



ASIA JUSTICE AND RIGHTS

Submission to the UN SRVAW for report on rape as a grave and systematic human rights violation and gender-based violence against women

Asia Justice and Rights (AJAR) is a human rights non-profit organization based in Indonesia working to build just and accountable societies free from impunity. It is specifically focused on strengthening human rights and ending entrenched impunity in the Asia-Pacific region, and it has programs in Indonesia, Timor-Leste, Myanmar, and Bangladesh as well as a region-wide program. In response to the call place by the UN Special Rapporteur on violence against women, its causes and consequences (SRVAW) for written responses to the questionnaire on criminalization and prosecution of rape, AJAR offers the contributions below. For any inquiries related to this submission, please contact AJAR Executive Director, Galuh Wandita (gwandita@asia-ajar.org). AJAR authorizes this submission to be made public.

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Bangladesh

For rape:

- a. Section 375 of The Penal Code, 1860¹
“A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:
Firstly. Against her will.
Secondly. Without her consent.
Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
Fifthly. With or without her consent, when she is under fourteen years of age

¹ Section 375 of The Penal Code, 1860 provides the definition of rape, which is also the operative definition of rape for The Prevention of Oppression Against Women and Children Act 2000.

Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.”

- b. Section 376 of The Penal Code, 1860
“Whoever commits rape shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

- c. Section 377 of The Penal Code, 1860
“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation. Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.”

- d. Section 9 of The Prevention of Oppression Against Women and Children Act 2000²
“Punishment for rape or death in consequence of rape:
i. Whoever commits rape with a woman or a child, shall be punished with rigorous imprisonment for life and with fine.

Explanation. Whoever has sexual intercourse without lawful marriage with a woman not being under fourteen years of age, against her will or with her consent obtained, by putting her in fear or by fraud, or with a woman not being above fourteen years of age with or without her consent, he shall be said to commit rape.

- ii. If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man shall be punished with death or with transportation for life and also with fine not exceeding one lac taka.
iii. If more than one man rapes a woman or a child and that woman or child dies or is injured in consequences of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lac taka.
iv. Whoever attempts on a woman or a child –

² See https://iknowpolitics.org/sites/default/files/prevention_act_bangladesh.pdf.

- (a) To cause death or hurt after rape, he shall be punished with rigorous imprisonment for life and also with fine.
- (b) To commit rape, he shall be punished with imprisonment for either description, which may extend to ten years but not less than five years rigorous imprisonment and also with fine.
- v. If a woman is raped in the police custody, each and every person, under whose custody the rape was committed and they all were directly responsible for safety of that woman, shall be punished for failure to provide safety, unless otherwise proved, with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine.”

Myanmar

For rape:³

a. Section 375 of The Penal Code

“ A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions

First.-- Against her will.

Secondly.-- Without her consent.

Thirdly-- With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly. -- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. -- —With or without her consent, when she is under fourteen years.

Explanation.-- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.-- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

b. Section 376 of The Penal Code

“Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

c. Section 377 of The Penal Code

³ See https://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf; see also <https://www.globaljusticecenter.net/documents/CaseStudy.pdf>.

“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Indonesia

For "rape" :

- a. Article 9(g) of Law No. 26 of 2000 about The Human Rights Court
“Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterility or sterilization or other equivalent forms of sexual violence.”
- b. Article 285 (concerning the crime of rape) of the Criminal Code (KUHP/Wetboek van Strafrecht)
“Whoever by force or threat of violence forces a woman who is not his wife to have sexual intercourse with him, is punished, for rape, with a maximum imprisonment of twelve years.”

For sexual violence and others terms:

- a. Article 9(h) (persecution based on sex) of Law No. 26 of 2000 about The Human Rights Court
“Persecution of a certain group or association based on the same political understanding, race, nationality, ethnicity, culture, religion, sex or other reasons that have been universally recognized as prohibited according to international law.”
- b. Article 8 (concerning sexual violence) of Law No. 23 of 2004 about the Elimination of Domestic Violence
“Sexual violence as referred to in Article 5 letter c includes:
 - a. Forcing sexual relations between people who live within the scope of the household;
 - b. Forcing sexual relations between one person within the scope of his household with another for commercial and/or specific purposes.”
- c. Article 289 (concerning the criminal act of obscenity) of the Criminal Code (KUHP/Wetboek van Strafrecht)
“Anyone who by force or threat of violence forces someone to commit or allow the act of obscenity is punished for committing an act that attacks the honor of decency with a maximum sentence of nine years.”

For child rape and sexual violence :

- a. Article 76 D of Law No. 35 of 2014 Amending the Law on Child Protection
"Everyone is prohibited from committing violence/threats of violence forcing children to have intercourse with them or other people."
- b. Article 76 E of Law No. 35 of 2014 Amending the Law on Child Protection

"Everyone is prohibited from committing violence/threats of violence, coercing, tricking, committing a series of lies / persuading children to commit/allow obscene acts to be committed."

2. Based on the wording of those provisions, is the provided definition of rape:
 - a. Gender specific, covering women only YES/NO
 - b. Gender neutral, covering all persons YES/NO
 - c. Based on the lack of consent of victim YES/ NO
 - d. Based on the use of force or threat YES/ NO
 - e. Some combination of the above. YES / NO
 - f. Does it cover only vaginal rape? YES /NO
 - g. Does it cover all forms of penetration? YES/NO. If yes, please specify.
 - h. Is marital rape in this provision explicitly included? YES / NO
 - i. Is the law silent on marital rape? YES/NO
 - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO
 - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO

Bangladesh

- a. Yes, it covers only women.⁴
- b. No, it does not cover all persons.
- c. Yes, it provides for rape based on the lack of consent of the victim. However, the view of consent the law reflects is facial and thus problematic. For instance, the law does not state that consent is, in fact, absent where a woman consents to intercourse under the mistaken belief that the man with whom she is consenting to have intercourse is her husband. Instead, the law describes that as a circumstance where the woman gave consent but the man can be found to have committed rape.
- d. Yes, it provides for rape based on the use of force or threat.
- e. Yes, it provides for rape based on some combination of the above. The law recognizes 5 different circumstances in which rape will be found.
- f. As a practical matter, yes. The law defines intercourse as "penetration," and although no further information is set forth in the law, that generally has been limited to vaginal penetration.⁵
- g. As a practical matter, no. The law only references "penetration." However, as noted in the preceding response, that generally has been limited to vaginal penetration.
- h. Yes, one form of marital rape, that of a wife under 15, is recognized by the law. However, unless the victim / wife is under 15, rape by a husband is not considered rape.
- i. No, it is not silent on marital rape as it recognizes rape when the victim is a wife under 15. However, this is a very narrow interpretation rooted in the victim's minor status.

⁴ See <https://blogs.dw.com/womentalkonline/2013/12/04/the-legal-framework-of-bangladeshs-rape-law/>; <https://www.hrw.org/news/2020/11/25/why-it-so-difficult-bangladeshi-women-get-justice>.

⁵ See <https://www.thedailystar.net/opinion/news/the-problematic-legal-definition-rape-1988293>.

- j. No, marital rape is not covered in the general provisions or by legal precedent. As noted above, only marital rape of a wife under 15 is recognized.
- k. Yes, marital rape of those over 15 is excluded in the provisions and not considered as a crime.

Myanmar

- a. Yes, it covers only women.
- b. No, it does not cover all person.
- c. Yes, it provides for rape based on the lack of consent of the victim. The same issue with law's perception of consent raised in relation to the Bangladesh law applies to the Burmese law.
- d. Yes, it provides for rape based on the use of force or threat.
- e. Yes, it provides for rape based on some combination of the above. The law recognizes 5 different circumstances in which rape will be found.
- f. As a practical matter, yes. The law defines intercourse as "penetration," and although no further information is set forth in the law, that generally has been limited to vaginal penetration.⁶
- g. As a practical matter, no. The law only references "penetration." However, as noted in the preceding response, that generally has been limited to vaginal penetration.
- h. Yes, one form of marital rape, that of a wife under 15, is recognized by the law. However, unless the victim / wife is under 15, rape by a husband is not considered rape.
- i. No, it is not silent on marital rape as it recognizes rape when the victim is a wife under 15. However, this is a very narrow interpretation rooted in the victim's minor status.
- j. No, marital rape is not covered in the general provisions or by legal precedent. As noted above, only marital rape of a wife under 15 is recognized.
- k. Yes, marital rape of those over 15 is excluded in the provisions and not considered as a crime.

Indonesia

- a. Yes, the law only covers women.
- b. No, the law is not gender neutral.
- c. Yes, the law provides for rape based on the lack of consent of the victim.
- d. Yes, the law provides for rape based on the use of force or threat.
- e. Yes, it provides for rape based on some combination of the above.
- f. Yes, the law only covers vaginal rape.
- g. No, the law does not cover all forms of penetration.
- h. No, marital rape is not explicitly included in Indonesia's law on rape.
- i. No, Indonesia's laws are not completely silent on marital rape as the law (i.e. the Law on Elimination of Domestic Violence) does criminalize forced sexual relations between a husband and wife. However, the crime is categorized as a complaint offense (klachtdelict) or an offense that cannot be prosecuted without a complaint and/or participation by the victim.

⁶ See <https://www.thedailystar.net/opinion/news/the-problematic-legal-definition-rape-1988293>.

- j. Yes, while marital rape is not covered in the general provisions, there is some legal precedent now for its prosecution as a result of the language in the Law on the Elimination of Domestic Violence.
- k. Yes, marital rape is excluded in some of the provisions, namely in Article 285 of the Criminal Code.

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

Bangladesh

No, apart from the provisions regarding marital status discussed above, there are no such provisions.

Indonesia

No, there are no such provisions.

4. What is the legal age for sexual consent?

Bangladesh

Generally speaking, the age of consent in Bangladesh is 18. However, Section 375 suggests an age of consent for sexual intercourse of 14 since it criminalizes intercourse (apart from marital intercourse) with a woman under 14 years with or without her consent. Thus, there is some ambiguity in Bangladesh law related to consent.

Indonesia

The legal age of consent is 18, based on Articles 47 and 50 of Law No. 1 of 1974.

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

Bangladesh

No, there are no provisions that differentiate for sexual activity between peers in Bangladesh.

Indonesia

No, there are no provisions that differentiate for sexual activity between peers in Indonesia.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Bangladesh

Both Section 376 of The Penal Code, 1860 and Section 9 of The Prevention of Oppression Against Women and Children Act 2000 pertain to criminal sanctions. See the response to Question 1 for laws' text.

Indonesia

Based on Article 285 of the Criminal Code, the perpetrator of rape will be punished with a maximum sentence of 12 years in prison.

Based on Government Regulation No.1 of 2016 (Government Regulation in lieu of law) Article 81 Paragraph 1, the perpetrators of child rape will be punished with a maximum sentence of 15 years in prison and maximum amercement of 5 billion rupiah.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Bangladesh

Legislation provides a means for victims to obtain reparation but only after the conviction of the perpetrator. The Prevention of Oppression Against Woman and Children Act 2000 allows tribunals to impose monetary fines upon those convicted.⁷ In 2019, the High Court of Bangladesh recognized the possibility that the state may need to pay compensation to a victim of rape.⁸

Indonesia

Article 35 of Law No. 26 of 2000 about the Human Rights Court states as follows:

1. Every victim and witness in a serious human rights violation and/or his heirs can receive compensation, resistance, and rehabilitation.
2. Compensation, restitution, and rehabilitation as meant in paragraph (1) shall be included in the injunction of a human rights court
3. Provisions regarding compensation, restitution, and rehabilitation shall be further regulated by government regulations.

Article 5 of Law No. 31 of 2014 concerning the protection of witnesses and victims states:

- (1) A witness or victim has the right to:
 - a. Obtain protection for the safety of his person, family, and property, and be free from threats regarding the testimony he will give, is giving or has given;
 - b. Participate in the process of selecting and determining the form of security protection and support;
 - c. Provide information without pressure;

⁷ See for discussion and illustration, <https://www.thedailystar.net/frontpage/its-hard-get-compensation-1216783>; see also <https://www.iosrjournals.org/iosr-jhss/papers/Vol.25-Issue10/Series-8/H2510085158.pdf>.

⁸ See <https://www.thedailystar.net/opinion/law/news/state-liability-pay-compensation-rape-necessary-ruling-1715395>.

- d. Get a translator
- e. Be free from entangled questions;
- f. Get information about case progress;
- g. Get information about court decisions;
- h. Know the terms of the convict's release;
- i. Maintain anonymity;
- j. Get a new identity;
- k. Obtain temporary residence;
- l. Acquire a new residence;
- m. Receive reimbursement of transportation costs as needed;
- n. Get legal advice;
- o. Receive temporary living expenses until the protection period ends; and/or
- p. Get assistance

(2) The rights as referred to in paragraph (1) shall be granted to witnesses and / or victims of criminal acts in certain cases in accordance with the decisions of the LPSK.

(3) In addition to witnesses and / or victims, the rights granted in certain cases as referred to in paragraph (2) can be given to perpetrator witnesses. Reporters and experts are also people who can provide information relating to a criminal case even though they have not heard it themselves, they have not seen it themselves and they have not experienced it themselves, as long as that person's statement is related to a criminal act.

Article 6 of Law No. 31 of 2014 concerning the protection of witnesses and victims states:

(1) Victims of serious human rights violations, victims of criminal acts of terrorism, victims of criminal acts of trafficking in persons, victims of torture, victims of crimes of sexual violence, and victims of serious torture, apart from having the right to the rights referred to in article 5, are also is entitled to get:

- a. Medical assistance, and
- b. Psychosocial and psychological rehabilitation assistance.

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

- a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
- b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO
- c. Is rape by spouse or intimate partner an aggravating circumstance?

Bangladesh

Yes, the law foresees two aggravating circumstances when sentencing rape cases in Bangladesh: (1) when death occurs as a consequence of the rape of the victim, and (2) if the rape happens within police custody.

- a. No, rape by more than one perpetrator is not an aggravating circumstance.
- b. No, rape of a particularly vulnerable individual is not an aggravating circumstance, nor is the imbalance of power between the alleged perpetrator and the victim.
- c. No, rape by a spouse or intimate partner is not an aggravating circumstance.

Indonesia

Yes, Article 81 paragraphs 3, 4, 5, 6, and 7 of Government Regulation No.1 of 2016 (Government Regulation in lieu of law) provide for aggravating circumstances in the case of child rape. Those paragraphs read as follows:

(3) In the event that the criminal offense as referred to in paragraph (1) is committed by parents, guardians, people who are related to the family, child caregivers, educators, educational personnel, officials who handle child protection, or it is committed by more than one person collectively, the penalty is added by 1/3 (one third) of the criminal threat as referred to in paragraph (1).

(4) Apart from the perpetrator as referred to in paragraph (3), an additional 1/3 (one third) of the criminal penalty is also imposed on the perpetrator who has been convicted of committing the criminal act as referred to in Article 76D.

(5) In the event that the criminal act as referred to in Article 76D results in more than 1 (one) victim, resulting in serious injuries, mental disorders, infectious diseases, impaired or loss of reproductive function, and / or the victim dies, the perpetrator is sentenced to death, life, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years.

(6) Apart from being subject to the criminal sanctions as referred to in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the perpetrator may be subject to additional punishment in the form of announcing the identity of the perpetrator.

(7) The perpetrators as intended in paragraphs (4) and (5) may be subject to actions in the form of chemical castration and installation of electronic detectors.

- a. No, rape by more than one perpetrator is not an aggravating circumstance.
- b. Yes, rape of a particularly vulnerable individual can be an aggravating circumstance.
- c. No, rape by a spouse or intimate partner is not an aggravating circumstance.

9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO
If yes, please specify.

Indonesia

Yes, Article 81 paragraph 9 of Government Regulation No.1 of 2016 (Government Regulation in lieu of law) provides that no additional punishment is given and action is excluded for the child perpetrator.

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

Bangladesh

No, reconciliation between the victim and the perpetrator is not allowed as part of a legal response.

a. There is no reconciliation process in practice. However, there is a practice of marrying off the victim⁹ or of the victim and the perpetrator mutually agreeing to get married.¹⁰

Indonesia

No, reconciliation between the victim and the perpetrator is not allowed as part of a legal response.

a. No, as best as can be discerned, reconciliation is not permitted in practice.

11. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO

Bangladesh

No, there are no rape shield provisions. In fact, Section 155(4) of the Evidence Act 1872 allows defense lawyers to enter evidence showing that the victim was of "generally immoral character" in rape cases.¹¹

Indonesia

Yes, Article 5 of Law No. 31 of 2014 concerning the protection of witnesses and victims provides some protections, which have been viewed as akin to rape shield provisions. Victims are afforded the protection of anonymity and of freedom from entangled questions.

⁹ See <https://www.dhakatribune.com/bangladesh/nation/2020/11/11/rapist-gets-bail-upon-agreeing-to-marry-victim>.

¹⁰ See <https://bdnews24.com/bangladesh/2020/10/23/bangladesh-court-permits-jailed-rape-convict-and-victim-to-marry>; <https://www.dhakatribune.com/bangladesh/court/2020/11/19/high-court-permits-jailed-rape-convict-to-marry-survivor>.

¹¹ See <http://bdlaws.minlaw.gov.bd/act-24/section-5271.html>.

12. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

- a. if the perpetrator marries the victim of rape? YES/NO
- b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

Bangladesh

No, there is no provision that allows for the non-prosecution of the perpetrator.

Indonesia

No, there is no provision that allows for the non-prosecution of the perpetrator.

13. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO

Bangladesh

Yes, rape reported to the police may be prosecuted ex officio. Section 21 of The Prevention of Oppression Against Woman and Children Act 2000

Indonesia

No, rape reported to the police is not prosecuted ex officio.

14. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

Bangladesh

Yes, rape reported to the police may be prosecuted ex parte. Section 21 of The Prevention of Oppression Against Woman and Children Act 2000 provides for a trial to proceed in the absence of the accused.

Indonesia

Yes, rape reported to the police may be prosecuted ex parte.

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO

Bangladesh

No, there is no provision for a plea bargain or “friendly settlement” in cases of rape of women. Rape is a non-compoundable offence. However, courts have litigants time to settle the matter out of court.¹²

¹² See <https://www.blast.org.bd/content/publications/BLAST-RLR-Conference-Report.pdf>, p. 15.

Indonesia

No, there is no provision for a plea bargain or “friendly settlement” in cases of rape of women.

16. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?
YES/NO

Bangladesh

No, there is no provision for a plea bargain or “friendly settlement” in cases of rape of children.

Indonesia

No, there is no provision for a plea bargain or “friendly settlement” in cases of rape of children.

17. Please provide information on the statute of limitations for prosecuting rape.

Bangladesh

There is no time limitation or bar to file or report a case of rape.

Indonesia

There is no statute of limitations for rape cases.

18. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO

Bangladesh

No, there is no specific provision stating that after becoming an adult, a child victim can report. However, as there is no time limitation or bar to file or report a case of rape, a child after reaching adulthood can report the rape.

Indonesia

No, there is no specific provision to this effect.

19. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.

Indonesia

Yes, there are mandatory requirements set forth in the Criminal Procedure Code. The requirements include material evidence and expert information (e.g. visum et repertum). Generally, it is understood that a medical exam is required for the prosecution of rape.¹³

¹³ See <https://www.voanews.com/east-asia-pacific/indonesian-campus-rape-victims-seek-justice>.

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

Bangladesh

Yes, Section 14 of The Prevention of Oppression Against Women and Children Act, 2000 seeks to prevent re-victimization by placing restrictions on the news media. It states as follows:

Section 14. Prohibition on publishing acquaintance of a woman or a child oppressed, in new media:

- i. Any news, information or name & address or any other information regarding any offence, under this Act, committed or any legal proceeding thereof, of which a woman or a child is the victim, shall be published or presented as such that the acquaintance of the woman or the child shall be undisclosed.
- ii. In case, where the provision under sub-section (i) is infringed, the person or persons liable for such infringement, each shall be punished with imprisonment for either description, which may extend to two years or with fine not exceeding one lac taka or both.

Indonesia

No, there are no provisions directly aimed at avoiding re-victimization. However, Article 5 of Law No. 31 of 2014 does provide some protections for victims which may avoid re-victimization.

21. Is rape criminalized as a war crime or crime against humanity? YES/NO

Bangladesh

Yes, Article 3(2)(a) of the International Crimes (Tribunals) Act, 1973 criminalizes rape as a crime against humanity.¹⁴ It relevant subsection states as follows:

- (a) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;

Myanmar

No, rape is not criminalized as a war crime or a crime against humanity.

Indonesia

Yes, it is criminalized as a war crime or crime against humanity.

¹⁴ ACT NO. XIX OF 1973, the International Crimes (Tribunals) Act, 1973.

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?
YES/NO

Bangladesh

No, there is no statute of limitations for prosecuting rape in war or in conflict contexts.

Indonesia

No, there is no statute of limitations for prosecuting rape in war or in conflict contexts.

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

Bangladesh

No, there are no explicit provisions excluding a statute of limitations for rape committed during war and armed conflict.

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

Bangladesh

Yes, the Rome Statute was ratified on 23 March 2010.¹⁵

Myanmar

No, the Rome Statute has not been ratified (nor has it even been signed).¹⁶

Indonesia

No, the Rome Statute has not been ratified (nor has it even been signed).¹⁷

Timor-Leste

Yes, the Rome Statute was ratified on 6 September 2002.¹⁸

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

Indonesia

Based on the annual records of the National Commission on Violence Against Women (Komnas Perempuan Indonesia), over the past three years violence against women has increased from 348,447 in 2017 to 406,178 in 2018 and 431,471 in 2019. In terms of rape, in 2018, there were

¹⁵ See https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/bangladesh.aspx.

¹⁶ See https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/asian%20states.aspx.

¹⁷ See https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/asian%20states.aspx.

¹⁸ See https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/timor%20leste.aspx.

818 rape in the personal realm, 195 cases of marital rape, and 786 cases in the public domain. Subsequently, in 2019, there were 792 cases of rape in the personal realm, 100 cases of marital rape, and 715 in the public domain.

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

Bangladesh

The barriers faced by Rohingya refugees in Bangladesh are unique and significant and thus, warrant explicit attention. The reflections below stem from AJAR's experience working with Rohingya refugees in the camps and on the Rohingya crisis in Bangladesh.

Situation of Rohingya survivors in Bangladesh

- Accounts from various mechanisms' reports, health care professionals and human rights organizations indicate that there was widespread sexual violence committed by the Tatmadaw and Myanmar security forces against the Rohingya during the 'clearance operations' in 2017 and the previous conflicts. SGBV remains a significant problem facing vulnerable groups including women and children in the camps in Bangladesh.
- Many women, and also men, have post-traumatic stress disorder, anxiety and depression as well as other physical health concerns from sexual violence. Many have recounted experiences of gang rape, sexual humiliation, SGBV, and other violent acts including beating, shooting, and killing.
- The Gender-Based Violence (GBV) Sub Sector coordination structure in Cox's Bazar was established in May 2017 and was reinforced and expanded to respond to the needs of the massive influx of the Rohingya refugees in Bangladesh in August 2017.
- The challenges for outreach for sexually traumatized women are great. In this deeply traditional Muslim society, Rohingya women stay mostly indoors. In addition, there has been continued sexual abuse of both women and children within the refugee camps. Additionally, there continues to be limited reproductive health care in the camps.

Barriers

The major barrier to the prosecution of rape of the Rohingya women and girls is that the alleged military perpetrators remain in Myanmar and the Myanmar government continues to deny the alleged crimes. Moreover, the Myanmar government has demonstrated a reluctance to investigate and prosecute crimes committed against the Rohingya population. Although there are now international and foreign justice mechanisms seeking to advance accountability, they require ongoing support and further strengthening to ensure prosecution of the perpetrators.

Another obstacle to the reporting, investigating, and prosecuting of rape suffered by Rohingya women is the lack of testimonial and physical evidence. Social and cultural stigma prevents many women from coming forward to discuss the sexual violence they have suffered. Even those who have disclosed the rape or other sexual violence they suffered may not want to give a formal

statement or testify in court. In addition, most women and girls who suffered SGBV in relation to the “clearance operations” in Myanmar did not have the ability to seek medical attention or receive medical testing following the violation. As a result, in most instances, there is a lack of physical evidence.

Rohingya rape victims may also worry that they will not receive adequate procedural protection during the prosecution of the perpetrators. These victims have already suffered severe trauma not only as a result of the sexual violence they suffered but as a result of their forced flight to Bangladesh. The reporting and prosecution of their rape may retraumatize them unless they receive proper care and protection during the investigation and prosecution of the perpetrators.

Notably, marital rape and domestic violence remain significant issues within the camp. Barriers already noted above, particularly the social and cultural stigma faced by women who speak out, contributes to the ongoing silencing of these SGBV victims as well.

Recommendations

- Continue to call on the Myanmar government to launch immediate investigations of grave human rights violations, including SGBV against the Rohingya perpetrated by the Tatmadaw and Myanmar security forces, and to hold those responsible accountable for the atrocities they have committed.
- Call on the international community to provide greater support to the government of Bangladesh and its partners in Cox’s Bazar to ensure that trauma-informed, survivor-centred treatment and support is accessible to survivors as they try to rebuild their lives.
- Call on humanitarian agencies, donors, and local service providers to help strengthen access to survivor-centred care for victims of sexual violence, including long-term access to psychosocial and mental health support for all Rohingya refugees.
- Call on the international community, the government of Bangladesh, humanitarian agencies, donors, and local service providers to promote greater access to justice and legal support for survivors of sexual violence.
- Call on the international community to continue to support the various justice mechanisms, including the IIMM and ICC, to look into the grave abuses inflicted on the Rohingya and to include SGBV as a crime.

Myanmar

Based on its extensive work with female survivors of conflict-related violence and its knowledge of the Myanmar context, AJAR offers additional reflections on the barriers to reporting, prosecution, and accountability below.

Impunity for Crimes Committed by Security Forces

The responsibility to prosecute and judge crimes of sexual violence lies on the national justice system, including the civilian criminal courts and the military courts, known as courts martial.

In Myanmar, sexual and gender-based violence crimes are very rarely prosecuted, especially when committed by members of the security forces like the military. The enduring lack of

accountability for such human rights violations in Myanmar has been widely documented over time by local and international civil society groups, as well as by various United Nations bodies.

Interference by the military remains the main obstacle to justice. Police are not performing their functions according to the law and that judges are corrupt and under the influence of the military. Other obstacles include lawyers' and civil society organizations' lack of resources and support for these cases, as well as challenges in getting witnesses and strong evidence.

Myanmar's legal and institutional framework means that the military and police have full control over the investigation and prosecution of crimes committed by their personnel.

The 2008 Constitution gives the military the right to independently administer all affairs of the armed forces,¹⁹ and establishes permanent military tribunals (known formally as courts-martial and informally as military courts).²⁰ The Commander-in-Chief has ultimate authority over the military tribunals, and there is no right of appeal to the Supreme Court or other civilian body.²¹ The 1959 Defense Services Act stipulates that soldiers who commit crimes of murder, homicide, and rape should be tried in a civilian criminal court rather than a court-martial, unless they were "on active service".²² Although there are instances where soldiers have been transferred to civilian courts, it remains very rare. As the Commander-in-Chief retains ultimate power according to the Constitution (which overrides other laws), the competence to transfer cases remains completely under military power, with no oversight by the civilian justice system.

With regard to the police, the 1995 Myanmar Police Force Maintenance of Discipline Law provides for special police courts to prosecute offenses committed by police officers, and it is generally understood that human rights violations by police officers are to be prosecuted under those rules rather than under civilian criminal law.²³

Prosecutions and convictions in military and police courts are extremely rare, and punishment is often weak and not adequate in comparison to the seriousness of the crimes. Even when cases are being handled within the civilian justice system, military interference at all levels makes it extremely difficult for politically sensitive cases to move forward.

Official denial of sexual violence committed by security forces against the Rohingya

Generally, the Myanmar government acknowledges that some crimes may have been committed by individual soldiers during the course of so-called "clearance operations" in Rakhine State. However, despite overwhelming evidence to the contrary, the government has always ardently dismissed allegations of sexual violence against the Rohingya.

¹⁹ Article 20(b).

²⁰ Articles 293 and 319.

²¹ Article 343(b).

²² Section 72.

²³ For more information, see the analysis in: International Commission of Jurists, *Achieving Justice for Gross Human Rights Violations in Myanmar, Baseline Study (2018)*, p.12, and Asian Legal Resource Centre, *Written statement to the UN Human Rights Council, UN Doc A/HRC/29/NGO/44 (2015)*, para 3.

In February 2019, in its submission to the Committee on the Elimination of Discrimination against Women (CEDAW Committee), the government wrote that “[d]espite 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”. They said that “there has been no evidence and sufficient grounds to convict anyone. Actions cannot be based on narratives and rumours of unreliable sources.”

At the hearings before the International Court of Justice (ICJ) in December 2019, the Myanmar Team led by Daw Aung San Suu Kyi ignored all evidence and allegations of sexual violence in their presentations. One of The Gambia’s Counsel, Phillipe Sands, famously denounced this attitude by Myanmar, and in particular, its agent, Daw Aung Sang Suu Kyi, by stating “Madame Agent, your silence says far more than your words”.

Since 2012, the Myanmar government has established more than 8 commissions or bodies in relation to the events in Rakhine State. The latest is the Independent Commission of Enquiry (ICOE) which was set up in July 2018, with the mandate to “investigate the allegations of human rights violations and related issues, following the terrorist attacks by ARSA”. The ICOE issued its final report in January 2020, just before the ICJ issued its decision on the provisional measures in *The Gambia v. Myanmar*.

The International Fact-Finding Mission on Myanmar (FFM) and human rights organizations and experts have been highly critical of the ICOE. Serious concerns over its independence and impartiality have been highlighted, including statements from the Government and the ICOE members that show bias and conflicts of interest.

In addition, it has been pointed out that the ICOE mandate itself is limited and problematic, and that it used an opaque and questionable methodology. Finally, its findings contradict reporting made by U.N. bodies and civil society groups, which questions its reliability. So far, only the Executive Summary and some annexes of the report have been released publicly, while the report itself remains confidential.

Regarding sexual and gender-based violence, the ICOE’s Executive Summary unconditionally rejects allegations of sexual violence, in particular gang rape. It states: “[t]here were no credible statements on allegations of gang rape committed by Myanmar’s security forces. Although some interviewees mentioned rape cases, these were all second-hand information heard from someone else.”

Situation of women survivors in Myanmar

AJAR’s report “*Speaking Truth for Peace*” offers a detailed discussion of the situation of women survivors in Myanmar.²⁴ It underscores that conflict and repression perpetuate violence and human rights violations (HRVs) against women in Myanmar. Ongoing conflicts continue to have

²⁴ See <http://asia-ajar.org/wp-content/uploads/2018/03/Speaking-Truth-to-Peace-Report-lowres.pdf>.

a devastating impact on women. Unaddressed past violence/HRVs continue to impact women in post-conflict settings, and ongoing repression and land confiscation lead to violence/HRVs against women, even in non-conflict affected areas.

In addition, the report shines a light on the day-to-day experiences of women survivors. Women survivors struggle for their livelihoods as a result of armed conflict and repression. Women survivors need assistance, support and access to basic services to address the consequences of violence. Moreover, women survivors also lack access to justice and reparations.

Recommendations

- Call on the Myanmar government to make the political and legal reforms needed to end impunity for sexual violence by State actors, including by calling on the government to engage in the following specific acts and initiatives:
 - Undertake necessary political and legal reforms to ensure accountability and the rule of law, including putting the military and police forces under full civilian control through a new federal constitution.
 - End military impunity for sexual violence and ensure that military personnel are held accountable.
 - Proactively encourage and organize the transfer to civilian courts of cases involving abuses by members of security forces, in particular in cases of sexual violence.
 - End military interference in the work of the police and justice actors.
 - Enact or amend relevant laws to provide a comprehensive legal framework to answer to acts of gender-based violence. To this end, adopt the long-delayed Violence Against Women Law, including specific provisions on gender-based violence in conflict, and ensure full compliance with CEDAW and other international human rights standards.
 - Review and immediately repeal all laws, provisions and regulations that discriminate against women
- Encourage the Myanmar government, the international community, and civil society to improve access to justice for women victims of sexual violence, including by calling on those actors to carry out the following acts and initiatives:
 - Facilitate access to justice for women victims, by providing protection for victims and witnesses, as well as effective gender-sensitive and accessible legal aid schemes.
 - Ensure that the support provided for access to justice in Burma by international donors specifically reaches community-based civil society groups who are doing risky, politically sensitive work and assisting victims of sexual violence committed by State actors.
 - Support the design, set up, and implementation of community-based paralegal programs in ethnic areas, in particular conflict-affected areas and remote rural areas, specifically with the aim of providing paralegal assistance to victims of human rights violations, in particular women victims of sexual violence.

- Enforce mechanisms to guarantee safe access to justice for survivors of gender-based violence committed by state actors by ensuring that women are protected from threats, harassment, retaliation, and other forms of harm and intimidation before, during, and after legal proceedings.
- Develop and implement gender sensitivity training for justice personnel and public officials, in particular law-enforcement personnel and health-service providers, in order to ensure that they are sensitized to all forms of violence against women and can provide adequate gender-sensitive support to victims.
- Develop and implement standardized good practices in medical responses to gender-based violence
- Call on the Myanmar government, the international community, and civil society to advance comprehensive approaches to combatting SGBV in Myanmar, including by calling those actors to carry out the following acts and initiatives:
 - Recognize survivors' right to reparations and establish programs for women survivors, in particular multi-sectoral services that include healthcare, trauma support, reproductive healthcare, and assistance for ageing populations, as well as access to capital through appropriate schemes for job creation, skills training, and microfinance.
 - Support women survivors' networks and the development of linkages between them, including by inviting them to participate in consultations and meetings on peace, development, human rights, access to justice, and other relevant forums.
 - Take measures to support changing mindsets and attitudes in favor of greater understanding of SGBV and the need to support survivors.
 - Utilize complementary and alternative, victim-centered measures that can be used alongside criminal laws. Examples include participatory action research tools, such as those utilized by AJAR that promote psychosocial healing while supporting empowerment and creating a space for community-led initiatives, and community-based healing centers, such as the center recently created in the Sama region of Myanmar to support survivors of conflict-related violence where survivors gather, learn new livelihood skills, communicate about their past experiences and their future hopes and goals, and build a community upon which they can continue to rely.

Indonesia

One of the most significant barriers to the prosecution of rape and to the accountability of perpetrators is that there is no law comprehensively covering sexual violence. There is a draft law on the elimination of sexual violence, which was first drafted in 2012, but until now, it has not been passed by the state. It has not passed because of the nine factions in Parliament, only five support entering the 2021 national legislation program process, which is necessary for the law to receive consideration and a vote.