055841>
- ⁱⁱ Why Rohingya genocide case is making history, Ashley Major, 28 January 2020
<https://www.thelawyersdaily.ca/articles/17630/why-rohingya-genocide-case-is-making-history-ashley-major>
- ⁱⁱⁱ “Caught in the Middle” Abuses against civilians amid conflict in Myanmar’s Northern Shan State, Amnesty International,
<https://www.amnesty.org/download/Documents/ASA1611422019ENGLISH.PDF>
- ^{iv} Caleb Quinley, Why Rohingya women and girls are risking dangerous smuggling routes, 16 January 2020,
<https://www.thenewhumanitarian.org/news/2020/1/16/Rohingya-trafficking-refugees-forced-marriage>
- ^v Bangladesh: Child sexual abuse reportedly on rise, Md. Kamruzzaman, 8 January 2020
<https://www.aa.com.tr/en/asia-pacific/bangladesh-child-sexual-abuse-reportedly-on-rise/1696828>
- ^{vi} Human Rights in Asia Pacific: Review of 2019,
<https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF>
- ^{vii} Indonesia raises minimum age for marriages in a bid to end child brides, Tasha Wibawa
<https://www.abc.net.au/news/2019-09-29/indonesia-raises-minimum-age-for-girls-to-marry/11523894>
- ^{viii} <https://indonesiaexpat.biz/featured/anti-sexual-violence-law-will-be-passed/>
- ^{ix} HRW Indonesia: Draft Criminal Code Disastrous for Rights,
<https://www.hrw.org/news/2019/09/18/indonesia-draft-criminal-code-disastrous-rights>
- ^x <https://www.amnesty.org/download/Documents/ASA0113542020ENGLISH.PDF> and
<https://www.hrw.org/world-report/2020>
- ^{xi} A violent, centuries-long war on Australia's doorstep is getting deadlier, Ahmad Hallak,
<https://www.smh.com.au/world/oceania/a-violent-centuries-long-war-on-australia-s-doorstep-is-getting-deadlier-20200106-p53pbb.html>