

Stakeholder report Universal Periodic Review, 37th session (January-February 2021) Myanmar

All Survivors Project (ASP) is an independent, impartial, international organisation that conducts research and advocacy and facilitates inter-disciplinary dialogue and learning to improve global responses for every victim/survivor of sexual violence including men and boys in situations of armed conflict and forced displacement. Through our work with governmental and non-governmental stakeholders and with male survivors of sexual violence, we seek to ensure that conflict-related sexual violence is prevented and that the rights of all victims/survivors, including men and boys, are fulfilled, and the dignity of all survivors is respected and protected.

In this stakeholder report, ASP puts forward its concerns about the lack of protection from sexual violence in Myanmar with a focus on men, boys and transgender persons before the Human Rights Council for the consideration of Myanmar's UPR review at the 37th session in November 2020.

This stakeholder report focuses on the following issues:

- Conflict related sexual violence against Rohingya men, boys and transgender persons;
- Inadequacies of the domestic legal framework and impunity for crimes of sexual violence;
- Provision of health, protection and essential services to survivors of sexual violence.

It concludes with some recommendations addressed to the Government of Myanmar.

1. Conflict related sexual violence against Rohingya men, boys and transgender persons

The UN has recognised the widespread and systematic nature of conflict-related sexual violence in the context of the military and security operations conducted by the Myanmar army and security forces in northern Myanmar since 2011.¹ The Independent International Fact-Finding Mission on Myanmar concluded in its 2018 report that "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".² A thematic report from 2019 identified further cases and provided a comprehensive analysis of conflict-related sexual violence in Myanmar.³

Sexual violence was used with the intent to intimidate, terrorise and punish the civilian population and as a tactic of war.⁴ The Myanmar army (Tatmadaw) and other security forces were overwhelmingly the main

¹ See reports of the UN Special Rapporteur on the human rights situation in Myanmar:

<https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/MM/Pages/SRMyanmar.aspx> and reports of the Independent International Fact-Finding Mission on Myanmar:

<https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx>

² Report of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/64 (2018).

³ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019).

⁴ Most recently, the January 2020 report of the UN High Commissioner for Human Rights noted how "sexual and gender-based violence has been used as a tool in the context of ethnic conflicts, primarily as a means of destroying the social fabric of non-Burman communities. The systematic use by the military of sexual and gender-based violence (including gang rape, sexual slavery and sexual torture) and the impunity for such acts, has been extensively documented by women's organizations over decades as 'part of a deliberate strategy to intimidate, terrorize or punish a civilian population, and [...] a tactic of war'. Testimony recorded, including most recently by the Fact-Finding Mission, highlights how brutal sexual violence against women and girls, as well as men, boys and transgender persons, aimed at destroying those targeted (physically and spiritually) as well as their communities." See Report of the UN High Commissioner for Human Rights, Situation of human rights of Rohingya Muslim minority and other minorities in Myanmar, UN Doc. A/HRC/43/18 (2020).

perpetrators, although other ethnic armed actors were also found responsible for some of the sexual violence. Women, girls, men and boys, including transgender persons, were affected by conflict-related sexual violence.

In its 2019 thematic report on sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, the Commission of Inquiry concluded that “that the use of sexual violence [against men and boys] and forced nudity by the Tatmadaw, the police and SaYaPa in northern Myanmar is not isolated but a broader practice.” It also noted that “it is likely that incidents of sexual violence against men and boys are under-reported due to fear of stigmatization, reprisal and ostracism by their communities.”⁵

Sexual violence against men and boys were documented in a range situations, including military ‘clearance’ operations and at checkpoints. Most notably sexual violence occurred in detention settings.

Sexual violence against men and boys remains under-reported globally and the few reported cases in Myanmar conform with this trend. In the contexts of conflicts, risks of reprisal and stigmatisation are exacerbated, which constitute additional barriers to disclosure and reporting.

Sexual violence in detention settings

Male detainees have been subjected to sexual violence, sometimes amounting to torture. The UN Fact-Finding mission and the UN Special Rapporteur on the human rights situation in Myanmar, as well as international non-governmental organisations, such as Amnesty International, documented patterns of rape and sexual violence against Rohingya men and boys detained in prisons, security cells and military camps or bases across Rakhine, Kachin and Shan states.⁶ Reports suggest that sexual violence in detention comprised of rape including gang rape, forced nudity, burning and beatings of genitals, forcing to witness rape, and other acts of sexual humiliation.

In Kachin and Shan states, the UN Fact-Finding Mission found that acts of “sexual violence and sexual humiliation in the context of detention were reportedly perpetrated by the police, the Tatmadaw and the Myanmar Intelligence Office (commonly referred to by its Myanmar acronym SaYaPa), the branch of the Myanmar armed forces tasked with intelligence gathering. The Mission found that the Tatmadaw has targeted men with rape, forced nudity, and other forms of sexual violence and debasing treatment, often for the purpose of obtaining information or confessions from detainees.”⁷

In Rakhine state, rape and other forms of sexual violence were verified by the UN against Rohingya men and boys detained in Buthidaung prison. The UN Fact-Finding Mission considered such treatment at the prison to be “endemic.”⁸ Anal and oral rape were carried out by prison authorities or by other detainees in the presence of the prison guards. Forced nudity and other forms of sexual humiliation against Rohingya

⁵ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 177. See also findings in Women’s Refugee Commission (WRC), *“It’s happening to our men as well”: Sexual Violence against Rohingya men and boys*, November 2018, <https://www.womensrefugeecommission.org/gbv/resources/1664-its-happening-to-our-men-as-well>

⁶ See Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), Amnesty International, *“We Will Destroy Everything”: Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar* (2018).

⁷ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 172.

⁸ Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (2018), para 669.

men and boys in prison contexts were also reported.⁹ Victims of sexual violence were sometimes killed or 'disappeared'. Male detainees were also forced to witness the rape of women and girls.¹⁰

Sexual violence against transgender persons

Transgender persons in Myanmar have been particularly vulnerable to sexual violence by security forces. Colors Rainbow, Myanmar's leading lesbian, gay, bisexual and transgender (LGBT) rights organisation, carried out research in 2012/2013 which documented such abuses.¹¹ This study found that transgender individuals are particularly vulnerable to physical and sexual violence by police, prison guards, police and prison administrators, and from other prisoners in detention context. It noted that "sexual assault and abuse by police was a common experience for respondents in this study. Over 50% of those interviewed stated that they experienced some form of sexual assault or abuse by police either when they were encountered in public or in detention settings. Sexual assault in this study ranged from forced stripping and the fondling of [transgender persons] breasts to forced oral sex and anal intercourse (rape). Gang rape and sexual assault by groups of police officers, prison guards, and other prisoners was also frequent in the cases of documented sexual abuse. Fear of sexual assault was also noted by some respondents. False confessions to crimes were obtained by threatening physical and sexual assault."¹²

In the context of the violence against the Rohingya population, the UN Fact-Finding Mission "received consistent accounts from transgender women who authorities targeted with sexual violence because, some survivors said, of their gender and sexual orientation, in addition to their ethnicity as Rohingya".¹³

2. Inadequacies of the domestic legal framework and impunity for crimes of sexual violence

Serious shortcomings in the Myanmar legal framework contributes to impunity for conflict-related sexual violence against men, boys and transgender persons.

With regards to the crime of rape, the penal code of Myanmar does not criminalise rape against men and boys. Article 375 of the penal code only covers the rape of women and girls by a man.¹⁴ By failing to proscribe rape against men and boys through a gender-inclusive definition of rape, the law denies them legal protections and contributes to impunity for these crimes. The criminal code also proscribes assaulting of women "intending to outrage or knowing it to be likely that he will thereby outrage her modesty".¹⁵ Again, this crime fails to comprehensively criminalise in a gender-inclusive way all forms of sexual violence (other than rape.)

Additionally, Article 377 of the penal code contains a provision that criminalises "carnal intercourse against the order of nature". In effect, it proscribes consensual same-sex relationships and, together with other domestic laws, such as the Emergency Provision Act and the Police Act, it is used to persecute transgender individuals. In its 2nd cycle UPR in November 2015, two recommendations were made to

⁹ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 163.

¹⁰ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 192.

¹¹ Colors Rainbow, *Facing 377: Discrimination and Human Rights Abuses Against Transgender, Gay and Bisexual Men in Myanmar* (2015), <http://equalitymyanmar.org/book/wp-content/uploads/2015/02/AnnualReport-rainbow.pdf>

¹² Colors Rainbow, *Facing 377: Discrimination and Human Rights Abuses Against Transgender, Gay and Bisexual Men in Myanmar* (2015), p. 44.

¹³ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 180.

¹⁴ Myanmar, The Penal Code, Chapter XVI, Of Offence Affecting the Human Body, Act No. 45/1869, Revised Edition, <https://www.wipo.int/edocs/lexdocs/laws/en/mm/mm004en.pdf>

¹⁵ Myanmar, The Penal Code, Article 354.

repeal Section 377 by Australia and Spain. Myanmar Government simply ‘noted’ these recommendations without explicitly accepting them.¹⁶

There are other barriers to accountability. As noted by the Fact-Finding Mission, “the constitutional and legal framework of Myanmar protects the Tatmadaw, and other security forces, effectively blocking military accountability” offering legislative impunity for sexual assault and other violations perpetrated by the Tatmadaw.¹⁷ The obstacles to obtain redress are further heightened for Rohingya survivors as the human rights provisions in the Myanmar Constitution are limited to “citizens” only.¹⁸

Partly as a result of these inadequacies of domestic law, impunity for the grave violations of international human rights and humanitarian law by Myanmar army and other security forces remain pervasive. The UN Fact-Finding Mission noted that “the continued lack of accountability has extended the longstanding impunity of the Tatmadaw and other security forces. The Mission is satisfied that the lack of accountability and the consequent impunity has encouraged repeated grave human rights violations in Myanmar and that those violations will continue until and unless impunity is lifted and accountability enforced.”¹⁹

In December 2018, the Government of Myanmar signed a joint communiqué with the Special Representative of the Secretary-General on Sexual Violence in Conflict. The communiqué requires concrete actions by the Myanmar Armed Forces such as the issuance of clear orders prohibiting sexual violence and ensuring accountability for violations, as well as timely investigation of all alleged abuses.²⁰ However, the Government has so far failed to effectively investigate conflict-related sexual violence and prosecute the perpetrators. The Independent Commission of Enquiry (ICOE), established by Myanmar in August 2018, released a report on its investigations on 21 January 2020. The report plays down the incidence of conflict-related sexual violence, raising serious concerns on the willingness of the Myanmar authorities to investigate and prosecute army and other government officials suspected of these crimes.²¹

3. Provision of health, protection and essential services to survivors of sexual violence

The Government of Myanmar noted in its Second cycle national UPR report that “improving access to and quality health is high on the Government agenda”. However, access to health care in Rakhine state is overall low, with Rohingya individuals facing additional obstacles, due to the imposition of travel restrictions, and discrimination.²²

In this context, access to survivor-centred, medical, mental health and psychosocial support (MHPSS), protection and livelihood responses for survivors of conflict-related sexual violence is very low, including for male survivors. The UN Fact-Finding Mission noted that “victims and survivors who have reported

¹⁶ Report of the Working Group on the Universal Periodic Review: Myanmar, UN Doc. A/HRC/31/13 (2015), in International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), *State-sponsored homophobia – global legislation overview update*, December 2019, p.458, https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2019.pdf

¹⁷ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 231.

¹⁸ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 234.

¹⁹ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 230.

²⁰ Report of the UN Secretary-General on sexual violence in armed conflict, UN Doc. S/2019/280 (2019), para 67.

²¹ See Human Rights Watch, *Myanmar: Government Rohingya Report Falls Short*, 22 January 2020, <https://www.hrw.org/news/2020/01/22/myanmar-government-rohingya-report-falls-short>

²² Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar, UN Doc. A/HRC/39/CRP.2 (2018), para 544.

sexual violence are still faced with challenges in accessing appropriate care. The Fact-Finding Mission notes that “services for the reporting, protection, and care of men and boys victims of sexual violence is still inadequate in Myanmar and in the refugee camps in Bangladesh.”²³

4. Recommendations

ASP makes the following recommendations to the Government of Myanmar:

- Review and amend Section 375 of the 1861 Penal Code to ensure that rape is proscribed in a gender-inclusive manner and the definition of rape is consistent with international standards;
- Repeal Section 377 of the 1861 Penal Code to ensure that consensual same-sex relationships are not criminalised;
- Ensure that all crimes of sexual violence (including but not limited to enforced sterilisation, genital violence, forced nudity, sexual slavery, forced prostitution) are proscribed in a gender-inclusive manner;
- Remove provisions that provide immunity from prosecution for conflict-related sexual violence and other serious violations of human rights and humanitarian law;
- Promptly investigate and prosecute Tatmadaw and other security personnel, including senior officials, for sexual violence, including as serious crimes under international law, such as crimes against humanity, war crimes and genocide;
- Ensure that all victims and survivors of sexual violence have access to medical, psychosocial and other support and services, including unrestricted access to free, safe, confidential, quality, gender competent medical support, including mental health and psychosocial support;
- Build capacity to provide specific support for male survivors of torture which also responds to the sexual violence suffered in detention.
- Ensure the availability of safe shelters for at-risk males and male survivors and transgender persons.

²³ Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts, UN Doc. A/HRC/42/CRP.4 (2019), para 158.