



# ASIA PACIFIC OUTLOOK

**APRIL 2016 ISSUE 2**

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Australian Government  
Department of Foreign Affairs and Trade



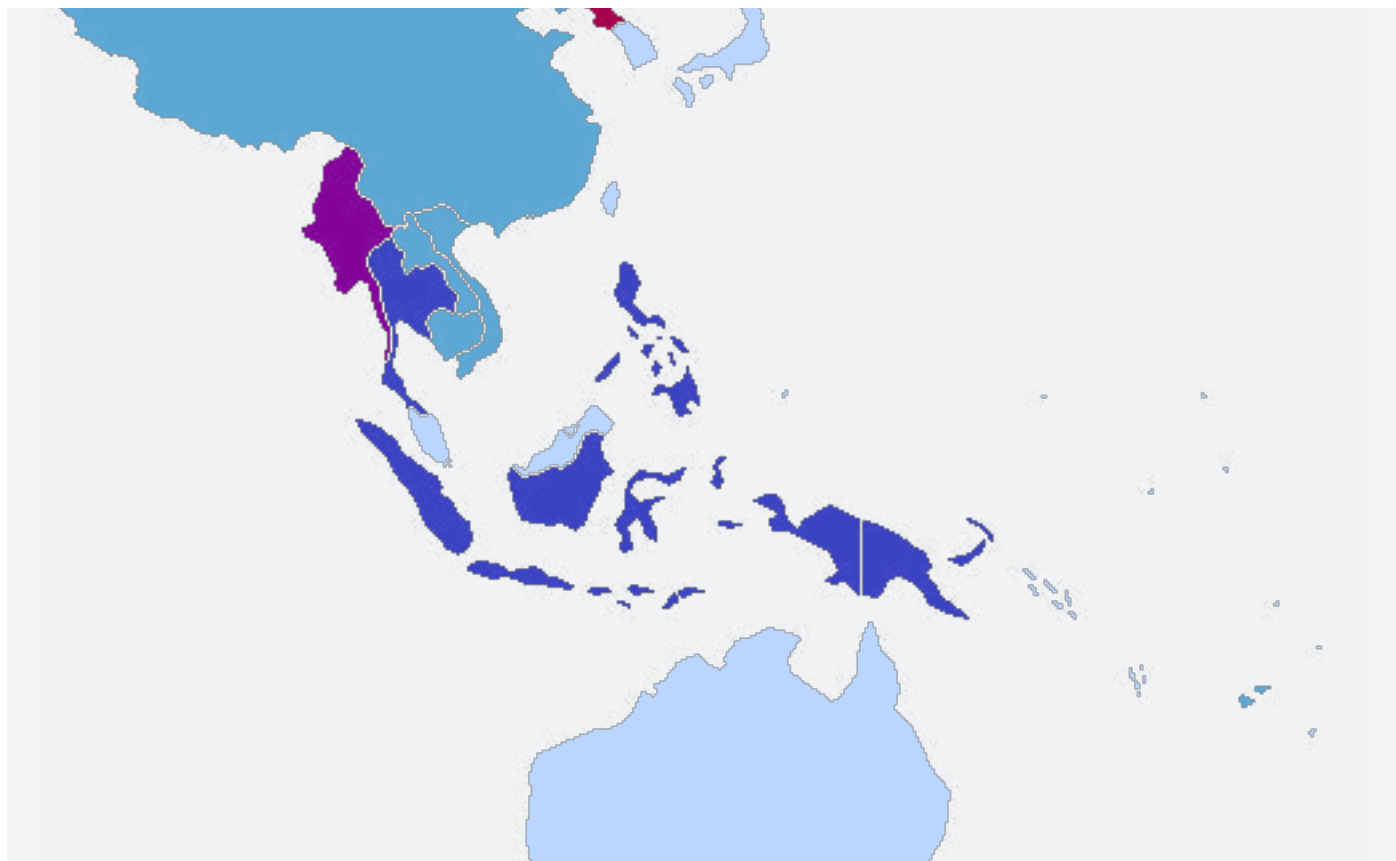
AP R2P

Asia Pacific Centre for the Responsibility to Protect



THE UNIVERSITY  
OF QUEENSLAND  
AUSTRALIA

# Regional Atrocity Risk Assessment



Very High	Democratic People's Republic of Korea (DPRK)
High	Myanmar
Moderate (high to low)	The Philippines Indonesia Papua New Guinea Timor-Leste Thailand
Low	Cambodia, China, Fiji, Kiribati, Laos, Vietnam
Very low	Australia, Brunei, Japan, Malaysia, Marshall Islands, Micronesia, Mongolia, Nauru, New Zealand, Palau, Republic of Korea, Samoa, Singapore, Solomon Islands, Taiwan, Tonga, Tuvalu, Vanuatu

# PROTECTION PRIORITIES

## HIGH RISK COUNTRIES



### Democratic People's Republic Korea

Crimes against humanity appear to continue unabated in the DPRK, specifically related to: summary executions; abductions and enforced disappearances; the use of political prison camps and torture; systematic discrimination and persecution, including pervasive gender-based discrimination and violence; and defectors and trafficking (See APO issue 1 for details).

An overarching concern since early January has been that the DPRK's 6 January nuclear test and 7 February long-range missile test may overshadow the imperative to pressure DPRK authorities to improve human rights and to ensure that Kim Jong Un and senior officials are held accountable for crimes against humanity. Amidst mounting international concern over DPRK's military program, Marzuki Darusman, the UN Special Rapporteur on the situation of human rights in the DPRK, has argued that the missile tests only reaffirm the need to ratchet up efforts to protect human rights in the DPRK, on the basis that 'the denial of human rights to its citizens internally has made resources available to embark on the path of aggressive military buildup; these are basically two sides

of the same coin'. Addressing serious and systematic human rights violations is integral to any effort to ensure stability on the Korean peninsula.



Accountability has been a key topic of recent debate in the UN. On 17 December, the UN General Assembly passed another resolution (119 for, 19 against and 48 abstentions) that called on the UN Security Council to refer the situation in DPRK to the International Criminal Court. . Although the Security Council formally discussed measures to address the human rights situation in DPRK on 10 December, China and Russia oppose an ICC referral. In January, Darusman, whose mandate expires in July, issued his final report to the Human Rights Council (HRC).

The report called on the HRC to establish a group of experts to develop a transitional justice strategy to address crimes committed in the DPRK. The panel would be mandated to: review international and domestic options for holding perpetrators to account; identify appropriate legal and institutional frameworks for pursuing accountability;

and recommend the most effective and appropriate prosecutorial strategy for the DPRK. The pursuit of accountability should take into account the risk of rapid deterioration of the humanitarian situation, and should entail forward risk planning and resource allocation to support humanitarian organizations in the DPRK to respond to emergencies.

In addition to the issue of accountability, respect for the principle of non-refoulement has been key human rights concern in recent months. In November 2015 and again in early February of this year, Russia signed extradition treaties with the DPRK. These treaties may lead to Russia's forced repatriation of some of the estimated 10,000 DPRK regular labourers in Russia, who could be at risk of serious human rights violations upon repatriation. There is likewise continued concern over China's policy of forcibly repatriating DPRK nationals who have crossed the border into China.

## **Recommendations**

### **For the government of DPRK**

The DPRK should immediately cease human rights violations, abide by UN sanctions, and reallocate the domestic budget away from disproportionate military expenditures toward improving its human rights situation. As part of this effort, DPRK should constructively engage with the OHCHR, the Special Rapporteur and the OHCHR field office in Seoul with the aim of developing concrete plans for technical assistance from the OHCHR to faithfully implement the universal periodic review recommendations the DPRK accepted in 2014, including recommendations relating to: economic and social rights, the rights of women and children, human rights education, a rights-based approach to development and family reunification. DPRK authorities should also follow through on the September 2015 invitation from the DPRK's Minister of Foreign Affairs to the High Commissioner for Human Rights to visit the country, and respond favourably to the outstanding requests for country visits from five special procedure mandate holders, including the 2015 requests of the Working Group on Arbitrary Detention and the Working Group on Enforced and Involuntary Disappearances. DPRK authorities should likewise resume bilateral talks with the Republic of Korea and Japan on human rights concerns, and abide by agreements already concluded.

### **Regional Actors**

All countries should respect the principle of non-refoulement and refrain from repatriating individuals to the DPRK where they are likely to face torture or other serious human rights violations. Russia should not implement recent extradition treaties with the DPRK, while China should implement the recommendation of the Committee against Torture's fifth periodic report on China to allow the Office of the UN High Commissioner for Refugees access to DPRK nationals who have crossed the border to determine whether they qualify for refugee status. Japan, the Republic of Korea and the US, as well as all other key diplomatic actors, should ensure that human rights accountability is an integral component of their DPRK diplomatic strategy.

### **International Community**

The UN system should address grave human rights violations in the DPRK in a coordinated and unified manner in accordance with Secretary-General's Human Rights Up Front Initiative. The Human Rights Council should: extend the mandate of the Special Rapporteur; task the Special Rapporteur or OHCHR to devise a comprehensive policy on humanitarian assistance in the DPRK; and establish a group of independent experts to devise practical mechanisms of accountability to secure truth and justice for victims of crimes against humanity in the DPRK. The General Assembly should continue to maintain visibility of the human rights situation and call for accountability in the DPRK, and the Security Council should hold regular briefings on the issue with the participation of UN High Commissioner for Human Rights, Special Rapporteur and other relevant experts. Civil Society actors should continue to raise awareness and visibility of the human rights situation, and advocate for accountability, including through supporting efforts to map suspected perpetrators of serious crimes and the related chain of command structure in the DPRK.

# PROTECTION PRIORITIES

## HIGH RISK COUNTRIES

### Myanmar



2015 Election		
NLD: 887	USDP: 117	Other: 146
2012 Election		
NLD: 41	USDP: 336	Other: 287
2010 Election		
	USDP: 388	Other: 276

Htin Kyaw, a close aide of National League for Democracy (NLD) party chief Aung San Suu Kyi, was elected on 15 March by parliament members as the first civilian president of the country. This is another important milestone in Myanmar's democratic transition following the landslide victory of the NLD in November last year and months of negotiations thereafter between Suu Kyi and the military for the orderly transfer of power from the outgoing military-backed Union Solidarity and Development Party (USDP) of former President Thein Sein.

The military strongly resisted efforts by the NLD to make Suu Kyi a nominee for president as she is banned from that position under the 2008 Constitution crafted by the Tatmadaw. She was, however, appointed to several cabinet positions making her a "super minister"—foreign minister, education, minister to the President's office, and electric and energy. As foreign minister, she will have a seat in the National Defence and Security Council, a powerful government body that can declare a state of emergency and includes members from the military.

The NLD's second nominee, Henry Van Thio was confirmed Vice President by parliament. As a Chin Christian minority, his appointment to the position courted some opposition from the Buddhist nationalist group Buddha Gonyi, which claims to be a protector of Buddhism in Myanmar. The group will reportedly stage a protest in Yangon against the appointment of Thio even as it voiced its concern about future violence in the country if he will be allowed to lead the country. The new government led by NLD will formally take over on 1 April.

Meanwhile, military chief Senior General Min Aung Hlaing on the occasion of the 71st Army Day on 27 March gave assurances that the Tatmadaw will work with the incoming NLD government, the parliament, and the public to build "eternal peace" and advance Myanmar's development. At the same time, however, he underscored the important role of the military in protecting the country and in maintaining stability even as it also supports national reconciliation, peace, and political reforms.

Based on the NLD's Election Manifesto in 2015, its priority will be the establishment of "a democratic federal union...with the goal of national reconciliation." Specifically, the NLD will give priority to: 1) ethnic affairs and internal peace, including holding "political dialogue based on the Panglong spirit in order to address the roots of internal armed conflict and enable people to live in security and tranquillity"; 2) having a constitution "that ensures that all the people of [the] country can live together in tranquility and security", specifically by amending the current constitution to ensure, among others, that "it is in accordance with basic human rights and democratic standards" and that it will "defend and protect the equal rights of citizens."; and 3) develop a system of government that will "fairly and justly defend the people" by, among others, establishing "executive and judicial systems that support the rule of law" and revoking "legislation that harms freedom and security that people should have by right."



With regard to the military, the NLD recognized the importance of the Tatmadaw as a state institution but at the same time it underscored its role in protecting and defending democratic principles even as it is "honoured by all" and "trusted, respected and relied upon by the people." Accordingly, the NLD will work "to make the police independent...and under the rule of law" and "to develop the police force in line with international standards."

While it is clear that the NLD has set its priorities right, especially in pursuing national reconciliation with ethnic minorities and the military, there are a number of challenges to implementing its specific goals and objectives in the next five years. For one, the military remains a major force to contend with as it holds 25 percent of the seats in parliament and can veto any constitutional amendments that it considers detrimental to its institutional interest. This includes ceasefire and peace agreements that the NLD may negotiate with ethnic armed organizations that adheres to the Panglong principle (which grants full autonomy to ethnic minority territories) rather than the 2008 Constitution.



While other ethnic minority groups that did not sign the national ceasefire agreement with President Thein Sein may have more confidence to pursue peace talks with the new government under the NLD, ongoing military operations against since last year will likely undermine the new government's peace efforts in the medium term. As well, the military is likely to resist any amendment to the 1982 Citizenship Law that does not recognize the Rohingyas as Burmese citizens or associate citizens, as well as the four discriminatory laws sponsored by the Buddhist nationalist group MaBaTha that were passed by parliament in 2015 against Rohingya and Muslim minorities.

Notwithstanding the above challenges, it is important to recognize that international assistance for capacity building of Myanmar's government under the NLD must be pursued and enhanced further. International support must be sustained especially in the areas of conflict prevention and peacebuilding, inter-faith dialogue, humanitarian assistance (especially in Rakhine state and other conflict-affected areas of the country), and continuing engagement with the military and police to promote security sector reform.

Australia and ASEAN, along with other dialogue partners like South Korea, Japan, the US and the European Union could play a critical role in shoring up international goodwill towards the new government as it continues to balance the competing interests within Myanmar to achieve long-term peace and stability.



*Turn over from former President Thein Sein (right) to incoming President Htin Kyaw*

# PROTECTION PRIORITIES

## MEDIUM RISK COUNTRIES



### The Philippines

In the run up to the 9 May general elections, the Philippine government must ensure a free, fair, and peaceful elections by enforcing laws against private armies and the proliferation of small arms and light weapons. With the start of the campaign period for local elections in the last week of March, election-related violence is expected to increase in the weeks ahead. Despite efforts by the Commission on Election (COMELEC) to encourage the signing of peace covenant among political rivals, the local media reported some cases of gun-ban violations and some candidates and their supporters being killed or injured by their rivals through ambushes. In areas controlled by communist insurgents, including some of their strongholds in Mindanao, candidates also face political harassment from the New People's Army (NPA) who impose "permit-to-campaign fees," which is a form of revolutionary tax. The Armed Forces of the Philippines

(AFP) has urged local and national candidates not to pay such fees as these only serve to undermine the counter-insurgency efforts to the military.

With regard to the peace process in Mindanao, the Philippine government should keep the communication lines open to all stakeholders despite the non-passage of the BBL. Specifically, the peace panels on both sides should work together to manage the frustrations of the Muslim communities in affected areas. Dialogue with legislators and local government officials, together with presidential candidates, on the prospects for passing the BBL in the next administration should be a priority at this time to sustain the momentum and the commitment to implementing the peace agreement with the MILF. The government and the MILF leadership should also ensure that their respective forces abide by international norms in protecting civilians in conflict areas even as the AFP pursues breakaway factions and extremist elements in Mindanao. The protection of indigenous peoples in Mindanao should also be given priority as they are caught in the crossfire between the communist insurgents and the military-supported militias in conflict areas.

With regard to protection of women and children against sexual violence, the Philippine government should do more to address the continuing plight of victims of Typhoon Haiyan/Yolanda. Specifically, the reported increase in gender-based violence between 2013 to 2015 against women and children reflects the continuing lack of funds, resources, adequate services, and facilities for protection of these vulnerable victims of natural disaster. An alarming increase in reported cases of sexual violence and abuse of children were said to have been committed in bunkhouses, transition shelters, and even in permanent housing. Among the main factors that contribute to the problem are drug abuse, poverty, lack of employment opportunities, and psych-social trauma in the aftermath of the disaster.

### The Philippines: Recommendations

- Encourage conflict-affected communities in Mindanao to adhere to the peace agreement
- Dialogue with presidential election candidates on importance of sustaining the commitment to peace in Mindanao and explore improvements to draft BBL and ensure its compliance with the 1987 constitution.
- Ensure AFP adhere to international norms in protecting civilians in armed conflicts including protection of indigenous peoples and their ancestral domain.
- Conduct national dialogue on atrocities prevention and implement the Responsibility to Protect principle and related national action plans on human rights protection and women, peace and security.
- Enforce laws against private armed groups and ensure the conduct of a free and fair elections on 9 May.
- Respond effectively to the plight of victims of Yolanda/Haiyan, specifically in protecting women and children against sexual violence and human trafficking.



## Indonesia

Indonesia continues to solidify its transition into a stable democracy and to adopt measures that contribute to the implementation of R2P. In particular, it has resolved violent disputes over Timor-Leste and Aceh, and the Widodo government is committed to easing tensions in West Papua. The Indonesian government has frequently voiced its support for R2P and commitment to implementing the principle. Indonesia has strong National Human Rights Institutions and has developed a National Plan of Action for the Promotion and Protection of Human Rights.

A number of challenges remain, however, and new ones emerge. The principal challenges are:

### **1. Islamist terrorism (country-wide)**

In January 2016, terrorists associated with the Islamic State (IS) launched a series of attacks across Jakarta, resulting in eight deaths (including four terrorists). The death toll could have been much higher, but it appears that at least one of the terrorist bombs detonated early. The security forces responded with a wave of arrests and the government has proposed further tightening of anti-terrorism legislation to make it easier for the police to arrest and detain terror suspects. These proposals have prompted concerns from human rights activists and the International Commission of Jurists, who fear a progressive reversal of hard-won human rights. The heightened threat of terrorism remains, and in February, Australia warned of a threat of imminent attacks across the country, including in Bali. The problem is exacerbated by the fact that an estimated 500 Indonesians have travelled to Syria and Iraq to fight with IS and may look to return to Indonesia in order to commit atrocity crimes.

### **2. Incitement against the Lesbian, Gay, Bisexual and Transgender community (LGBT).**

Historically, the LGBT community in Jakarta has enjoyed relatively little harassment – though the same is not true in other parts of the country. In the first quarter of 2016, there has been a dramatic and inexplicable increase in hate speech against LGBT people, including direct incitement to commit atrocity crimes from a former government minister. Former Communications Minister Titaful Sembiring explicitly exhorted others to “kill” gay people. The country’s Defence Minister, Ryamizard Ryacudu, described the country’s gay rights movement as a form of ‘warfare’ against Indonesian sovereignty and Vice-President Jusuf Kalla has called for the de-funding of UN programs targeting discrimination and violence against LGBT people. This comes in a climate of growing intolerance, small scale anti-LGBT demonstrations and increasing reports of harassment and violence towards the LGBT community.

### **3. Sectarian tensions in Aceh.**

Granted significant autonomy by its peace agreement with Jakarta, the regional government in Aceh has allowed the passage of Sha’ria law and has tightened religious restrictions. There was also an increase in religious violence against minorities in the second half of 2015. After a series of churches were burned to the ground in 2015, Christian communities established tent churches. The government ordered that these should be dismantled in January, causing further tensions and the risk of sectarian violence.

### **4. Secessionist conflict in West Papua.**

Secessionist conflict in West Papua also contains atrocity risks, with both government forces and secessionists accused of targeting civilians over the past few years. After a brief upsurge of violence in September 2015, the situation in West Papua has been relatively stable in the first part of 2016. President Widodo continues to support initiatives aimed at reducing tensions. These include an end to the transmigration of Javans to Papua, the lifting of the travel ban imposed on foreign journalists and the release of several Papuan political leaders. Some of these measures are controversial, however, and as a result have not been implemented fully.



## Indonesia: Recommendations

The international community should provide assistance when requested to help the government and civil society to tackle these remaining challenges. Key steps include:

- The appointment of a National R2P Focal Point to coordinate national and international efforts.
- The development of a comprehensive strategy for tackling violent extremism that strengthens the security forces whilst protecting core human rights.
- The adoption of stronger measures to prevent Indonesians travelling overseas to commit atrocity crimes for IS and others.
- The immediate end of all forms of hate speech and incitement to commit violence, especially that targeting the LGBT community.
- The promotion of inter-faith dialogue and local capacities for conflict resolution in regions affected by communal strife.
- Continued efforts to reform the governance of West Papua and stimulate economic.



## Papua New Guinea

Papua New Guinea continues to confront a number of challenges which could give rise to atrocity crimes. Shortly after independence it experienced armed conflict as a result of the civil war on the island of Bougainville and, whilst the peace there holds, the situation remains relatively fragile.

Most worryingly, PNG experiences extremely high levels of sexual violence. A report in March 2016 by Medecins sans Frontieres found that two-thirds of women in PNG had been beaten by their partner (compared to a global average of one third) whilst a UNDP report notes that the first sexual experience for one in ten girls/women in PNG is rape. It also found that 23% of male perpetrators were children when they first committed a sexual assault and that 80% of male respondents reported that they believed that they were entitled to sex from women. As a result, sexual violence is endemic and the country is judged by many to have the highest rate of sexual and 'domestic' violence of any country in the world outside a context of armed conflict. Some field workers report that the level of violence in PNG is similar to that experienced in armed conflict affected regions such as eastern Democratic Republic of Congo. This endemic violence, which constitutes a grave risk of crimes against humanity, also means that there is a high risk that any armed conflict in the country would be accompanied by widespread and systematic sexual and gender based violence.

High rates of violence are partly a result of the government's relaxed attitude. Intra-family violence was criminalized only in 2013, and reports suggest that significant sections of the community still do not understand that it is illegal. Enforcement of the law has not been especially rigorous and impunity remains the norm. Endemic sexual violence has many sources: grinding poverty, low levels of development and education, deeply entrenched discrimination against women and girls, limited legislative protections and limited enforcement of the law when it comes to the rights of women and girls, chronically high levels of unemployment, alcoholism and drug abuse.

## Papua New Guinea: Recommendations

The government of PNG and its partners should:

- Publicize, educate and enforce the human rights of girls and women.
- Ensure improved access to justice for the victims of sexual violence.
- Tackle impunity by strengthening the training and accountability of security forces, including police.
- Increase support for victims.
- Develop and implement a strategy for reinforcing anti-violence norms amongst men.
- Empower women through increasing educational and economic opportunities.



## Thailand

Thus far, in 2016, the situation in Thailand, including in Pattani, has remained relatively calm. Thailand continues to be plagued by political conflict on two fronts, either of which could escalate into atrocity crimes if not managed effectively. The first is the ongoing conflict between supporters of former Prime Minister Thaksin Shinawatra ('red-shirts') and his opponents ('yellow-shirts'), who back the current military government. The country remains ruled by a military government and proposed constitutional reforms have been rejected by the opposition and former government. Moreover, it is reported that the army has established 'black sites' for the detention of civilian activists.

If true, this could constitute a break of the constitutional limits on the role of the military and indicate a worrying trend.

The second is the Islamic insurgency in the country's south. The first few months of 2016 has seen a reduction in violence by Pattani rebels, which was loudly trumpeted by the government in Bangkok. However, a car bomb explosion outside a Special Forces base in February left 10 people injured and signalled that the downturn in violence may only have been a temporary lull. Whilst violence in the region is around 50% lower than it was the previous year, the most recent bombing suggests the emergence of new, more radical, terrorist organizations, such as 'Black Swan'.

### Thailand: Recommendations

- It is crucial that the transition to civilian and democratic government continues. This should be done in full consultation with all the relevant parties.
- All parties abide by their legal obligations to not use force against civilians.
- The government of Thailand should fulfill its responsibility to protect by protecting civilians from terrorism and insurgent attacks and should explore options for negotiations with the insurgents.
- The insurgents must refrain from targeting civilians and should be prepared to enter negotiations in good faith.



## Timor Leste

The Asia Pacific Centre will shortly release a more detailed risk assessment of the situation in Timor-Leste.

Timor-Leste recovered well from the 2006 crisis that saw the state come close to collapse. In that case, communal and ethnic tensions spiralled into violence as police, army and disaffected resistance veterans fought one another, forcing some 100,000 Dili residents to flee. Oil and gas revenues helped the Aliança da Maioria Parlamentar (AMP) government headed by Xanana Gusmão to spend its way out of conflict by financially rewarding the surrendering rebels, whose desertions from the army had set the 2006 crisis in motion, providing grants to encourage the return of displaced civilians, granting generous state pensions to the veterans, and granting lucrative construction contracts to other potential spoiler groups.

These measures helped the government restore peace and stability. National elections in 2012 were peaceful, judged "free and fair" and returned the government to power with a more sweeping majority. However, the government has enacted new restrictions on journalism, which make it more difficult for the independent media to report on government activity. In an effort to diminish its reliance on international experts, the government also expelled all international staff from the judicial system, significantly weakening the system's capacity and creating an immediate backlog of cases. The government's pragmatic approach to conflict resolution has certainly succeeded in stabilizing the country, and the situation there has significantly improved over the past decade resulting in a reduced risk of atrocity crimes.

However, the government's approach also means that whilst groups have been 'appeased' through financial rewards, many of the underlying tensions and problems remain unaddressed. The falling price for oil might reduce the government's income stream and inhibit its capacity to continue using financial leverage for peace. Thus far, the government has drawn on reserves in order to maintain its spending and analysts suggest that it could continue to do this for some time. But unless prices increase, the government's position will become unsustainable and tensions may increase once again.

### **Timor Leste: Recommendations**

- In order to address the primary concern of Timor-Leste's unsustainable reliance on oil and gas revenues, a renewed effort must be made to diversify the nation's economy. This can only be achieved through unified efforts by the Timorese government and private donors to support and expand the country's non-oil sectors, such as agriculture, tourism, fisheries and small industry. Given that the nation's most significant source (the Bayu Undan field) is projected to be exhausted in 2024 and given that the depletion of existing oil and gas revenues has the potential to trigger renewed outbreaks of violence and atrocities (indicator 8.9), this is a particularly pressing matter.
- A similar effort ought to be made to address poverty, unemployment and human security. Whilst the diversification of the economy and further raising of revenue should assist, the government can take further steps by improving infrastructure and government services, strengthening human capital, strengthening education and health care standards, and enhancing climate readiness.
- The government of Timor-Leste should focus on implementing the recommendations of the Commission for Reception, Truth and Reconciliation (CATR) and the Commission of Truth and Friendship (CTF), as well as establishing the proposed National Reparations Program and Public Memory Institute in accordance with international standards.
- The role, responsibilities and duties of each of the security forces ought to be clearly defined so as to avoid overlap and tension in the future. The training of each should be tailored to suit such roles.
- The government should reconsider its decision to dismiss all international judicial personnel and advisors.
- The government should repeal recent legislation restricting the national media.

# IMPLEMENTATION MATTERS

Significant developments in the implementation of R2P in the Asia Pacific included:

On 2-4 February, The Philippines hosted the second meeting of Global Action Against Mass Atrocity Crimes, attended by more than 200 officials, analysts and activists from over 100 different countries. The meeting focused on building national architectures for atrocity prevention. For more information see [www.gaamac.org](http://www.gaamac.org)

Several Asia Pacific States participated in a UN General Assembly dialogue hosted by the President of the General Assembly on 26 February. Among those speaking were Australia, China, Republic of Korea, Japan, Indonesia, Malaysia, Myanmar, The Philippines and New Zealand.

On 16 March, the Asia Pacific Centre for the Responsibility to Protect hosted a public seminar on the situation in Myanmar. Speakers included Sayed Hamid Albar (former Foreign Minister of Malaysia and current Special Envoy of the OIC for Myanmar) and Gareth Evans (former Foreign Minister of Australia).

Strengthening partnership with China. From 16 March, the Deputy Director of the Asia Pacific Centre for the Responsibility to Protect, Dr. Sarah Teitt will be based at the Chinese Institute of International Studies in Beijing as part of an exchange program between the two organizations. The organizations are conducting joint research on the Syria crisis and on the challenges posed by non-state armed groups.

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), gathered together several government delegates from member states, regional and international human rights organisations, and approximately 30 representatives of national civil society organisations (CSOs) to consult on the Regional Plans of Action (RPAs) for the 2013 Declaration on the Elimination of Violence Against Women (EVAW) and the Elimination of Violence Against Children (EVAC) in Manila ,29-30 March.



# SEXUAL & GENDER BASED VIOLENCE

Regional Consultation of the ASEAN Commission on Women and Children  
with Civil Society Organisations on the Implementation of Regional Plans of Actions  
on the Elimination of Violence against Women and Children

*Maria Tanyag, PhD Candidate, Monash University*

On 29-30 March 2016, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), gathered together several government delegates from member states, regional and international human rights organisations, and approximately 30 representatives of national civil society organisations (CSOs) to consult on the Regional Plans of Action (RPAs) for the 2013 Declaration on the Elimination of Violence Against Women (EVAW) and the Elimination of Violence Against Children (EVAC).

The RPAs aim to concretise strategies on the effective implementation of the declarations at regional and national levels. Both RPAs, to this end, explicitly set out the role of CSOs as partners and collaborators in ending all forms of violence against women and children in ASEAN. Indeed, the engagement of CSOs in Bangkok is a continuation of their efforts to provide substantive inputs to the RPAs in Bali, Indonesia on 23-24 February 2016.

Furthermore, under the guiding principles of the RPAs, ending violence against women and children (VAWC) is framed through human rights, multi-sectoral, multidisciplinary and evidence-based approaches. Finally, in line with the ASEAN Community Blueprint, the RPAs cover a period of 10 years starting from 2016 until 2025.

Hence, the Bangkok regional consultation had a strong focus on discussing priority areas for the first five years such as the development of regional guidelines for the collection and analysis of VAWC data; implementing preventive interventions that will address gender stereotypes and harmful traditional and religious beliefs; and establishing national performance standards for service providers.

The regional consultation productively identified key points for collaboration between the ACWC and CSOs. First, the participants considered the importance of utilising the RPAs to ensure that ASEAN member states meet their international commitments to CEDAW, Convention on the





Rights of the Child (CRC), Beijing Platform for Action, and the Sustainable Development Goals. Second, the availability of systematic and reliable data on the prevalence of various forms of VAWC across ASEAN was agreed as an urgent prerequisite to mapping a 'baseline' for interventions. For instance, the discussions raised the possibility of creating an online database which will serve as the repository of available quantitative and qualitative resources on VAWC in the region, including all existing, relevant national legislations as well as offering links to regional human rights experts and services provided by CSOs.

However, the consultation also highlighted prevailing institutional barriers to ending VAWC within ASEAN. Among the persistently raised concern is the ACWC's limited mandate vis-à-vis the ASEAN organisational structure, and lack of financial resources to sustain many of its functions. In practice, although working on similar and overlapping issues of protection and prevention, coordination gaps persist between the ACWC, ASEAN Committee on Migrant Workers (ACMW), and ASEAN Intergovernmental Commission on Human Rights (AICHR).

Moreover, CSOs pointed out the continued severance of ASEAN's three pillars (political-security, economic, and socio-cultural communities) as a crucial impediment to addressing the various root causes of VAWC especially the lingering threat of intensifying ASEAN women's economic marginalisation in the face of greater economic integration among member states.

Finally, participants noted the challenge of comprehensively addressing emergent forms of compounded insecurities in ASEAN such as internal and cross-border displacements resulting from both conflicts and environmental disasters; and the distinct vulnerability to violence of particular groups of women and children such as those with disability or belonging to ethnic and/or religious minority.

Nevertheless, the RPAs and the Bangkok regional consultation embody the consistent collaboration of ACWC and CSOs. This strong partnership and the commitment from both sides to sustain it will play a pivotal role in translating plans to concrete outcomes over the next five to ten years.



Maria Tanyag representing APR2P at the recent ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) meeting in Manila.

# ISSUES IN BRIEF

## R2P AND NON-STATE ARMED GROUPS

*Alex Bellamy (Director, Asia-Pacific Centre for the Responsibility to Protect)*

States and non-state armed groups have a responsibility to protect. The nature of their respective responsibilities is different, however.

States have the primary responsibility to protect. They are responsible for ensuring the protection of all populations within their territory and in situations where they are unable to extend their protection into territory held by non-state armed groups they have a responsibility to request international assistance.

Non-state armed groups have a threefold obligation:

1. To comply with International Humanitarian Law (IHL) by refraining from committing genocide, war crimes, ethnic cleansing and crimes against humanity and to take positive steps to ensure the protection of civilians<sup>1</sup>;
2. To refrain from incitement to commit genocide<sup>2</sup>;
3. Those that occupy territory have additional obligations to ensure stability, order and humanitarian access within their zone of control.

Non-state armed groups should be held accountable for any failures to fulfill these responsibilities. They should signal their intention to shoulder these responsibilities by signing "Deeds of Commitment".

Although it is uncontroversial to propose that non-state armed groups (NSAGs) are obliged to comply with IHL and may be subject to international criminal law in cases where they commit violations, things become more complex in situations where international criminal law cannot be applied. In these situations, the sole mechanisms for achieving compliance with IHL is the consent of armed groups themselves<sup>3</sup>. An NGO, Geneva Call,

has made a significant contribution by persuading several NSAGs to commit themselves to IHL. But these arrangements are not widely recognized by states. Unsurprisingly, these arrangements have not yet been extended to those NSAGs with the poorest human rights records.

A further complicating question is whether NSAGs have R2P-like responsibilities that extend beyond mere compliance with IHL's prohibition of atrocity crimes. The UN Secretary-General's first Special Adviser on R2P, Edward Luck, suggested that non-state armed groups that control territory have a responsibility to prevent atrocity crimes identical to that of states. As Luck explained, "I made a bigger leap of faith...in proposing to the Secretary-General that he assert that non-state armed groups that control territory as well as national authorities, have the responsibility to protect populations by preventing the four specified crimes and their incitement<sup>4</sup>". Supporting this view, others have suggested that the "international community" referred to in paragraphs 138 and 139 of the World Summit Outcome Document includes non-state armed groups and that, as such, when these groups control territory they acquire wider responsibilities to prevent atrocities and incitement and protect populations<sup>5</sup>.

But whilst no state has formally objected to this interpretation, none has publicly defended it either. It therefore remains to be seen whether states accept this proposition and there are grounds for thinking that many would not. But the larger problem associated with extending the full range of responsibilities associated with R2P to territory-occupying NSAGs is conceptual. It is widely understood—and has been often stated by the UN Secretary-General—that the responsibilities associated with R2P derive from sovereignty. To say that NSAGs have a responsibility to protect is to imply that they have sovereign-based responsibilities and

to tacitly place them on an equal footing to states<sup>6</sup>. Conceptually, unless one cedes notional—a move hardly likely to win widespread support—it is difficult to justify the allocation of wider responsibilities for protection to NSAGs.

However, in International Humanitarian Law it is not “sovereignty” that determines applicable law but the empirical condition of “control”<sup>7</sup>. For example, the Law of Occupation (Fourth Geneva Convention, 1949) comes into effect as a result of a territory being physically controlled by an armed group and carries with it legal obligations above and beyond the non-commission of atrocity crimes. These include obligations to restore and maintain public order and safety (and thus prevent atrocity crimes), ensure the provision of food and medical care to the civilian population, respect cultural property, and permit the International Committee of the Red Cross (ICRC) to conduct its humanitarian activities. The Law of Occupation applies irrespective of whether the occupation is lawful or not. Moreover, the occupying force does not acquire sovereignty or sovereignty-like attributes over the territory and occupation is defined strictly as a temporary condition. Thus, by referring to the Law of Occupation we can hold non-state armed groups accountable for a wider range of duties that hold territory without undermining the primary responsibility to protect which is held exclusively by states.

### **A Note on Terrorism and Violent Extremism**

A further question relates to the connection between terrorism, atrocity crimes and R2P. Terrorism and atrocity crimes are sometimes connected but are not synonymous. Part of the problem is that national legislation contains different definitions of “terrorism” and there is no agreed global standard. Acts of terrorism (bombings, shootings etc.) that intentionally target civilians are atrocity crimes. Thus, violent extremism, which practices and celebrates the killing of civilians, fosters a form

of terrorist violence that also constitutes atrocity crimes. But some acts associated with “terrorism” are not atrocity crimes. For example, some legislation defines terrorism as any violence by NSAGs, whilst others include an intention to create “fear” as a defining feature of terrorism. Neither of these necessarily constitute atrocity crimes. Individual acts of violence may also constitute terrorism when conducted with political intent but may lack the scale and systematicity to constitute atrocity crimes.

### **It seems clear that:**

1. States have a responsibility to protect their populations from violent extremist terrorism.
2. States have a responsibility to prevent the incitement of terrorism and violent extremism.
3. States have a responsibility to prevent members of their own population from travelling overseas to incite or practice violent extremism.
4. The international community should assist states to fulfill their primary responsibility to protect their populations from violent extremism.

### **Some points of difference should also be noted:**

1. Terrorism can apply to examples of “lone wolf” violence that are not sufficiently widespread or systematic to constitute atrocity crimes.
2. Not all definitions of “terrorism” involve the incitement or commission of atrocity crimes.

#### **Footnotes:**

1. E.g. Article 13, Geneva Protocol II, 1977.
2. Article 3 (e) of the Rome Statute. Also see, Implementing the Responsibility to Protect, para. 18.
3. Marco Sassoli, “Taking armed groups seriously: ways to improve their compliance with international humanitarian law.” *International Humanitarian Legal Studies*, 1, 2010 pp. 5-51.
4. Edward C. Luck, “Foreword” in pp. ix in Kurt Mills and David Jason Karp (eds.), *Human Rights Protection in Global Politics: Responsibilities of States and Non-State Actors* (Basingstoke: Palgrave, 2015), p. ix.
5. “Violent Non-State Actors as Perpetrators and Enablers of Atrocity Crimes”, Stanley Foundation Policy Dialogue Brief, 2015, p. 2.
6. Raphael van Steenberghe, “Non-State Actors”, in Gentian Zyberi (ed.), *An Institutional Approach to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2013), p. 55.
7. This is made explicit in Additional Protocol II to the Geneva Conventions (1977) Relating to the Protection of Victims of Non-International Armed Conflicts.

# ISSUES IN BRIEF

## EMERGING CRISIS IN PHILIPPINES:MINDANAO

*Noel Morada (Director of Regional, Asia-Pacific Centre for the Responsibility to Protect)*

Fears of resumption of violence in Mindanao were expressed by some quarters in the Philippines following the failure of Congress to pass the Bangsamoro Basic Law (BBL) as it adjourned in early February for the forthcoming May general elections. The BBL, which is an important component of the peace deal signed by President Aquino with the Moro Islamic Liberation Front, became the main casualty of the Mamasapano counter-terrorism operations in January 2015 that resulted in the death of 44 SAF troops, Muslim rebels, and civilians.

A number of legislators who initially endorsed the BBL as drafted by transitional commission withdrew their support for the bill amidst public anger against the MILF (some of its troops were involved in killing the SAF forces). President Aquino failed to muster enough support for the original draft of the BBL among his majority party members in the lower house and allies in the upper house of the legislature. In both chambers, alternative versions to the BBL were filed, which significantly watered down the autonomous powers that will be granted to the proposed Bangsamoro region primarily to ensure that it conforms to the 1987 Constitution and that it will not be struck down by the Supreme Court.

Issues were also raised by some senators regarding the transition phase of implementing the Bangsamoro autonomy law, specifically with regard to the period that the MILF would disarm and surrender their weapons. With less than three months remaining in his six-year term, it is clear that President Aquino will have to pass on to the next administration the task of crafting a Bangsamoro autonomy law that will be acceptable to all stakeholders for long-term peace in Mindanao.

As expected, government and MILF peace negotiators expressed frustration over the failure of Congress to pass the BBL before the end of President Aquino's term. Both parties warned of extremist Muslim groups, such as the Bangsamoro

Islamic Freedom Fighters—a splinter faction of the MILF—and other groups who have pledged support to the ISIS/ISIL, would exploit the situation to undermine the whole peace process in Mindanao.

Nonetheless, the MILF also expressed its commitment to abide by the peace agreement signed in 2014 and its willingness to pursue engagement with the government under the new administration that will take over in July. In an effort to manage the tense situation after the non-passage of the BBL, members of the peace panel held a meeting in Kuala Lumpur in February to map out a plan of action to deal with growing anger and frustration amongst the Bangsamoro people. In their joint statement issued on 11 February, the government and MILF panel members, among others: 1) expressed their commitment to stay the course of peace; 2) agreed to extend the mandate of the Joint AdHoc Action Group until 17 March 2017 to ensure the long-standing ceasefire between the government and MILF forces; and 3) accepted the report of the Transitional Justice and Reconciliation Commission and to study how to its recommendations could be operationalized<sup>1</sup>.

Notwithstanding the concerted efforts of the government and the MILF to manage the tense situation, encounters between the BIFF and the Armed Forces of the Philippines (AFP) have erupted in Mindanao since February. Specifically, the AFP stated that it is gearing for more attacks from the BIFF as the latter threatened to sabotage road and bridge projects that were intended to provide access to civilians in far-flung areas of Maguindanao<sup>2</sup>. Four government soldiers were wounded in an encounter on 18 February with the BIFF forces in Maguindanao<sup>3</sup>. There were also reports of mistaken encounters between the MILF and AFP despite coordination with local ceasefire committees<sup>4</sup>.

In an effort to avoid similar encounters between the MILF and the AFP forces, the former repositioned more than a thousand troops as the latter staged several law enforcement operations against the BIFF<sup>5</sup>. Some lawless elements, including those claiming to be supporters of ISIS/ISIL, also had encounters with the AFP that resulted in some civilians being evacuated in MILF camps in Lanao<sup>6</sup>.

The peace process in Mindanao is a major issue in the forthcoming Philippine elections in May. Specifically, some candidates for president and vice-president as well as in the senate have advocated for adopting a federal form of government in the Philippines (which would require amending the present constitution) that would not only pave the way for the creation of a more meaningful Bangsamoro autonomous region but also ensure that any law granting such autonomy to the Bangsamoro people would not be declared unconstitutional by the Supreme Court. However, this option is unlikely to get much public support in the near future given the failure of past efforts to promote federalism in the Philippines. A more viable option is to enhance the existing Autonomous Region of Muslim Mindanao (ARMM), which is already recognized under the current constitution, by amending its enabling laws to give more substantive and meaningful autonomy to Bangsamoro people in Mindanao. At the same time, the protection of ancestral domains of indigenous peoples or the lumads (who are neither Christian nor Muslim) must also be ensured in any Bangsamoro autonomy law that will be passed by the Philippine Congress under the new administration.

One of the major issues raised against the BBL is that it lacks provisions that recognize and protect the rights of indigenous peoples in Mindanao, including their ancestral domain. They are often caught not only in the conflict between armed Muslim rebels and the AFP but also between the

communist rebels and the AFP, which are often in resource-rich conflict areas where the ancestral domains of the lumads are located. As reported in the previous issue of the Outlook, both government troops and communist forces have committed atrocities against the indigenous peoples in Mindanao, especially in areas where small-scale mining operations are conducted.

## Recommendations

In order to manage the frustrations of stakeholders over the failure to enact the BBL, it is important:

1. For the members of the peace panel on both sides to encourage the conflict-affected communities in Mindanao to adhere to the peace agreement between the government and the MILF despite the non-passage of the BBL.
2. For the Aquino administration, in its last 100 days in office, to hold a dialogue with candidates for president in the May elections on the importance of sustaining the commitment to peace in Mindanao and begin to explore innovative ways to improve on the draft BBL that would be acceptable to all stakeholders and ensure its compliance with the 1987 constitution.
3. For the government to ensure that the AFP adheres to international norms in protecting civilians in armed conflicts even as they pursue their military operations against armed rebel groups in Mindanao, including the protection of indigenous peoples and their ancestral domain.
4. For the new administration that will take over in July to seriously consider conducting a national dialogue on atrocities prevention and implement the Responsibility to Protect principle and related national action plans on human rights protection and women, peace and security.

### Footnotes:

1. See "GPH-MILF Joint Statement 11 Feb 2016", available from <http://www.opapp.gov.ph/milf/news/gph-milf-joint-statement-11-feb-2016>. For the full report of the Transitional Justice and Reconciliation Commission, it is available from <http://www.opapp.gov.ph/news/report-transitional-justice-and-reconciliation-commission>
2. John Unson, "Military gearing up for BIFF attacks on road projects," Philstar.com, 8 February 2016, from <http://www.philstar.com/nation/2016/02/08/1550998/military-gearing-biff-attacks-road-projects>, accessed on 18 March 2016.
3. Karlos Manlupig, "4 soldiers wounded in fresh clash with BIFF in Maguindanao," Inquirer.net, 18 February 2016, from <http://newsinfo.inquirer.net/766053/4-soldiers-wounded-in-fresh-clash-with-biff-in-maguindanao-army>, accessed on 18 March 2016.
4. Alex Ho, "Military clarifies how misencounter with MILF erupted," CNN Philippines, 13 February 2016, available from <http://cnnphilippines.com/news/2016/02/13/Military-clarifies-MILF-misencounter.html>, accessed on 18 March 2016.
5. "MILF repositions troops to assist AFP in BIFF pursuit," 25 February 2016, from <http://www.opapp.gov.ph/milf/news/milf-repositions-troops-assist-afp-biff-pursuit>, accessed 18 March 2016.
6. "MILF provides sanctuary to Lanao clash evacuees," 25 February 2016, from <http://www.opapp.gov.ph/milf/news/milf-provides-sanctuary-lanao-clash-evacuees>, accessed on 18 March 2016.



# RELEVANT PUBLICATIONS

Phil Orchard and Heather Rae, **'Russia and the Responsibility to Protect'**, Ideas in Brief, March 2016: <http://www.r2pasiapacific.org/docs/R2P%20Ideas%20in%20Brief/AP%20R2P%20Policy%20Brief%206%201%20Russia%20and%20the%20Responsibility%20to%20Protect.pdf>

Volume 8, Issue 1 of **Global Responsibility to Protect** (2016) featuring articles on Women, Peace and Security, Mexico, and debates about intervention in Libya and Syria: <http://booksandjournals.brillonline.com/content/journals/1875984x>

Alex Bellamy, **'Fulfilling the Promise of R2P: Our Shared Responsibility'**, <http://r2pstudentjournal.leeds.ac.uk/articles/fulfilling-the-promise-of-r2p-our-shared-responsibility/>

Alex Bellamy, **'Syria is a Failure of Commitment, Not Principle'**, [https://www.washingtonpost.com/news/in-theory/wp/2016/02/16/syria-is-a-failure-of-commitment-not-principle/?tid=ss\\_tw](https://www.washingtonpost.com/news/in-theory/wp/2016/02/16/syria-is-a-failure-of-commitment-not-principle/?tid=ss_tw)

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Alex Bellamy, **'The First Response: Peaceful Means in the Responsibility to Protect's Third Pillar'**, <http://www.stanleyfoundation.org/resources.cfm?id=1586>