CENTER FOR REPRODUCTIVE RIGHTS

May 27, 2018

Committee on the Elimination of Discrimination Against Women
Human Rights Treaties Division, OHCHR
Palais Wilson – 52, rue des Paquis
CH – 1201 Geneva, Switzerland

Re: Supplementary information on situation of Rohingya women and girls from northern Rakhine state of Myanmar for review by the Committee on Elimination of Discrimination against Women.

The Center for Reproductive Rights (the Center), a global legal advocacy organization with offices in Nepal, Colombia, Kenya, Switzerland and the United States has prepared this letter to assist the Committee on the Elimination of Discrimination Against Women (the Committee) in its exceptional review of the situation of Rohingya women and girls from the northern Rakhine state of Myanmar in relation to alleged instances of violence by the security forces of the Government of Myanmar. This submission will provide supplementary information regarding the impact of the violence on the sexual and reproductive health and rights of Rohingya women and girls impacted by the conflict the Rakhine state.

Brief Overview of Sexual and Reproductive Rights and Health in Myanmar

Women's health indicators in Myanmar are amongst the worst in the region, and reproductive health care for Rohingya women is particularly dismal despite an acute need for such services in the wake of the ongoing crisis in Rakhine. In Myanmar, the maternal mortality ratio remains high at 282 deaths per 100,000 live births, and it is estimated that one in five deaths among young women is a maternal death.[1] Forty percent of deliveries take place without the assistance of a skilled birth attendant, and the contraceptive prevalence rate for married women is low at only 51%.[2] Abortion is illegal, except when pregnancy threatens the life of the pregnant woman, and both women and health practitioners are liable to fines and imprisonment of up to 10 years for illegal abortions.[3] Reproductive health indicators of women living in conflict areas in Myanmar are even worse than that of women in Myanmar as a whole, with maternal mortality ratios estimated to be much higher than the national figure at 320 deaths per 100,000 live births.[4] Studies reflect that in Rakhine, an estimated 30 percent of births are attended by a skilled health practitioner and only 19 percent occur in a health facility (compared with the national averages of 60 per cent and 37 per cent, respectively).[5] Even before military operation by the Myanmar security forces against the Rohingya population, many Rohingya women in the Rakhine state had been displaced by the ongoing conflict and communal violence and were residing in camps with very limited access to sexual and reproductive health services.[6] The barriers faced by Rohingyas in accessing healthcare is compounded by systematic discrimination by the Government of Myanmar against the Rohingya population.

Rohingyas were denied citizenship of Myanmar under a law passed in 1982, and they have been steadily persecuted since then through communal violence and military crackdowns.[7]

Sexual and Reproductive Rights Violations Resulting from the Military Operation against the Rohingya by the Government of Myanmar

Since August 25, 2017, Myanmar security forces have committed widespread sexual violence against Rohingya Muslims in Myanmar's Rakhine state as part of its ethnic cleansing campaign.[8] Killings, rapes, arbitrary arrests, and mass arsons of homes by Myanmar security forces have caused an estimated 750,000 Rohingya refugees to cross the border into Cox's Bazar, Bangladesh. Approximately 60% of these new arrivals are women and girls.[9] The Secretary General's special representative, Pramila Patten visited Cox's Bazar in late 2017 and received accounts of sexual violence in Rakhine, including rape, gang rape, forced nudity and abduction from almost every Rohingya woman and girl she interviewed in Cox's Bazar.[10] "While it is difficult to estimate the number of rapes that have occurred, humanitarian agencies in Bangladesh refugee camps report receiving dozens and sometimes hundreds of cases."[11] Humanitarian organizations have reported providing services to 2,756 survivors of sexual and gender-based violence (SGBV), though this figure is likely low due to stigma and other barriers of reporting SGBV.[12] Many of these rapes have resulted in pregnancies.[13]

Rohingya women and girls in Myanmar. Despite the acute health risks faced by Rohingya women and girls due to the widespread threat and use of sexual violence against women and girls in Rakhine, recent reporting from the state reveals that the Myanmar government is denying medical care and blocking humanitarian aid to the remaining Rohingya population, including sexual and reproductive health care.[14] According to the UN Office for the Coordination of Humanitarian Affairs, 500,000 Rohingyas remain in Myanmar and face severe discrimination.[15] Approximately 120,000 Rohingyas have been confined to camps in the Sittwe area of Myanmar.[16] Living conditions in these camps are harsh, and women are at risk of gender based violence and abuse.[17] While UNFPA supported clinics provide basic health services in the camps, health referrals are extremely difficult due to the restrictions on movement for the Rohingya population.[18] Even prior to the military operation, Rohingyas residing in the Rakhine state faced serious barriers accessing healthcare and health indicators for the Rohingya population were substantially worse than that of the majority population.[19] Ongoing communal conflict and military crackdown of Rohingyas in the Rakhine state led to the confinement of large numbers of Rohingyas in camps for internally displaced persons, where women report facing discrimination in accessing health services.[20]

Displaced Rohingya women and girls. Rohingya women and girls who were displaced by the violence and are now in refugee camps in Bangladesh also continue to face grave risks to their sexual and reproductive health both from pregnancies resulting from sexual violence in Rakhine as well as conditions in the camps themselves.[21] Given the mass migration from Myanmar, efforts to address human rights violations experienced by Rohingya women and girls must take a transnational approach to ensure that reproductive rights continue to be respected, protected, and fulfilled not just at the site of conflict but also in refugee settings. Rohingya women

and girls in refugee camps in Bangladesh are in dire need of sexual and reproductive health services. Estimates suggest that around twenty-four thousand pregnant and lactating Rohingya women require maternal health-care support in health-care facilities.[22] Displaced Rohingya women have limited access to crucial sexual and reproductive health services.[23] Life-saving emergency obstetric care is not available 24/7 for a majority of residents and access to transportation to health facilities is limited.[24] As a result, Rohingya women face an acute risk of maternal mortality and morbidity. Access to voluntary contraception in refugee camps is limited as only a few health facilities are fully equipped to provide a full range of contraceptives.[25] Policy barriers also prevent health personnel from providing a complete range of contraceptives.[26] For example, refugees are required to provide proof of permanent address to access long-acting, reversible contraceptive methods.[27] Abortion is illegal in Bangladesh except where undertaken to save the life of a pregnant woman;[28] however, the law does provide for "menstrual regulation," which can be performed within twelve weeks[29] of a woman's last menstruation without confirmation of pregnancy.[30] Unfortunately, even menstrual regulation services are available in only ten facilities throughout the camp.[31]

Many of the women and girls who arrived in Bangladesh after being raped by the Myanmar Armed Forces in or around August 2017 are due to give birth in the next few weeks, and there are concerns that many women will not be able to access medical care to give birth safely.[32] These women and girls urgently require access to sexual and reproductive health and psychological counselling services.[33]

Rohingya women and girls in camps in Bangladesh also remain at risk for gender-based violence, including child, early, and forced marriage and trafficking.[34] Overcrowded camps and limited privacy increase security risks for women and girls.[35] Moreover, some Rohingya families have forced girls as young as 11 to marry in hopes of securing more food for themselves and the rest of their families.[36] Child marriages such as these are linked to higher risks of forced initiation into sex and ongoing sexual violence,[37] as well as to early pregnancies which are linked to high rates of maternal mortality and morbidity.[38] However, post-rape care, which includes emergency contraception, safe abortion, and counseling services, remains inadequate in the refugee camps,[39] with 47 percent of settlement areas still lacking basic clinical management services for survivors of rape and other forms of sexual and reproductive health care.[40]

The risks due to unwanted pregnancies and severe shortage of reproductive health services will be heightened in the upcoming rain and monsoon season.[41] Floods and landslides will make it even more challenging for humanitarian groups to provide life-saving obstetric care services to women and girls who will be exposed to greater risks of disease in addition to maternal mortality and morbidity.

Although Rohingya refugees have a right to return to Myanmar and Bangladesh is making efforts to repatriate refugees, the security of the Rohingya population must be a priority in any proposed repatriation process.[42] The Government of Myanmar must guarantee that Rohingya women will not be subjected to further violence when they return to Rakhine state and they must not be deprived of crucial reproductive and sexual health services. Repatriation must not take place prior to guarantees by the

Government of Myanmar that it will respect and fulfill the sexual and reproductive health and rights of Rohingya women and girls.

Sexual and Reproductive Health and Rights of Rohingya Women under International Human Rights Law

The rights of Rohingya women and girls are protected by multiple and complementary bodies of international law, including international human rights law (IHRL), international humanitarian law (IHL), international criminal law, and refugee law. International legal and political bodies have affirmed that fundamental human rights obligations, including sexual and reproductive health and rights (SRHR), continue to apply even during situations of armed conflict.[43] In addition to human rights treaty bodies, the UN Security Council has passed several resolutions in the past 15 years relating to Women, Peace, and Security that touch on SRHR and has urged "United Nations entities and donors to provide non-discriminatory and comprehensive health services, including sexual and reproductive health" to survivors of sexual violence.[44] In addition to specific references to SRHR, these resolutions affirm the applicability of states' human rights obligations in situations of armed conflict.[45]

Access to sexual and reproductive health information and services is fundamental to an adequate humanitarian response to this crisis and to ensuring the rights of Rohingya women and girls under international law. Human rights treaty bodies have found that the denial of safe abortion care to survivors of rape in armed conflict violates the rights to health and privacy and could amount to a violation of the prohibition on ill-treatment.[46] Non-derogable minimum core obligations related to sexual and reproductive health require states to take steps to prevent unsafe abortion and to provide post-abortion care and counseling. They also require states to "repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine individual's or particular group's access to sexual and reproductive health facilities, services, goods and information."[47]

In conflict-affected settings, the CEDAW Committee has explicitly called on states to ensure access to "maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care . . . complications of delivery or other reproductive health complications, among others."[48] The Committee has interpreted the Convention to require "women seeking asylum and women refugees be granted, without discrimination, the right to . . . health care and other support, . . . appropriate to their particular needs as women."[49] In its recommendations to specific states, the CEDAW Committee has noted with concern the effects of armed conflict on SRHR and maternal mortality, in particular, calling on states affected by conflict to "accord priority to the provision of sexual and reproductive health services."[50]

These violations are exacerbated by and in turn reinforce gender-based inequalities and patterns of gender-based violence, further diminishing the capacity of women and girls to enjoy fundamental human rights, including sexual and reproductive rights. The CEDAW Committee has specifically called on states to safeguard refugees and internally displaced persons from child, early, and forced marriage and to provide

them with immediate access to medical services and to create accountability mechanisms for gender-based violence in all displacement settings.[51]

Ensuring adequate protection of the rights of Rohingya women and girls in the wake of violence in Rakhine will also require addressing violations of reproductive rights occurring in refugee camps outside of Myanmar. Treaty monitoring bodies have expressed concern regarding grave risks to sexual and reproductive health faced by Rohingya women and girls. The Committee on Economic Social and Cultural Rights, in its Concluding Observations on the initial report of Bangladesh, noted the lack of access for Rohingya refugees to "healthcare services, education and other basic services" outside refugee camps due to the absence of their legal status.[52] The Human Rights Committee expressed concern that Rohingya women and girls are exposed to "sexual and gender-based violence and domestic violence" in refugee camps in Bangladesh.[53] Similarly, in its report on the upcoming Universal Periodic Review of Bangladesh at Human Rights Council, OHCHR has noted that the United Nations High Commissioner for Refugees (UNHCR) was concerned about "increasing gender-based violence against unregistered Rohingya women and girls" and recommended that Bangladesh ensure that all refugee and stateless women and girls have "effective access to justice."[54] The stakeholders' submissions for the upcoming Universal Periodic Review also expressed concern regarding "limited access to health for many Rohingya women and girls living with HIV/AIDS."[55]

Suggested Recommendations

The lack of crucial sexual and reproductive health services constitutes widespread violations of the sexual and reproductive rights of Rohingya women and girls displaced as a result of conflict. The Center respectfully requests that the Committee consider making the following recommendations to the Government of Myanmar:

- Immediately stop the violence and persecution against Rohingyas, including Rohingya women and girls.
- Eliminate all forms of discrimination against the Rohingya population, including particularly in access to sexual and reproductive health services by Rohingya women and girls.
- Immediately investigate, prosecute and punish the perpetrators of violence against the Rohingya population, including sexual violence against women and girls and ensure the participation of Rohingya women and girls in any accountability process.
- Rehabilitate the victims of violence and armed conflict by creating safe and habitable conditions in the Rakhine state for Rohingyas and returning Rohingya refugees and ensure that women and girls subjected to sexual violence are provided required psycho-social and sexual and reproductive health services.
- Ensure the availability of sexual and reproductive health services for Rohingya women, including those internally displaced by ongoing conflict; sexual and reproductive health services include obstetric, prenatal, and post-natal care; contraceptive information and services, including emergency contraception; and safe abortion services for victims of rape and sexual violence and married girls.

- Ensure participation of Rohingya women and girls in the process of development and implementation of programs, including sexual and reproductive health services, and set up clear monitoring mechanisms to ensure access to and quality of services.
- Ensure the quality of services and adherence to standards, including local staff training and capacity building, supervision and mentoring.

It is further requested that, given the large number of Rohingya women and girls in refugee camps in Bangladesh, the Committee make the following recommendations to the Government of Bangladesh, relevant UN agencies, and humanitarian organizations to work together to:

- Ensure that Rohingya women and girls in refugee camps have access to quality sexual and reproductive health services including obstetric care, contraceptive information and services, including emergency contraception, counseling and safe abortion services for victims of rape and sexual violence and married girls in refugee camps.
- Ensure that the opinions of Rohingya women and girls in refugee camps are taken into account in the process of development and implementation of programs, including sexual and reproductive health services.
- Refrain from entering into a repatriation agreement with the Government of Myanmar prior to firm and plausible commitments by Myanmar that it will not commit further violence against Rohingya women and girls,and will guarantee them access to quality sexual and reproductive health and services.

If you would like more information or have any questions, please contact Sara Malkani of the Center for Reproductive Rights (smalkani@reprorights.org).

Respectfully submitted,

Center for Reproductive Rights

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