

# GIRLS BEAR THE SHAME

Briefing Paper

Impediments to Justice  
for Girl Children  
who have Experienced  
Sexual Violence in Burma



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## WOMEN'S LEAGUE OF BURMA

The Women's League of Burma (WLB) is an umbrella organisation comprising 13 women's organisations of different ethnic backgrounds from Burma. WLB was founded on 9th December, 1999. Its mission is to work for women's empowerment and advancement of the status of women, and to work for the increased participation of women in all spheres of society in the democracy movement, and in peace and national reconciliation processes through capacity building, advocacy, research and documentation.

## AIMS

- To work for the empowerment and advancement of the status of women
- To work for the rights of women and gender equality
- To work for the Elimination of all forms of discrimination and violence against women
- To work for the increased participation of women in every level of decision making in all spheres of society
- To participate effectively in the movement for peace, democracy and national reconciliation

# GIRLS BEAR THE SHAME

*Impediments to justice for girl children who have experienced sexual violence in Burma.*

More than one year after the election of a pro-democracy government, the Women's League of Burma (WLB) has found that women and girls continue to experience alarming rates of sexual violence in Burma at the hands of both State actors and private citizens.<sup>1</sup> According to police records, sexual abuse of young children are the most common rape cases.<sup>2</sup> Perpetrators may be neighbours, teachers, monks, military personnel, police officers, village administrators and family members; and survivors include girls as young as three years old. WLB considers rape committed against minors to be especially heinous, yet these young survivors continue to face challenges accessing justice and recovering from the trauma of these experiences.

Girls impacted by sexual violence often suffer from physical injury, trauma-related mental health problems, interruptions to their education, negative social stigma, and even ostracism from their communities. The crimes against them may be ignored, covered up, or not taken seriously, and are often minimized in the name of maintaining 'peace' in the village. In the minority of cases that do make it through the formal legal system, girls are re-traumatized by compulsory participation in public trials, lack of gender sensitivity training among Judges or special accommodations for child survivors, and an unreliable and ineffective legal system which allows perpetrators with power, money or connections to evade justice.

WLB's work on cases of violence against women and girls in Burma's ethnic communities has revealed that despite recent support for more severe legal responses to sexual violence against children, girl survivors and their families continue to face entrenched gender discrimination and gaps in the legal and judicial systems when trying to seek redress for the crimes against them. These obstacles represent failures of the current government to protect girl children's international human rights under the Convention of the Rights of the Child (CRC), and the Convention on All Forms of Discrimination Against Women (CEDAW), while also revealing inadequacies in the current legal system as well as policy and legislative framework. Without systemic social change, legal reform, and adherence to the rule of law, these pervasive crimes will continue, with young children paying the ultimate price.

In ethnic and conflict affected areas, WLB also continues to document sexual violence committed against women by Burmese military officers (Tatmadaw) as despite the recent semi democratic transition in Burma, military and government officials continues to enjoy impunity as de facto entrenched in the 2008

<sup>1</sup> While national police records indicate only 1,100 reported rape cases in 2016, the barriers to the formal justice system set out in this report explain why this number is disproportionately low: Aye Their Kyaw, "Breaking the Devil's Silence: Sexual Violence in Myanmar" *The Irrawaddy* (19 August 2017), Online: <https://www.irrawaddy.com/opinion/guest-column/breaking-devils-silence-sexual-violence-myanmar.html>. The number of reported cases may also be increasing due to the work of women's organizations who are providing support for more survivors to come forward and pursue formal legal justice.

<sup>2</sup> Nyein Nyein, "Child Sex Abuse Cases Spark Community Outrage, Calls for Harsher Sentences" *The Irrawaddy* (30 December 2015), Online: <https://www.irrawaddy.com/news/burma/child-sex-abuse-cases-spark-community-outrage-calls-for-harsher-sentences.html>.

Constitution. The controversial amnesty clause in Article 445 has always been interpreted by successive military regimes as providing regime officials blanket amnesty for all crimes committed in the course of their official duties, including acts of gender-based violence. However, many have argued that this article should be interpreted restrictively and exclude immunity for “serious criminal acts”, such as those that violate national or international law and that by definition are outside the scope of “their respective duties”.<sup>3</sup>

The Constitution further institutionalizes impunity by providing for military control over its own judicial processes, especially by making the decision of the Commander-in-Chief of the Defence Services a “final and conclusive” one,<sup>4</sup> thus allowing the Commander-in-Chief to arbitrarily overturn any verdict.

As a result of this constitutionalized impunity, acts of gender-based violence committed by State actors very rarely end up in civilian courts.<sup>5</sup> In theory, section 72 of the 1959 Defense Services Act allows for military personnel to be tried in civilian courts in cases of murder, homicide and/or rape.<sup>6</sup> Legal limitations to such transfers however (especially the fact that the perpetrator must be out of active duty), coupled with common corruption and executive interference in the judiciary, effectively means that only a very small number of cases are ever transferred, despite advocacy by WLB’s member organizations.

Additionally, the opaque and partial court-martial system, which gives military courts competence over all Defense Services personnel with no civilian oversight, hinders survivors’ access to justice and perpetuates the belief for State officials that they are above the law. Survivors are often kept in the dark about whether legal proceedings have taken place against their attackers, as well as the outcome of those proceedings. This diminishes any feelings of justice or accountability for child survivors and their families.

However, this briefing paper is intended to shed the light on some of the experiences of girls who have experienced sexual violence across Burma, particularly in non-conflict ethnic areas, as well as identify the challenges and barriers to formal justice they face when seeking legal redress for these crimes.<sup>7</sup> Informed by these experiences, WLB offers recommendations for legal and policy reforms, as well as further social programming.

3 See WLB, “Same Impunity, Same Patterns” (January 2014), p.29.

4 Constitution, Articles 294 and 343(b). See also Amnesty International, “Myanmar: Briefing to the UN Committee on the Elimination of Discrimination against Women, 64th session, 4-22 July 2016, p. 13.

5 See for example: Moe Myint, “Alleged Rape Victim, 8, Dies of Malnutrition in Rangoon” *The Irrawaddy* (22 October 2015), Online: <https://www.irrawaddy.com/news/burma/alleged-rape-victim-8-dies-of-malnutrition-in-rangoon.html>

6 Section 72 reads: “Civil offences not triable by court-martial. A person subject to this Act who commits an offence of murder against a person not subject to military law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

(a) while on active service, or

(b) at any place outside the Union of Burma, or

(c) at a frontier post specified by the President by notification in this behalf”.

7 While it is important to acknowledge that boys as well as girls experience sexual violence in Burma, this report focuses on the documentation of cases by WLB’s focal points and member organizations, which only reflect the experiences of girl children in these areas. Further research on the scope and prevalence of this issue is an important recommendation of this report. For more information of sexual abuse of boys, see Equality Myanmar, “Lifting the Lid on Child Sex Abuse” (21 October 2016), Online: <http://equalitymyanmar.org/lifting-the-lid-on-child-se-abuse/>. It should also be recognized that the data collected for this report reflects only some of the experiences of girls living in government controlled areas of the country where WLB operates. The voices of those who have experienced sexual violence in regions controlled by Ethnic Armed Organizations are not included in this report. Further research into the comparative experiences in these regions would contribute highly valuable information to this discourse.

## Gaps and Broken Promises: Domestic and International Legal Framework

Burma has a complex legal system, made up of several sources of law including Common Law, customary law, and religious and traditional laws, many of which are unwritten. The government has also ratified a limited number of international conventions that afford rights to girl children for protection against sexual violence.

The Burmese government has publicly affirmed its legal commitment to protect children as evidenced by its ratification of the CRC in August 1991. The CRC requires the ratifying States to respect and ensure the rights of each child, including taking appropriate legislative, administrative, social and educational measures to protect the child from all violence, injury or abuse, including sexual abuse, regardless of whether they are in the care of their parents or any other party.<sup>8</sup> With respect to preventing sexual violence against children, CRC specifically requires States to “undertake to protect the child from all forms of sexual exploitation and sexual abuse.”<sup>9</sup> Moreover, CRC also requires that State Parties take all appropriate measures to promote physical and psychological recovery and social reintegration” of a child who has been exploited, abused, or subjected to any form of cruel, inhuman or degrading treatment or punishment.<sup>10</sup>

Burma has also signed the “Option Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,” which provides further requirements on State Parties with respect to the prevention of sexual exploitation of children.<sup>11</sup> In the specific cases covered by the protocol,<sup>12</sup> regarding children’s participation in the criminal justice system, State Parties undertake to adopt procedures that recognize the special needs of child victims and witnesses, provide appropriate support to children throughout the legal process, protect the privacy and identity of child victims as appropriate, and provide for the safety of children, their families and any witnesses involved in the case.<sup>13</sup>

Burma has not signed the “Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure,”<sup>14</sup> which would allow children whose rights under the CRC have been violated an alternative means of seeking justice, by way of filing direct complaints against their government with the United Nations once all domestic attempts for justice had been exhausted.

Although Burma is a State Party to the CRC, the treaty has not been comprehensively integrated into national law, so it can therefore be overridden by domestic laws and policy. In 1993, Burma legislated the Child Law with the aim, in part, to “implement the rights of the child recognized in the United Nations Convention on the Rights of

<sup>8</sup> *Convention on the Rights of the Child, Article 19(1).*

<sup>9</sup> *Convention on the Rights of the Child, Article 34.*

<sup>10</sup> *Convention on the Rights of the Child, Article 39.*

<sup>11</sup> *Burma signed this Optional Protocol on 17 January 2012.*

<sup>12</sup> *See Optional Protocol on the Sale of Children, Article 3(1).*

<sup>13</sup> *Optional Protocol on the Sale of Children, Article 8(1).*

<sup>14</sup> *The third Optional Protocol was adopted at the sixty-sixth session of the General Assembly of the United Nations by resolution 66/138 of 19 December 2011, opened for signature in Geneva, Switzerland, on 28 February 2012 and entered into force on 14 April 2014, in accordance with article 19(1).*

the Child.”<sup>15</sup> While there have been ongoing talks of revising this law,<sup>16</sup> the original legislation defined a child as anyone under sixteen years of age.<sup>17</sup> This is inconsistent with the CRC, which defines children as human beings below the age of eighteen years. While various other provisions of the CRC are legislated in the Child Law, there is very little that legislates protection of children from sexual abuse. The closest relevant prohibitions are those set out in section 66, which call for a maximum 2 year sentence with possible fine, for anyone who knowingly neglects that a girl under 16 within their guardianship is engaging in prostitution, willfully mistreating a child, or using the child in pornography.<sup>18</sup> There are no provisions which broadly prohibit all forms of sexual violence against children, or impose on the government a requirement to provide psychological and physical recovery or social integration for children who have been sexually abused or exploited.

Burma is also a signatory to the CEDAW, which commits State Parties to guaranteeing women “the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men”. Although CEDAW contains further international protections for women against sexual violence, domestic law and procedure fail to properly implement it.<sup>19</sup> Lawyers who try to use CEDAW provisions in court are faced with objections from judges, who will only consider domestic criminal law. The responsibility to implement CEDAW has instead been given to government-organized initiatives such as the Myanmar Women’s Affairs Federation (MWAFF) and the Myanmar National Committee for Women’s Affairs (MNCWA). However these organizations are led by men, or the wives of high-ranking members of the Tatmadaw, and favour programs focusing on women’s protection rather than women’s empowerment, and have been highly effective.<sup>20</sup> Burma has also not signed or ratified the CEDAW Optional Protocol, which would allow women to submit complaints regarding violations of CEDAW to the Committee who could follow up with an inquiry procedure.<sup>21</sup>

Despite efforts to work on a comprehensive violence against women law (the long-awaited “Prevention and Protection of Violence against Women Bill”), the process continues to be stalled. As the bill has not been made available for public review, it is unknown whether there are adequate provisions to address all forms of sexual violence against girl children. WLB is currently undertaking a comprehensive review and analysis of this Bill, and will be making recommendations shortly on its scope and adequateness in addressing all forms of sexual violence against women and girl children.

<sup>15</sup> *The Child Law, section 3(a).*

<sup>16</sup> *San Yamin Aung, “Child Law Revised to Increase Punishment for Offenders” The Irrawaddy (29 November 2016), Online: <https://www.irrawaddy.com/news/burma/child-law-revised-to-increase-punishment-for-offenders.html>; Shwe Yee Saw Myint, “Myanmar Revises Child Law, Childhood Status Extended to 18” Myanmar Times (24 November 2012), Online: <http://www.mmtimes.com/index.php/national-news/3325-myanmar-revises-child-law-childhood-status-extended-to-18.html>; UNICEF has also been providing technical support for the purpose of amending the Child Law to meet international standards, see: [https://www.unicef.org/myanmar/protection\\_24172.html](https://www.unicef.org/myanmar/protection_24172.html).*

<sup>17</sup> *The Child Law, 1993, section 2(a)*

<sup>18</sup> *The Child Law, 1993, section 66(a),(d), and (f).*

<sup>19</sup> *General Recommendation No. 19 on Violence Against Women includes gender-based violence against women as a form of discrimination covered by the scope of CEDAW.*

<sup>20</sup> *Global Justice Centre & Leitner Centre for International Law and Justice, “Promises Not Progress: Burma’s National Plan for Women Falls Short of Gender Equality and CEDAW”, August 2015, at p. 20.*

<sup>21</sup> *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (A/RES/54/4).*



Rape is criminalized under Burma's national law through Article 375 of the Myanmar Penal Code, however its definition does not meet international standards. Specifically, it limits the gender of perpetrators to men, does not provide for the rape of men or boys, and explicitly exempts marital rape from the law, unless the girl is younger than 15.<sup>22</sup> It is also commonly interpreted as limiting the actus reus of rape to vaginal penetration by the male genital organ, which in practice means that penetration by foreign objects is not considered rape. "Carnal intercourse" of all forms is also criminalized by Article 377. Other forms of sexual violence against children are not explicitly criminalized, and in practice the police will not pursue complaints where there is no evidence of semen. While Article 376 allows the courts to sentence convicted rapists up to 20 years in prison, there is no mandated minimum sentence. There is also not a separate provision or sentencing considerations for sexual assaults committed against children.

When cases of sexual violence do make it into the courts, they have often been dealt with by township courts which only have the jurisdiction to sentence offenders to up to seven years of imprisonment. This has often resulted in low sentences, which have recently garnered negative public attention.<sup>23</sup> Some activists and law-makers have called for harsher penalties, including controversially amending Article 376 to allow for the imposition of the death penalty for child rapists; however all attempts to do so have so far been blocked by parliament.<sup>24</sup> Perhaps in response to the inability to obtain legal reform in this area, in January 2017 the Supreme Court of Burma issued an order that all child rape cases be heard by district level courts, which have the jurisdiction to impose higher sentences.<sup>25</sup> While this is a positive development, WLB member organizations have still had to advocate on behalf of survivors in some cases to have their trials transferred to district level courts, and are aware of other child rape cases that are still being heard at the township level.

This weak legal framework is exasperated by non-adherence to the rule of law which creates roadblocks to cases ever reaching the court system, as well as inefficiencies within the judiciary and legal system.

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<sup>22</sup> Section 375 of the Penal Code was revised in January 2016 to raise the minimum age of statutory rape to 15. An amendment to Burma's marriage laws has recently been proposed to make them consistent with this change to the Penal Code. See Aung Kyaw Min, "Proposed amendments raise statutory rape age to 15" *Myanmar Times* (13 June 2017), Online: <http://www.mmmtimes.com/index.php/national-news/yangon/26356-proposed-amendments-raise-statutory-rape-age-to-15.html>.

<sup>23</sup> Nyein Nyein, "Child Sex Abuse Cases Spark Community Outrage, Calls for Harsher Sentences" *The Irrawaddy* (30 December 2015), Online: <https://www.irrawaddy.com/news/burma/child-sex-abuse-cases-spark-community-outrage-calls-for-harsher-sentences.html>.

<sup>24</sup> A proposal to amend Article 376 submitted by Daw Khin Saw Wai to the Lower House in February 2017 was blocked from consideration for not having been drafted in English as well as Burmese. See: San Yamin Aung, "Proposal to Assign Death Penalty for Child Rape Hits Setback" *The Irrawaddy* (2 February 2017), Online: <https://www.irrawaddy.com/news/burma/proposal-to-assign-death-penalty-for-child-rape-hits-setback.html>. A previous attempt to amend Article 376 to allow for harsher sentences of child rapists, proposed by U Thein Nyunt in October 2013, received only 19 votes in favour and 330 votes against by Members of Parliament See: Cherry Thein, "Children Vulnerable to Abuse in Myanmar" *Myanmar Times* (20 January 2014), Online: <http://www.mmmtimes.com/index.php/in-depth/9333-society-leaves-children-at-risk-of-abuse.html>; Nyein Nyein, "Lower House Rejects Calls to Discuss Child Rape" *The Irrawaddy* (22 October 2013), Online: <https://www.irrawaddy.com/news/burma/lower-house-rejects-calls-discuss-child-rape.html>.

<sup>25</sup> Htet Naing Zaw, "District Court Ordered to Try More Child Rape Cases" *The Irrawaddy* (1 February 2017), Online: <https://www.irrawaddy.com/news/burma/district-courts-ordered-to-try-more-child-rape-cases.html>.

## Barriers at Every Turn: Impediments to Justice for Girl Children

Barriers to justice for girl children who have experienced sexual violence start at the community level, and transcend the formal justice system and support services. The cases supported by WLB's member organizations and community focal points reveal a number of common trends and experiences which have had a negative effect on access to legal justice for girls who have experienced sexual violence.

## Social Perceptions and Gender Discrimination

WLB has found that a primary reason that girls are being targeted for sexual violence is related to gender attitudes of perpetrators, and similar discriminatory attitudes affect how families, village administrators, police, and the village communities respond to such cases. The way that girls are socialized also has a bearing on whether survivors are able to come forward after a crime has been committed against them.

Girls are socialized from a young age to respect and obey their elders, and persons in positions of authority. As such, they are perceived as easy targets to sexual predators, who are able to lure girls into private by exerting such authority. Girls are often afraid to speak out against the men who may threaten them, and so parents or other family members often do not become aware of the attacks until signs of injury or trauma become apparent in their daughters. By that time evidence may have been lost through washing of bodies or clothing, making a police investigation more difficult.

Regardless of age, girls generally do not have a say in how their cases are dealt with. In cases of non-familial rape, if girls do come forward to their families, parents may also have reservations about making public accusations because of social relationships and cultural attitudes. Parents may wish to shelter their child from the shame, stigma and gossip that would follow from sharing this information with anyone outside the family. In some cases, gossip among school children has been so prevalent that survivors find it intolerable and end up leaving school. In other cases, families may not want to disrupt social relationships within the village by speaking out, especially if the perpetrator is known to the family.

### Case Study

*A fourteen-year-old girl in Dawei was raped by a prominent monk in her community, who lured her into his bedroom at the monastery while her family was there to volunteer. Threatened not to tell anyone, the girl did not reveal the rape to her family until she collapsed the next day from excessive bleeding from her vagina. While the girl was being treated at the hospital, the perpetrator came and took the girl away when her parents had left to get food. The police investigated, and eventually found the girl and arrested the perpetrator. Despite the strong evidence against the monk, the girl and her family received significant pressure from the monk's supporters in the community to discontinue legal proceedings because the monk was perceived as representing the Buddha. Although the monk was ultimately convicted of this crime, the girl has been unable to return to her village due to hostile attitudes, and her education has thus been interrupted throughout proceedings.*



There is also the risk that the family could be labeled as 'trouble-makers' or just wanting to gain financially from making accusations. Older girls have been scrutinized for what they were wearing or where they were at the time of the attack, or may be accused of trying to snare the man into marriage. Parents of younger girls have been blamed for leaving their children alone. At the community level, religion and superstition come into play as women are told they are victims because they are being punished for some bad act in a past life. Predominant attitudes in ethnic villages continue to place the shame and responsibility for sexual violence on the girls rather than those who commit rape.

Families are especially hesitant to come forward when the alleged perpetrator is someone known to have money or higher status in the community, as they may understand that this can be used to influence the police or judiciary. These perpetrators are often able to avoid prosecution by paying compensation or intimidating survivors not to pursue cases against them. Higher status perpetrators are also more likely to have the support of community members, such as in the case studies below, who will oppose survivors from going to police or seeking justice. Village administrators and police offices may also handle cases involving such alleged perpetrators differently, as they themselves may hold inferior social status and not want to risk taking action against someone who has power in their community.

In these cases, maintaining systems of power, community peace and respect for high status people and institutions is prioritized over the welfare of girl survivors, or ensuring that perpetrators are held responsible. Girls' interests are placed as the lowest priority within village structures.

## Role of Customary Law and Village Administrators

In rural and ethnic areas, village administrators are local authorities tasked with keeping peace within their jurisdiction, and may apply customary or traditional law to do so. Village administrators are overwhelmingly male, and generally lack any form of gender sensitivity training. WLB focal points in rural villages have observed that village authorities do not treat rape of young girls as a serious offence. Village administrators are often the first point of contact and frequently take on the responsibility of either dismissing the claims (often citing "lack of evidence"), or settling what is seen as a dispute between the parties.

## Case Study

*A seventeen-year-old girl in Kachin State was raped by a public school teacher. When the girl tried to obtain medical treatment as a result of the attack, she was told that it would not be provided unless a police report was filed. As the girl and her family were preparing to go to the police, they were approached by the district level educational officer, who was concerned that the allegations would create a negative image for the school. They pressured the girl to accept a settlement of 4,500,000 kyat not to go to the police. The girl did not want to accept the offer, but her parents agreed to the settlement for fear of the stigma the case would bring to their family. The teacher was subsequently moved to a school in another township in order to conceal the news about him.*

In one case in Rakhine State, the mother of a young girl discovered her daughter had been raped and immediately went to the village administrator. The village administrator brushed them off, telling them to come back the next morning. When they returned, his primary focus was to convince them not to go to the police rather than showing any concern for the girl's welfare.

In another case in Rangoon, a young girl confided in her neighbour that she had been repeatedly raped by her father. The neighbour brought the girl to the village administrator, who said they needed evidence before going to police and recommended that the girl return to her home so that evidence could be collected if she was raped again.

Village administrators may also "settle" disputes, which may involve arranging for the perpetrator to pay a "compensation" to girls or their families, to cover medical expenses, in exchange for the family not reporting them to the police. This is usually a small sum of money or other commodities, determined based on the perpetrator's ability to pay. Once the compensation is accepted by the survivor, or more often by her family without consulting her, customary authorities and the community enforce the arrangement and prevent survivors from accessing the formal justice system. In cases where a settlement is arranged but never paid, there is no form of legal recourse for the survivor. For facilitating such a settlement, the village administrator may receive a portion of the compensation paid by the perpetrator. In one particularly troublesome example, a village administrator in Dawei encouraged a survivor's family to accept ten bags of concrete as compensation for the rape of their daughter, which they were then expected to donate to the village for "solving" the problem.

In other cases, village administrators may arrange for a perpetrator of rape to marry their victim as a means of resolution.<sup>26</sup> This practice takes into consideration the social stigma a rape survivor will carry, and the difficulty she may have finding a husband as a result. Families concerned for the future of their daughters may accept these arrangements. The rapist is therefore seen as taking on the social and financial responsibility for his victim, all the while sanctioning continued abuse. It is not uncommon for these perpetrators to feel this arrangement has given them the right to subsequent unlimited sexual access to their brides. Other customary practices such as "cleaning" a village after a villager has suffered rape or sexual violence, are still in place in certain areas.<sup>27</sup>

Child survivors' families may accept such settlements for a variety of reasons. Those in ethnic areas may not be familiar with their legal rights or options for redress. As a result, they are often uncomfortable accessing the formal justice system, which can be intimidating and frightening. Official court documents are in Burmese, and courts do not offer translations into ethnic languages or child friendly forms. Moreover, it is costly to travel to courts from ethnic areas and to proceed with cases. For families who survive on daily labour, it is not feasible to take time of work to participate in the court process. Furthermore, most ethnic and marginalized girl children and their families simply do not possess the skill set to deal with a judicial process—of which they are already apprehensive—while they are focused on trying to feed their families. Because of these barriers, families of child survivors in ethnic areas are typically most comfortable resolving claims at the village level, even if they do not achieve a sense of justice from the process.

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<sup>26</sup> CEDAW Concluding Observations, p. 7, UN Women and Justice Base's 2016 Report, p. 62, 63.

<sup>27</sup> A woman survivor of gender-based violence is considered "unclean" and ostracized from the community. This can be cured if the survivor and her family pay tributes and put on feasts and festivals for the village in order to "clean" it; WLB, "Long Way to Go", p. 7, 86.

## Police Attitudes and Lack of Capacity

Like village administrators, WLB has encountered government police officers who refuse to treat the rape of girl children as a serious offence. Even in Rangoon, there is still concern that police are not adequately trained on gender sensitivity and working with rape survivors. A common occurrence is for girls to have to recount the intimate details of the attack in a public area of the police station, and with male police officers. In one case, a teenage survivor of sexual violence was requested to remove her clothing in the public space of the police station to show a male officer her injuries. WLB has also documented incidents where the police have become frustrated in dealing with emotional survivors, and directed them to civil society organizations to 'handle' them instead of communicating with them directly.

The situation is worse in ethnic areas, where police may be susceptible to influence and corruption from perpetrators who have money or authority, and have been known to try to negotiate settlements rather than build legal cases. Survivors are often pressured to settle or drop complaints in these situations, so that women and girls are victimized again by their lack of economic and political power.

Police may also be slow to investigate allegations, or avoid taking responsibility in cases that involve traveling to remote villages. WLB's member organizations have reported cases where police have demanded payment for petrol from survivors or CSOs before agreeing to travel to villages to conduct investigations. There is also little cooperation amongst authorities if an alleged perpetrator flees the jurisdiction of the police handling the case; and police have told survivors it is their responsibility to initiate new complaints with police in different townships where the perpetrator may be hiding. In some cases, the police will take the complaint "officially" but only post the arrest warrant at the police station and allow the perpetrator to flee. In other cases, police have lost evidence or not kept adequate records of investigations, which ultimately has had a negative outcome on legal proceedings.

### Case Study

*In Eastern Rangoon, a grandmother came home to find the neighbour raping her granddaughter. The grandmother went to the police to report the crime, but the officer threatened that they could be criminally charged for making false statements if there was no evidence of the rape. Subsequently the grandmother learned that the neighbour's family had already paid the police not to accept their complaint. As a result, the grandmother and her granddaughter fled the township out of fear of further repercussions.*

## Corruption and Irregular Application of the Law

### Case Study

A fourteen-year-old girl in Rakhine State was raped by a man from her village. The attack was reported to the police, who investigated and arrested the perpetrator. The girl underwent a medical examination, which provided evidence of recent sexual trauma. The girl and her mother pursued legal action, despite attacks and threats to their lives from the perpetrator and his supporters. The Judge ultimately acquitted the perpetrator, however the survivor's family was not informed of this decision until they encountered the perpetrator again in the village. There are strong suspicions that the perpetrator's lawyer had paid the Judge to render this decision in his client's favour.

While there have been some advancements in the punishment of child rapists where cases make it to the formal justice system,<sup>28</sup> glaring gaps in the legal framework continue to be compounded by the lack of an independent, impartial and effective judiciary.

The few rights for girls that are actually enshrined in law are often not enforced due to corruption in the legal system, the police and other governmental authorities. This widespread corruption has been recognized by national authorities,<sup>29</sup> the UN Human Rights Council,<sup>30</sup> and more recently, by the CEDAW Committee who stated that it was **"particularly concerned at reports of judicial corruption and executive interference in the judiciary"** and called on the government to **"initiate necessary reforms to ensure that the judiciary is independent, impartial, professional and gender sensitive, as a means of safe-guarding women's rights"**<sup>31</sup> Indeed, WLB has documented cases where accused perpetrators with any connection to government will be given leniency, as they are seen as colleagues to the judges trying their cases, and priority is given to maintaining those relationships. Inconsistent sentences and the (often justified) perception that powerful perpetrators can just assert influence or pay money to escape

<sup>28</sup> Htet Naing Zaw, "District Court Ordered to Try More Child Rape Cases" *The Irrawaddy* (1 February 2017), Online: <https://www.irrawaddy.com/news/burma/district-courts-ordered-to-try-more-child-rape-cases.html>.

<sup>29</sup> Judicial and Legal Affairs Complaints and Grievances Investigation Committee. See "Burma's Judicial System Deeply Corrupt, Parliament Told", *The Irrawaddy*, 9 December 2015. The committee recognized that the "judiciary remains one of the country's most corrupt institutions" and noted the ability of the executive to "exert influence over the judiciary".

<sup>30</sup> "Situation of human rights in Myanmar", Resolution adopted by the Human Rights Council, United Nations, 2 April 2015, A/HRC/RES/28/23, calling on the government to "address the need for an independent, impartial and effective judiciary" and a self-governing professional organization of lawyers. WLB and AJAR welcome the launch of the Independent Lawyer Association in Myanmar (ILAM), a national professional organization in January 2016 and will closely monitor its actions. It is currently still in the process of adopting its constitution.

<sup>31</sup> Committee on the Elimination of Discrimination against Women, "Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Myanmar", CEDAW/C/MMR/CO/4-5, adopted by the Committee at its sixty-fourth session, 4-22 July 2016, p. 5 (thereafter "CEDAW Concluding Observations").

conviction is a significant obstacle to girls obtaining justice, as it erodes the public's trust in the formal legal justice system.

Irregular application of the law also affects girls dealing with the trauma of the sexual violence they experienced. Despite the passing into law of the 2014 Emergency Care and Treatment Bill,<sup>32</sup> hospitals often refuse treatment to survivors where they suspect a rape has occurred unless a police report has been filed.<sup>33</sup> This causes problems for survivors and their families who have reached informal settlements on the agreement that the police will not be involved.

## Lack of Specialized Procedural Accommodations for Children

Children whose cases do end up in the courts often experience additional trauma through their participation in the formal legal system. Judges and lawyers, the majority of whom are men, have insufficient gender and child sensitivity training, which affects girls' participation at every stage of the court process. The law requires all survivors to attend the trial of their perpetrators, and further allows for cross-examination of the survivor by the accused.<sup>34</sup> All WLB focal points interviewed for this report noted that girl rape survivors have been required to attend court and be present at least once during the trial process, regardless of their age. Failure of the survivor to attend, or should a survivor decide to withdraw their complaint, would result in an acquittal of the accused.

Although the Child Law provides for specialized procedures when the accused is a child, no such provisions are made for child survivors of crime. No accommodations for child survivors are found in the Criminal Code of Procedure or the Evidence Act either. Generally, child rape trials take place in courtrooms that are open to the public. WLB's experience is that requests for girls to provide in camera (private) testimony are brushed off and generally not granted. More often, survivors are not made aware that such options might be available. In practice, this means that when girls are required to testify, they must do so in public court, in the presence of strangers waiting for other cases to be heard, as well as the alleged perpetrator.

Young girls often do not understand legal or biological terminology used by Judges or lawyers, and experience great shame recounting their experiences in such a public forum. Girls who may have previously been able to recount their attacks often freeze up in these settings, and are unable to provide testimony. Younger children often have trouble repeating their experiences in a consistent manner. The most common occurrence is for the girls to just cry throughout the proceedings. The overall impact of participation in this manner is often re-traumatization, which is only compounded by a lack of witness protection and counseling services.

The experiences of those who go through the legal system often work as a deterrent for other families to choose this method of pursuing justice because of the hardship it causes for their children.

<sup>32</sup> Nobel Zaw, "Emergency Care Bill Signed Into Law" *The Irrawaddy* (9 December 2014), Online: <http://reliefweb.int/report/myanmar/emergency-care-bill-signed-law>.

<sup>33</sup> Government hospitals must obtain permission from local police before they are permitted to treat patients, in order to ensure that evidence is not destroyed: Gender Equality Network, "Myanmar Laws and CEDAW, The Case for Anti-Violence Against Women Laws in Myanmar" (January 2013), p.8.

<sup>34</sup> Code of Criminal Procedure, sections 208 and 247.

## Lack of Specialized Counseling Services for Children

Girls who have been subjected to sexual violence often experience significant psychological distress, may not be able to fully understand what has happened them, and often do not possess the coping mechanisms to move forward from these attacks without the appropriate support. As described above, participation in the legal justice system can also be a source of additional trauma.

Little to no specialized mental health services exist in Burma for child survivors of sexual violence; what is available is provided ad hoc by women's organizations attempting to fill gaps in services. This tends to lean more towards providing children with comfort and reassurance as they recount their experiences, which has value in itself, rather than professional psychological treatment. While limited government funded psychological services are endemic of the social welfare system in Burma, the failure to provide them for child survivors of sexual assault represents a violation of children's rights under the CRC,<sup>35</sup> and creates significant challenges for girls who have also suffered multiple traumas exasperated by physical injury, and ostracism from their schools and communities due to the shame associated with trauma they have experienced.

As the below case study illustrates, failure to provide young girls with appropriate counseling services may also affect their ability to participate in the legal process, and given the important evidentiary value of survivor testimony, this ultimately will impact the outcome of such proceedings.

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<sup>35</sup> *Convention on the Rights of the Child, Article 39.*

## CONCLUSION

Societies are judged by how their most vulnerable members are treated. The prevalence of sexual violence against girls in Burma is a black mark on the government's claims to the country's progress and transition to peace and democracy. The government of Burma has an international responsibility to protect the fundamental human rights of all citizens, yet the rights of women and girls continue to be systemically violated. Comprehensive legal reform, gender sensitivity training among law enforcement and judiciary, special accommodations for child witnesses, and adherence to the rule of law are all essential steps to rectifying this grave state of affairs. The government also needs to take further steps to ensure that girls who have experienced sexual trauma receive psychological support and social reintegration. Further efforts in community education on legal rights, responsibilities and options for redress are also necessary. Finally, systematic documentation of cases and further research is essential to developing evidence based policies for future reform.



## RECOMMENDATIONS

### Recommendations for the Judiciary:

11. Provide special accommodations for child survivors of crime, including facilitating in camera testimony, and alternatives to formal testimony such as using anatomically correct pictures that children can use to describe the acts committed and which body parts were involved.
12. Increase the number of women judges at all levels of court.
13. Provide gender and child sensitivity training to all Judges and judicial staff.
14. Provide free-of-charge translation and interpretation services in all ethnic languages as required by parties to legal proceedings.
15. Facilitate circuit courts to travel to rural and ethnic areas to reduce the burden of travel for survivors who live outside of urban centres.
16. Increase efforts to eliminate corruption within the judicial system.
17. Improve consistency in sentencing and the application of the law for similar offences.
18. Ensure the timely administration and conclusion of legal cases involving sexual violence against women and girls.

### Recommendations for Village Administrators:

19. Ensure that all village administrators undergo legal and gender-sensitivity training to better understand issues of sexual violence against children, and become better informed and prepared to take allegations of sexual violence seriously, and provide survivors with comprehensive information about their legal options.
20. Facilitate the development of standardized procedures for addressing sexual violence within village administrators' communities in consultation with women's organizations.
21. Take responsibility for facilitating awareness-raising on sexual violence and the rights of women and children to members of their communities.
22. Increase opportunities for more women to become village administrators.

### Recommendations for Service Providers:

23. Increase sexuality education for children, facilitate discussions about appropriate body contact, and encourage children to speak up if they are sexually assaulted.
24. Provide community legal education workshops in ethnic areas to increase understanding on legal rights, responsibilities and procedural options to obtain formal legal redress for sexual violence.
25. Increase specialized support for child survivors of sexual violence, including reintegration support and professional counseling services.

## Recommendations for the Government of Burma:<sup>36</sup>

1. Provide State funding for victim services, including professional mental health services and witness protection for children and all survivors of sexual violence.
2. Revise the Child Law to establish a minimum sentence for sexual violence against children.
3. Revise the Penal Code to broaden the scope of criminalized sexual violence to meet international standards.
4. Conduct awareness-raising among Members of Parliament and government staff about the rights of women and children.
5. Conduct public awareness-raising about sexual violence, and the rights of women and children in both urban and rural ethnic areas.
6. Invest greater resources to promote the human rights of and equality for women and girls in ethnic areas.
7. Pass the Protection and Prevention of Violence Against Women Bill into law immediately, and continue to consult with women's organizations to ensure that the law is effectively protecting the rights of women and girls in Burma.
8. Increase the number of women in front-line staff positions, including police officers and mental health workers.
9. Conduct child and gender-sensitivity training amongst police officers, counselors and other front line staff who work with survivors.
10. Develop a national health care system in which care is distributed effectively, equitably and transparently, well-equipped public health facilities are available and comprehensive public and reproductive health education is offered, particularly in rural areas.

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<sup>36</sup> See WLB's Briefing Paper "Access to Justice for Women Survivors of Gender-based violence committed by state actors in Burma" 24 November 2016, for WLB's recommendations to the Burmese government with respect to ending impunity and achieving access to justice for women survivors of gender-based violence committed by State Actors: <http://womenofburma.org/briefing-paper-access-to-justice-for-women-survivors-of-gender-based-violence-committed-by-state-actors-in-burma/>.