

HUMAN RIGHTS ANALYSIS



The right to reproductive choice

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THE reason for choosing reproductive rights is quite obvious. These rights are inherent to the dignity, autonomy and personhood of all women around the world. Yet they are the first to be sacrificed, whether in the name of religion, culture, nationalism, fundamentalism, tradition, population policies or family values." (Manisha Gupte, 'Reproductive Rights in East Central Europe: A Public Health Concern' in Alicia Ely Yamin (ed.)

Fixed gender roles are embedded in the interpretation of the Bangladeshi national philosophy. The man is the head of the household and the woman is wife, mother and upholder of social values. Traditionally, sexuality is not spoken openly about and sexual relations are matters reserved for married life. In reality however, the society is rapidly changing. The imbalance between the official position on sexuality and the reality on the ground has various unfortunate consequences. Educational information in schools on reproductive health is focused on biology, anatomy and the establishment of happy and prosperous families, not on sexuality and reproductive health.

Bangladesh is the world's most populated country with an estimated population growth rate of 1.566 per cent per year. The fertility rate has declined during the last 25 years, primarily due to massive family planning campaigns and programs. In 1970-1975 the fertility rate was 6.3, while the current rate of 3.3 is a decline of 48% in couple of decades. The Bangladeshi family planning program has gained international recognition, but its impact on human rights, particularly human rights of women, has been criticized. The program has mainly been focusing on women for both methods and responsibility for family planning. According to the United Nations Population Fund (UNPFA), contraceptive prevalence rate seems to have stagnated at 57 per cent and the maternal mortality ratio is consistently high.

Women's reproductive rights were not spelled out in the international human rights documents until 1990s. The development of those human rights, by and large, fell into two relatively successive phases: (1) development brought by the international human rights instruments from 1940s to 1980s; and (2) development brought by the international conferences in 1990s.

Development Brought by the International Human Rights Instruments

In response to World War II and the Nazi regime, the international community devoted to the international protection of human rights and enacted various human rights instruments. The signing of the Charter of the United Nations was a significant step in bringing human rights more firmly with the sphere of international law. The Universal Declaration of Human

Rights (UDHR) and other three international human rights treaties protecting women's reproductive rights have been adopted under the auspices of the UN.

The UDHR establishes the foundation for the international protection of reproductive rights through the enumeration of specific rights, which include: (1) the right to a standard of living adequate for the health and well-being, including the right to special protection for a woman in her role as a mother; (2) the right to privacy; (3) the right to seek, receive and impart information; (4) the right to marry and found a family on the basis of equality; and (5) the right to freedom from discrimination on the basis of sex and gender.

Along with civil and political rights, the ICCPR (International Covenant on Civil and Political Rights) also deals with women's rights with respect to family and reproductive self-determination. The article 23 (1) and (2) of the ICCPR states that the "family is the natural and fundamental group unit of society and is entitled to protection by society and the State" and that the "right of men and women of marriageable age to marry and to found a family shall be recognized."

The ICESCR, in its article 10, demands states that "special protection should be accorded to mothers during a reasonable period before and after childbirth..." It also recognizes that every person has the right to the "enjoyment of the highest attainable standard of physical and mental health." In order to achieve the full realization of this right, the ICESCR states that steps to reduce the "stillbirth-rate and infant mortality and for the healthy development of the child" should be taken by the State. These provisions implicitly encompass the right of a woman to health services and information to prevent unwanted pregnancies that may endanger the woman's physical and mental health.

In those early human rights treaties, women's

reproductive role, resulting in "a host of discriminatory practices which originate from the treatment of women as instruments for childbearing and childrearing", "it was as child bearers and childrearsers through the protection of motherhood." It is the Women's Convention that has firmly established that the human rights of women included all rights--civil,

political, economic, social and cultural, undoubtedly including reproductive rights.

The reproductive rights are composed of a clustering of specific human rights around individual's reproductive interests, which have already recognized in the national law and the international human rights instruments and other relevant UN consensus documents.

Moreover, it goes on to enumerate these specific human rights are:

- (1) the right to decide freely and responsibly the number, spacing and timing of their children and the right to have the information and means to do so;
- (2) the right to sexual and reproductive health; and
- (3) the right to make decision concerning reproduction free of discrimination, coercion and violence.

Conclusion

Women's reproductive rights, at least to some extent, have been recognized in many international human rights treaties, including the ICCPR. By way of dynamic interpretation through its General Comments, concluding observations on states parties' reports and its jurisprudence, the HRC has broadened many specific rights under the ICCPR, which have been used, or can be used, to advance women's reproductive rights. In evaluating the states parties' compliance with those rights, the HRC generally recognizes that attributing a purely negative or passive role to the states parties appears inadequate. The provisions that safeguard those rights may require the states parties to play an active role to take, not only negative, but

also positive, and immediate obligations to respect, protect and promote those rights. Those rights are interactive so that each depends to a greater or lesser degree on the observance of others, and may not be exhaustive, for protecting women's interests on reproductive health and choice, though, they hit, at least part of the vital components of women's reproductive rights.

Apart from protecting prisoners from being treated inhumanely, the right to be free from inhuman and degrading treatment also ensure the inherent dignity of women in the reproductive health and choice context. Denial of abortion services even when pregnancy is a result of rape or the prospective child is unviable, denial of adequate medical treatment to a pregnant woman whose health is threatened, forced abortion or sterilization, FGM (Female Genital Mutilation) and other practices, which may inflict physical or mental pain or suffering upon women. The states parties should take positive measures to eliminate such practices and provide adequate remedies to victims.

Women's reproductive autonomy over their own body, particularly including freedom to decide the number and spacing and timing of their children, is guaranteed by article 17 (ICCPR), which protects the right to privacy. Article 17 safeguards women's privacy, which relates to reproductive functions, from unlawful or arbitrary interference of governments, and from invasion of private sectors. Positive obligations should be taken by the states parties to prohibit interference of women's privacy in matters relating to reproductive health and choice and to ensure confidentiality of women's reproductive health status.

In order to reduce the amount of early marriages, which may be a cause of high maternal mortality rate, the HRC (Human Rights Committee) recommends the states parties to effectively implement national family laws, which set a minimum age for women to marry.

The right to information necessary for women's reproductive health and choice is guaranteed by article 19 (ICCPR). Women's access to information on abortion should not be unduly restricted even in the countries where abortion is generally prohibited.

Although there is not much experience of the application of human rights in women's reproductive health and choice context at the international level, the amount of such experience is growing. Other international human rights treaty bodies and tribunals, for example, in the global level, the Committee on ICESCR, the CEDAW, and in the regional level the ECtHR and the IACHR, have provided many useful suggestions for the HRC when it applies the provisions to formulate concluding observations or comments concerning reproductive issues and make decisions on individual complaints about their violation of women's reproductive rights.

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RIGHTS INVESTIGATION



More investigations needed to deliver justice

THE delivery of justice at the International Criminal Court (ICC) is at risk despite progress by the ICC prosecutor, said Human Rights Watch in a report released on September 15. With the appointment of a new prosecutor by year's end and new cases in Libya, the ICC prosecutor should close gaps in investigation and prosecution strategies and bring additional cases.

The 50-page report, "Unfinished Business: Closing Gaps in the Selection of ICC Cases," assesses the Office of the Prosecutor's choice of cases in its first five investigations. Investigations in Central African Republic, Sudan's Darfur region, Democratic Republic of Congo, Kenya, and northern Uganda have yielded 10 cases and three trials, making an important contribution to tack-

ling impunity for some of the world's worst crimes. But these cases have not gone far enough to ensure that justice delivered by the ICC will resonate with concerns of victims and affected communities.

court's goals in these countries." The report is based on Human Rights Watch country expertise and close monitoring of the ICC over the past eight years. To deliver meaningfully on its mandate, the ICC should bring to trial those most responsible for the gravest crimes, including government officials. Safeguarding the court's independence and impartiality in the selection of cases is of fundamental importance, Human Rights Watch said.

In Congo and Uganda, ICC investigations have targeted rebel groups but have not yielded charges against government officials and armed forces widely alleged to have committed serious abuses. The absence of these cases - or clear and public explanations as to why they are not being pursued - has left too many victims without justice and undermined perceptions of the court's independence and impartiality.

In investigations in the Central African Republic and of Sudanese government atrocities in Darfur, the ICC has targeted only one senior leader for prosecution. Ensuring that those most responsible are brought to justice is a key benchmark of the ICC's mandate, and one unlikely to be satisfied through a single prosecution, Human Rights Watch said.

"The ICC prosecutor's tough choices face intense scrutiny, which makes it all the more important that they enhance the court's independence and credibility," said Evenson.

"By failing to project an effective and coherent strategy through his investigations, the prosecutor has too often come up short."

The ICC's recent investigations in Kenya are a welcome shift from past practice, Human Rights Watch said. The prosecutor is seeking charges against alleged perpetrators affiliated with both sides of the country's 2007-2008 post-election violence. This is in marked contrast to Congo, where delays and discrepancies in

charges brought against leaders of rival militias in the Ituri district may have worsened ethnic tension. But more ICC investigations are needed to expand accountability in Kenya for police abuses and for crimes committed in western Kenya's Mt. Elgon region.

ICC member countries will meet in December 2011 to elect the next ICC prosecutor, who is expected to take office in mid-2012. Human Rights Watch urged the Office of the Prosecutor to put more effective case selection strategies in place.

The ICC's increasing workload will place new pressures on the court, Human Rights Watch said. In March 2011, the ICC prosecutor opened an investigation in Libya, following a unanimous referral by the United Nations Security Council. Member countries fund the court, including its country investigations.

"Delivering meaningful justice in Libya should not come at the expense of the court's existing commitments to affected communities in Bangui and Bunia," said Evenson. "ICC member countries should ensure the court has the resources it needs to meet existing and new demands."

Background

The ICC is the world's first permanent court mandated to bring to justice perpetrators of war crimes, crimes against humanity, and genocide when national courts are unable or unwilling to do so. The ICC treaty, known as the Rome Statute, entered into force in 2002, just four years after 120 states adopted the treaty during the Rome Conference.

The court's jurisdiction may be triggered in one of three ways. States parties or the UN Security Council can refer a specific set of events, known as a "situation," to the ICC prosecutor, or the ICC prosecutor can seek on his own motion authorization by a pre-trial chamber of ICC judges to open an investigation.

In addition to investigations in Democratic Republic of Congo, northern Uganda, the Darfur region of Sudan, the Central African Republic, Kenya, and Libya, the Office of the Prosecutor is looking at situations in Afghanistan, Colombia, Georgia, Guinea,

Honduras, Nigeria and South Korea. The Palestinian National Authority also has petitioned the ICC prosecutor to accept jurisdiction over alleged crimes in Gaza. In June 2011, the prosecutor asked the ICC for authorization to open an investigation in Côte d'Ivoire; a decision is pending.

Five individuals are in ICC custody in The Hague, while six suspects in Kenya cases are voluntarily appearing at pre-trial proceedings. Three others charged with war crimes in connection with an attack on African Union peacekeepers in Darfur appeared voluntarily during pre-trial proceedings, although ICC judges declined to confirm charges against one. Pre-trial proceedings are ongoing in a case arising out of the ICC's investigations in Congo's North and South Kivu provinces.

Closing arguments were heard in August 2011 in the trial of the Congolese militia leader Thomas Lubanga Dyilo. Trials are ongoing in the case of Germain Katanga and Mathieu Ngudjolo Chui, also Congolese militia leaders, and Jean-Pierre Bemba Gombo, a Congolese national and former vice-president of the Congo charged with crimes committed in the Central African Republic.

Sudanese President Omar al-Bashir and two other individuals sought in relation to the Darfur situation remain at large, as do former Libyan leader Muammar Gaddafi and two others wanted in connection with crimes against humanity committed in Libya. Arrest warrants also remain outstanding for leaders of Uganda's rebel Lord's Resistance Army and Bosco Ntaganda, a former rebel commander now integrated into the Congolese national army.

The current ICC prosecutor, Luis Moreno-Ocampo, was elected to a nine-year term in 2003. ICC member states will elect a new prosecutor in December 2011. The new prosecutor is expected to take office in mid-2012. Human Rights Watch, along with other non-governmental organizations, has urged ICC member countries to ensure that the election of the next prosecutor is driven by merit.

Source: Human Rights Watch.



ling impunity for some of the world's worst crimes. But these cases have not gone far enough to ensure that justice delivered by the ICC will resonate with concerns of victims and affected communities.

"The ICC's first investigations have too often bypassed key perpetrators and crimes," said Elizabeth Evenson, senior international justice counsel at Human Rights Watch. "From Congo to Darfur, the prosecutor needs better strategies for case selection to achieve the