

RAPE AS INTERNATIONAL CRIME

Making case for Rohingya women

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A Rohingya refugee man stands before Kutupalong camp at Ukha in Cox's Bazar on August 13. Nearly 700,000 Rohingya fled Myanmar's Rakhine state in 2017 to escape a violent military crackdown. — Agence France-Presse/Chandan Khanna

Myanmar needs to be taken to task now for crimes against humanity and acts of genocide perpetrated against the Rohingya population and must pay appropriate compensation for all the harm and loss incurred by the latter, including for the crime of rape and other offences of a sexual nature.

THE Rohingya people have been thrust into the international spotlight for the most inhumane reasons. Despite their long history in Myanmar, today they have no nationality, no home, no security and for many, no family. Reports, statements and news have shown the world that when they were living in the Rakhain state, they were looked down upon as inferior by the Buddhist majority population and had no legal rights, citizenship, no right to practise their own religion (Islam) in peace, little or no chance for education, were deprived from proper and effective medical facilities and treatment and lived in the poor townships. In 1994, a law was passed where severe marriage restrictions were imposed on the Rohingya community requiring long and complicated procedures and in 2005, a law was passed that limited the birth rate among Rohingya Muslims to two children a family. This is, indeed, selective repression. In a nutshell, the Rohingyas were, and still are, unwanted in Myanmar.

Living in Bangladesh, the fact that we are host to the largest refugee camp in the world is an everyday reality. However, it is those who are working closely with and for the Rohingya refugees who are affected the most by what they see and hear, as they treat wounded, impregnated, distressed, scared and physically and mentally fragile Rohingya refugees. What these people have experience can only be described as crimes against the human race — as crimes against humanity.

However, it is not only the Rohingya people who fled for their lives and entered Bangladesh, which we need to think about. We also need to think about the welfare of the next generation of refugees who will be born or have been born in the camps — many to mothers who were raped by Burmese soldiers and their cohorts in crime — and about the mothers who did not ask to play such a role. They were violated as a part of a systematic move to wipe out the Rohingya population from Myanmar. Myanmar must face the International Criminal Court. It must be charged with crimes against humanity, including for rape, forced impregnation and sexual abuse.

Rape as a crime against humanity

THE Rome Statue of the International Criminal Court recognises four crimes that it considers ‘the most serious crimes of concern to the international community as a whole’. These are the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Article 7 of the Rome Statute defines 11 offences that are recognised as crimes against humanity. These, briefly, include murder, extermination, deportation or forcible transfer of population, torture, rape, sexual slavery, forced pregnancy or other forms of sexual violation, enforced disappearances and other inhumane acts that intentionally cause great suffering or serious injury to mental or physical health. Anyone who has been closely following the news and reports of atrocities perpetrated on the Rohingya people will realise that they have suffered all of these at the hands of the Myanmar Army and its supporters-in-arms.

In order for the above crimes to count as ‘crimes against humanity’, they (any of them) must be committed as

part of a widespread or systematic attack directed against any civilian population. The Rohingya community as a whole have come under such violence on a systematic basis due to a very specific agenda of the Myanmar government — through its laws, policies and practices of persecution and exclusion.

Not only are the Rohingya people suffering what amounts to crimes against humanity, what is being and has been done to them also amounts to the crime of genocide, as per Article 6 of the Rome Statute. Under this, genocide is defined as acts of killing, causing serious bodily or mental harm, imposing measures to prevent births or forcibly transferring children, in order to or with the intention of destroying in whole or in part, a national, ethnic, racial or religious group. The Rohingya people have been continuously targeted and suppressed, killed and forced under birth control policies, denied nationality and other citizen-related rights by the Myanmar government. This is a very good example of what ingredients are required to create a genocide. The Rome Statute, in Article 7, recognises ‘rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any form of sexual violence or comparable gravity’ as crimes against humanity if such acts are part of a widespread or systematic attack directed against any civilian population.

Given the social stigma attached to rape, there is little hope that an exact number of Rohingya females who were raped by Myanmar soldiers and/or their supporters in crime can be made. However, medical volunteers, UNICEF field workers and non-governmental organisations working as healthcare providers are trying their best to assist as many victim-survivors as possible. UNICEF is providing healthcare for pregnant girls and women inside the camps but there have also been reports of attempts at self-induced abortions by those too shy or ashamed to seek proper assistance and support. According to a May 17, 2018 report in the South China Morning Post an estimated 48,000 women will give birth in the camps in 2018, many of them victims of rape in the hands of Burmese soldiers. Many of them are not yet adults — some are as young as 12. The report further states that the organisation MSF alone treated 311 rape victims between the ages of 9 and 50 between August 2017 and March 2018. Another report published by the New Straits Times quotes a report released by Reuters stating that ‘around 60 babies a day are being born in vast refugee camps in Bangladesh.’

Several non-governmental organisations, both national and international, are closely monitoring the human rights situation in the refugee camps and collecting testimonies from the refugees regarding their background, where they are from and the atrocities they suffered. Women in the camps tell of their young daughters being dragged away by Burmese soldiers, either never to be seen again or to be found abandoned in fields, dead with their clothes in disarray. They tell of the horrors of being gang-raped by the soldiers, of their children forced to be witness to their rape. They tell of the other physical injuries they suffered — stabs, bodily wounds, burns. Even girls below the age of 12 were not spared.

On February 3, 2017, the Office of the High Commissioner for Human Rights released a flash report following its mission to Bangladesh and its visit to the refugee camps. The report contains interviews of Rohingya refugees who fled Myanmar in October 2016 and after. Fifty-two per cent of the 101 women interviewed by

the mission reported surviving rape or other forms of sexual violence. The women identified the perpetrators as soldiers, in uniform. The report adds that a majority of the survivors interviewed were raped by more than one soldier/rapist. They were victims of gang or multiple rape. Pregnant women were not spared.

Incidents of rape and gang-rape by men who have been identified as soldiers of the Myanmar army have been reported by several international organisations carrying out fact-finding missions in the refugee camps of Cox's Bazaar. Evidence has been found by the medical services and camps set up for the welfare of the female refugees. Evidence has been found by interviewing male refugees. Women in South Asia — especially from conservative communities where rape is a taboo issue — will not voluntarily lie about being raped, let alone being gang-raped.

Rape as an act of genocide

ARTICLE 6 of the Rome Statute defines 'genocide' as 'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.'

The Rohingyas are obviously a specific racial and religious group from the point of view of the Myanmar majority. They are being killed, suffering serious bodily and mental harm, being subjected to conditions of life that are aimed at bringing about this group's physical destruction and there are family planning policies imposed by the Myanmar government to limit the number of children the Rohingyas can have. Can we clearly say that the Rohingya people are fleeing genocide? I think so. Furthermore, if one of the *actus reus* for the crime of genocide is the commission of 'serious bodily or mental harm', then rape and gang rape most definitely are a component of genocide.

In 1971, Bangladeshi women were raped by Pakistani soldiers. A 1994 report by Medecins sans Frontières recalls rape as a weapon in the 1990s in the war in the former Yugoslavia. The report says that in Bosnia, systematic rape was used as part of the strategy of ethnic cleansing and that women were raped so they could give birth to Serbian babies. In the war between the Hutu and Tutsi in Rwanda in 1994 between 250,000 and half a million women were raped. The people of former East Pakistan can be considered a 'national group' while the internal war in the former Yugoslavia was targeted at a religious group and the war in Rwanda was between ethnic groups. All such groups fall under the targets of 'genocide' as defined in the Genocide Convention of 1948, which was adopted by the Rome Statute. And now, the Rohingyas are part of this list and their women have suffered the serious bodily and mental harm of rape and gang rape in the hands of Myanmar soldiers.

Rape is a crime against humanity and an act of genocide. Along with the evidence gathered regarding incidents

of causing deaths due to burning, shooting, stabbing, killing of children, enforced disappearance, physical and psychological torture, ethnic and religious discrimination, destruction of food and food sources, arbitrary arrest and detention and other violations to human rights perpetrated on the people of the Rohingya community, it is high time the UN Security Council took stringent measures against Myanmar and referred it to investigation by the International Criminal Court.

As for children who are being born to the survivors of the rape, they are born with the same rights to life, dignity and security that every human being is born with. It is hoped that they find guardians and protectors who will ensure that their human rights are respected and that they thrive. They are not responsible for the atrocities that created them.

Human rights are universal and do not come with a particular religion, gender or class. Myanmar needs to be taken to task now for crimes against humanity and acts of genocide perpetrated against the Rohingya population and must pay appropriate compensation for all the harm and loss incurred by the latter, including for the crime of rape and other offences of a sexual nature.