

A Report by
Women and Child Rights Project (WCRP)
Human Rights Foundation of Monland (HURFOM)

BRIEFER- CRACKS IN THE SILENCE:

SEXUAL VIOLENCE AGAINST CHILDREN AND CHALLENGES TO ACCESSING JUSTICE IN MON STATE AND MON AREAS OF SOUTHEAST BURMA

“Even if a [child rape] case is brought to the courts, the punishment [perpetrators receive] is not just, so they [villagers] do not want to fight for justice. People do not trust in the rule of law, so they just give up on the truth.”

~ Interview with Mi Cherry Soe, Mon Women's Network

Since 2013, the number of reported cases of violence, particularly sexual violence, toward children in Burma has increased dramatically. So too is this the case in Mon State and Mon areas of Burma. HURFOM itself has seen a significant increase in the number of cases of violence toward children received between 2013 and 2016. However, due to the shame and stigma associated with sexual violence, as well as the challenges faced when accessing justice in Burma's complex, pluralistic legal system, it is likely that the number is much higher than actually documented.

This report by HURFOM's Women and Child Rights Project (WCRP) analyzes 20 cases of violence toward children received from Mon State and Mon areas of southeast Burma between December 2013 and January 2017. The types of violence ranged from rape to human trafficking; however, in the majority of cases sexual violence was identified as the primary motive. While HURFOM acknowledges the small size of the dataset, this report aims to provide a platform for community perspectives on issues that they have identified as important to them, rather than to make general conclusions regarding the phenomenon.

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While analyzing the cases, interesting patterns in how families navigated the pluralistic legal system in Burma emerged, as well as a number of challenges they face when accessing justice while reporting a crime involving sexual violence. Thus, this report looks not only at individual cases, but also at the challenges villagers face when pursuing justice and the forms of agency, both individual and collective, they use to overcome these obstacles.

This report is divided into six main sections. After the Introduction (Chapter 1) and Methodology (Chapter 2), this report provides a basic overview of the legal and administrative structures that deal with crime of a sexual nature. Furthermore, it provides a brief examination of Burma's international and domestic obligations to protect children. Next, Trends in Violence Toward Children (Chapter 4) are provided including types of violence, perpetrators, and reporting chains, after which Voices of Villagers (Chapter 5) are presented, including individual and collective forms of agency, perspectives on the increase in reports of sexual violence, and challenges to accessing justice. Finally, Recommendations (Chapter 6) for the Burma government, including local government and administrative departments, the New Mon State Party (NMSP), as well as community-based organizations (CBOs) are provided.

Key Findings

- HURFOM saw a significant rise in the number of reports of violence against children received between 2013 and 2017.
- In all cases received by HURFOM, the victims were female.
- By far, the vast majority — 85% — of violent abuse toward girls in Mon State and Mon areas documented by HURFOM involved sexual violence as the primary form of abuse.
- While rape was the primary type of abuse, in 70% of the incidents, victims reported experiencing two or more types of abuse concurrently, including abduction, explicit threats to their life and/or their families' lives, and serious injuries sustained during the attack.
- In only 30% of cases documented by HURFOM has the incident been reported as settled through the police, village administration, or NMSP.
- Villagers used a variety of methods to overcome obstacles to accessing justice, including reporting the incident, rejecting compensation in lieu of punishment, protesting an unsatisfactory outcome, and community support.
- Villagers face a variety of challenges when accessing justice, including traditional beliefs surrounding sexual violence, low socio-economic status, weak rule of law, and lack of trust in formal legal systems.

Trends in Violence Against Children

Types of Violence

HURFOM received reports concerning 20 incidents of violence against children, including multiple and concurrent types of abuses, occurring between December 2013 and January 2017. In all cases received by HURFOM, the victims were female. Those experiencing violence ranged in age from as young as three to 17 years of age; however, there was a slight majority of cases involving children between the ages of 13 and 17. In all, HURFOM documented 16 incidents of rape; one attempted rape; seven incidents of abduction, including one case of human trafficking; six incidents of explicit

threats toward life; and two killings, for a total of 20 unique cases.

Sexual Violence

By far, the vast majority — 85% — of violent abuse toward girls in Mon State and Mon areas documented by HURFOM involved sexual violence. Out of the 20 incidents HURFOM received, 16 of those involved rape as the primary type of abuse, while one case involved the attempted rape of a minor.

While rape was the primary type of abuse, in 70% of the incidents, victims reported experiencing two or more types of abuse concurrently. These abuses included abduction, explicit threats to their life and/or their families' lives, and serious injuries sustained during the attack.

For example, in June 2016, a 9-year-old girl was raped by a 24-year-old man in A Baw village, Ye Township, Mon State, after which he threatened that if she told her parents he would come back and kill her:

"She was left unconscious for a few hours, and after she woke up she had to walk three miles back to her village. When her mother saw her injuries, including vaginal bleeding, she took the child to the hospital and there it was then revealed by the doctor in Ye that she had been raped. The young girl is currently in grade three; however, due to her medical condition, she has had to drop out of school for a while."

Incident Report submitted by HURFOM Field Reporter

Killing

Although the killing of a child after a sexual assault was rare in the dataset, HURFOM documented two cases of the intentional death of a child.

For example, in June 2014, an 11-year-old girl was raped and murdered in Yebyu Township, Tenasserim Division on her way home from school. According to an administrator from Thar Yar Mon village:

"[The] child was [found] dead in a hole and her stuff, such as a bag, umbrella, and shoes were beside her. Her shirt was lacerated and her head had been hit with a stone. The authorities took her body to the hospital in Kan Bauk [where] the doctor checked her body and found that she was raped before she was killed."

Incident Report submitted by HURFOM Field Reporter

Perpetrators

In all cases documented by HURFOM, the perpetrator was male. In addition, the offender was much more likely to be known to the victim, either as a community member or family member, while in only a small number of cases were the perpetrators strangers. Out of the 20 cases of violence against children documented by HURFOM, nine of the perpetrators were community members, six were related to the victim, two were strangers, two were unidentified, and one was a soldier in the Burma Army.

Community Members

In 45% of cases received by HURFOM involving violence against children in Mon State and Mon areas of Burma, the perpetrator was a member of the child's community. Community members included individuals close to the family, neighbours, and coworkers. The victim's family often expressed disbelief that someone they knew could be involved.

For example, in November 2016, an 18-year-old boy attempted to rape a 9-year-old girl in A--- village, Thanbyuzayat Township, Mon State. As the attack took place in the grandfather's home in the early morning hours, upon hearing the noise the girl's grandfather woke up and scared the perpetrator away:

"We feel they [the perpetrator and his family] don't care about us. If they apologized to us early on, we would have felt fine and may have forgiven them. We never thought that he would do this to my granddaughter because his parents were working in our rubber plantation and he always visits our house."

Interview with Grandfather of 9-year-old victim of attempted rape

Family Members

Being related either by blood or marriage was the second most common type of relationship identified between the perpetrator and victim.

HURFOM documented six cases of violence against children perpetrated by a family member of the victim. In only two cases were the perpetrators immediate family members, being either the father or brother of the victim, while in four cases the perpetrator was either the uncle or brother-in-law of the victim.

Soldiers

Contrary to previous reporting periods, HURFOM received only one report of sexual violence committed by a soldier during the current reporting period. On December 24, 2013, a soldier from Burma Army Infantry Battalion (IB) #31 abducted a

13-year-old girl from her home and raped her in Ye Township, Mon State:

“[On the] night of the incident, Mi Paroal Mon was making a roof while her parents were [out]. To carry the nypa palm, Than Win and his three men went down to Mi Paroal Mon’s house around 7:00 pm. The incident occurred that night. Than Win intruded into the house and hugged her tightly. Then they brought her to the Mon National School and assaulted her there. The men had rope and tied her up. Only Than Win raped her while three men helped him.”

Incident Report submitted by HURFOM Field Reporter

Voices of Villagers

Agency

During the reporting period, villagers in Mon State and Mon areas of southeast Burma have addressed the challenges associated with accessing justice in cases of violence toward children in a variety of ways. These include reporting the crime itself, despite widespread shame and stigma associated with sexual violence; continuing to call for justice despite threats or pressure to remain silent from perpetrators and powerful figures; appealing to legal authorities for justice, particularly in the form of punishment for the perpetrator; turning down offers of compensation in lieu of punishment; and protesting decisions by authorities through petitions and turning to alternative legal systems to achieve desired outcomes.

Reporting

In many cases, the disclosure of an incident of sexual violence by a child to a parent or guardian was a courageous act in itself. In Burmese and Mon cultures, sexual violence is often associated with social shame and stigma. This in tandem with explicit threats to their and/or their family’s safety by the perpetrator creates strong disincentives to reporting crime of a sexual nature. This is borne out by the evidence collected by HURFOM, where in approximately only 11% of cases did victims immediately disclose the incident without prompting by a family member or guardian. Furthermore, even after disclosing an incident to a parent or guardian, families sometimes felt reluctant to report the incident to authorities, citing the shame they felt regarding the situation.

However, the increasing number of cases being reported in Burma, may be an indication that cultural traditions to remain silent regarding such issues is slowly changing.

In all cases documented by HURFOM the survivors of sexual violence did eventually, either intentionally or accidentally, disclose their ordeal to someone. In some cases, they even continued to demand justice despite repeated attempts to intimidate them, in one case by military officials:

“If she were to refuse this settlement, the military personnel threatened that Mi Paroal Mon and her family would be expelled from living in the village. Mi Paroal Mon refused this settlement, and personally requested that her parents not accept anything the military would offer to settle the case

easily. The military threatened the victim and her family to leave the village if they still had tension with the battalion. However, the girl kept saying that Than Win did assault her. The military has also [pressured] village administrators to settle the case.”

Incident Report submitted by HURFOM Field Reporter

Rejecting compensation in lieu of punishment

Another common strategy employed by families when pursuing justice was to reject monetary compensation in favour of jail time for the perpetrator. Some villagers refused monetary settlements and in one case returned compensation to the perpetrator in order to pursue other legal options. Survivors of sexual assault and their families are often pressured to accept compensation by village administrators and the families of perpetrators in order to resolve the situation quickly and quietly.

Protesting a decision or lack of investigation

Another form of agency documented by HURFOM was a family’s willingness to speak out regarding dissatisfaction with how the case was being handled by authorities. In some cases, families reached out to CBOs, appealed decisions, and even sought justice through other legal systems if left unsatisfied with the outcome.

Community support

Not only has HURFOM documented the various ways in which individuals in Mon State and Mon areas of southeast Burma have sought justice for abuses, these attempts also include collective efforts to seek justice on behalf of a victim and a community, as well as to prevent further abuses from occurring. These attempts include petitioning a military base for justice by a village on behalf of a victim raped by a soldier, and local organizations providing victim support services, as well as community education and awareness.

Community support can also take the form of local CBOs providing support to young women and girls who experience sexual violence. In 30% of cases documented by HURFOM, CBOs are explicitly mentioned as aiding families. In some cases, support for families and survivors included attending to health issues, such as medical checks and treatment for injuries; transportation to medical clinics and hospitals; legal and financial support; and counselling.

Community support extends beyond victim services, focusing as well on preventative education and rights awareness. Many local CBOs and national rights activists offer community education in the form of sex education, legal workshops, and rights trainings. These trainings target all sectors of the community, including children and parents, as well as authority figures, such as village administrators

Perspectives on the increase in reported cases of the sexual abuse of children

A number of trends emerged during the analysis regarding the increasing prevalence of reports of violence against children in Mon State and Mon areas of southeast Burma. While an in-depth study is required to fully understand the phenomenon, HURFOM documented both villager and CBO perspectives on the issue. A number of trends emerged during these discussions, including a

greater willingness to report such issues; access to technology; lack of rule of law; and weak penalties for offenders.

Increasing education and access to technology

Some believed the increase in reports of sexual violence against children was an indication that individuals and families were more willing to speak out about the issue, rejecting traditional beliefs that sexual violence is shameful and should be kept

silent. This increase in willingness was attributed to efforts by CBOs to educate villagers on sexual abuse and legal rights.

Others felt that an increased willingness to talk about these issues was related to the proliferation of technology, especially internet access, smartphones, and social media:

“There were no smartphones and social media in the past, but we have everything now and people have better general knowledge. So they speak out about the abuses and report their problems. There must be education workshops in remote areas [without internet access].”

Interview with Mi Sar Dar, MNEC

However, technology was not always regarded as a positive force as many felt that increased access to the internet has allowed pornography to have a deleterious effect on communities:

“As we are living in the age of technology, everyone can watch porn movies on their smartphones. It’s very accessible. After watching porn movies, perpetrators want to try [what they see] and innocent children become their targets.”

Interview with Mi Ong Rin, MWO

Lack of rule of law/weak enforcement

Others felt that the increase in reports of sexual violence against minors stemmed from a lack of rule of law and weak enforcement of laws. Much of this perspective derives from the short sentences perpetrators of sexual violence against children receive after being convicted, which often fall far short of the ten-year maximum stipulated in the penal code:

“Due to the lack of justice and strong rule of law, as well as weak punishment for perpetrators, it creates an environment where rape occurs more, especially the raping of young children. I would suggest for stronger laws and punishments...The laws in Myanmar look like rubber bands. They can be loose or strict. In the case of a four-year-old child that was raped, the perpetrator had been sentenced to only four years in prison.”

Interview with Mi Cherry Soe, MWN

Challenges to accessing justice

During HURFOM’s discussions of key challenges to accessing justice with villagers and CBOs in Mon State and Mon areas of southeast Burma, two broad themes emerged: lack of reporting of incidents of sexual violence against children and lack of adequate redress when one does pursue justice through formal or informal mechanisms. Lack of reporting could take two primary forms: that of not reporting the incident at all, or reporting only to village-level authorities, without pursuing formal legal outcomes.

The reasons identified for these two obstacles were often interconnected and mutually reinforcing, creating cumulative obstacles to achieving justice. The four main categories believed to lead to the above outcomes were identified as: traditional beliefs surrounding sex and sexual violence; low socio-economic status; lack of trust in both government authorities and the legal process; and unsatisfactory legal outcomes.

Traditional beliefs

Traditional beliefs regarding gender equality, women’s rights, and sexual violence are one of the biggest obstacles for victims when accessing justice for violent abuse. All of these issues combine to create a social system of shame and stigma associated with crime of this nature. This deep-seated social stigma is a major factor in the under-reporting of crimes of sexual violence. Furthermore, outdated laws explicitly allow for some types of sexual violence, further adding to a culture of silence and tacit acceptance. For example, marital rape is legal under the Penal Code in Burma, as long as one’s wife is 13 years or older. In a culture where violence against women and young girls is socially-legitimized, incidents of sexual violence often go underreported.

However, even if individuals do disclose to a family member or guardian, the fear of community shame and stigma may induce them to either keep it to themselves or settle at the village level. As village administrators, the majority of whom are men, have no official authority to legally try a rape case, they often pursue customary law consisting of arbitration between the perpetrator and the victim’s family, resulting in compensation:

“Everyone including villagers, victims, village headmen have accepted that being raped is very shameful. So most of the rape cases are secretly solved without reporting [to the police or the authority].”

Interview with Mi Kon Chan Non, MWO

Low socio-economic status

Low socio-economic status is another obstacle to accessing justice. Even if a low-income family does opt to report an incident of sexual violence against their child, compensation may seem like the best course of action in light of the legal fees and transportation costs associated with taking formal legal action in a court of law. Furthermore, length of trials can last years, necessitating even greater costs and days off work for families to attend the trial:

“No villager wants to appear in court. The legal process will take years and it is costly. The rural people realize that going to trial is costly. Most of the perpetrators are rich and the victims are poor. They think they will definitely lose a trial against the rich. They deeply believe that money wins the trial. That’s why they accept compensation decided by the village headmen.”

Interview with Mi Ong Rin, MWO

Lack of trust in legal process and authorities

Lack of trust in formal legal systems was another primary obstacle to accessing justice. This took two major forms: lack of trust in the government, police, and administration departments and lack of trust in the judicial processes. This distrust of formal legal administrations can be attributed to an unfamiliarity with government departments in urban centres, as well as unease regarding interactions with police in Burmese controlled areas. Long and costly trials, police and jury ineptitude, corruption, and language barriers have all contributed to an inherent distrust of formal legal systems and processes among many villagers.

Unsatisfactory legal outcomes and lack of rule of law

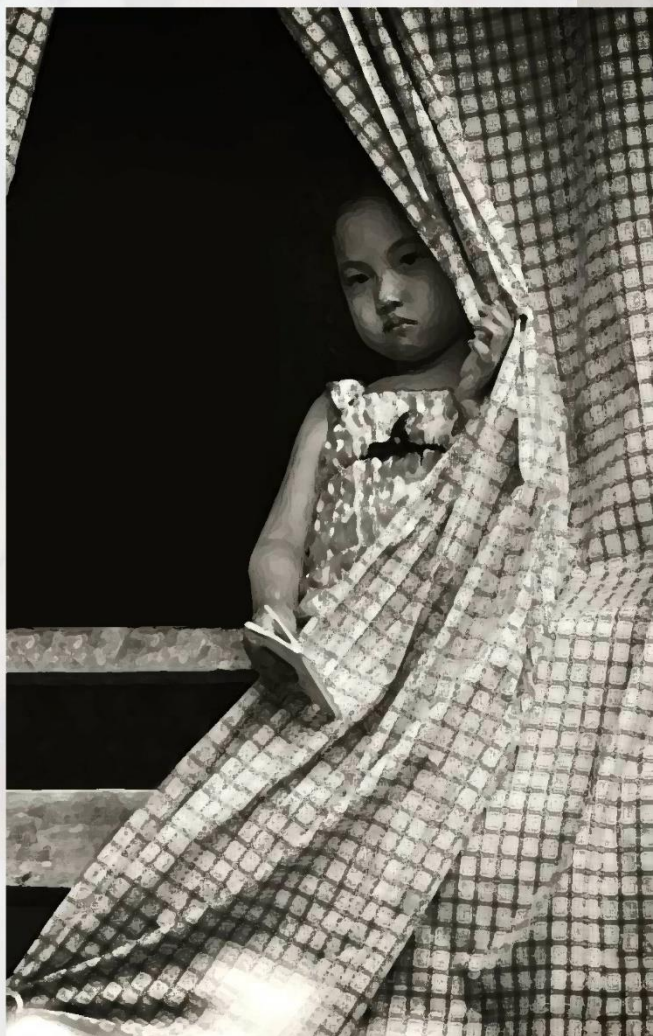
By far some of the most common and reoccurring themes regarding challenges individuals face when

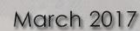
accessing justice in Burma, especially regarding sexual violence, were inadequacies within the formal legal and judicial systems. Many felt this was due to outdated laws and the absence of specific laws and policies targeting violence towards women and children.

A primary reason for feeling the laws were currently inadequate was the perceived light punishments perpetrators of sexual violence against children received. Without adequate external inhibitors, such as appropriate social sanctions and harsh punishments, people felt that this would only serve to encourage perpetrators to commit similar crimes again.

“The punishments are quite light so after subtracting the time spent in jail while the police investigated and the length of the trial, the perpetrator does not have to stay in prison too much longer.

Interview with Mi Kon Chan Non, MWO





Recommendations

HURFOM recommends the Burma government to:

- ❖ Adopt a coherent and modern national child protection policy.
- ❖ Ensure that those accessing the formal legal system in Burma have access to police and court services in their language, as well as access to laws published in their own language.
- ❖ Ensure the participation of more women in judicial systems and processes, including juries.
- ❖ Educate all parties involved in legal and judicial processes, male and female, on sexual violence and gender equality.
- ❖ Eliminate corruption in police and judicial systems, and ensure all reported cases of sexual violence are investigated thoroughly, without victim blaming or collusion with alleged perpetrators.
- ❖ Provide assistance for survivors of sexual violence, including safe houses and temporary shelters.
- ❖ Provide sex and gender equality education in schools and work to eliminate harmful, traditional beliefs surrounding sexual violence.
- ❖ Implement poverty reduction programs for villagers and provide legal assistance for low-income families.

HURFOM recommends the Burma Parliament to:

- ❖ Abolish provisions in the penal code which allow for sexual violence.
- ❖ Amend the penal code to include specific provisions which target perpetrators of violence toward children, ensuring they receive adequate and proportional punishment.

Recommendations

- ❖ Release and consult with civil society on the draft National Policy on the Prevention of Violence Against Women, and pass legislation that promotes and protects the rights of women.
- ❖ Release and consult with civil society on the draft amendment of the 1993 Child Law, and ensure the law includes a section on the prevention of violence and sexual violence toward children.

HURFOM recommends the GAD to:

- ❖ Ensure that GAD authorities at all levels of government report all crimes of a sexual nature to the police.
- ❖ Eliminate the use of customary law and village-level arbitration and compensation as a method of settling cases of sexual violence.

HURFOM recommends the NMSP to:

- ❖ Ensure all cases of sexual violence are reported to the central judiciary committee of the NMSP by village, township, and district-level authorities.
- ❖ Eliminate the use of negotiation and compensation as a method of settling cases at all levels of NMSP administration.
- ❖ Ensure the participation of more women in judicial systems and processes, including juries.
- ❖ Educate all parties involved in legal and judicial processes, male and female, on sexual violence and gender equality.

Recommendations

HURFOM recommends local CBOs to:

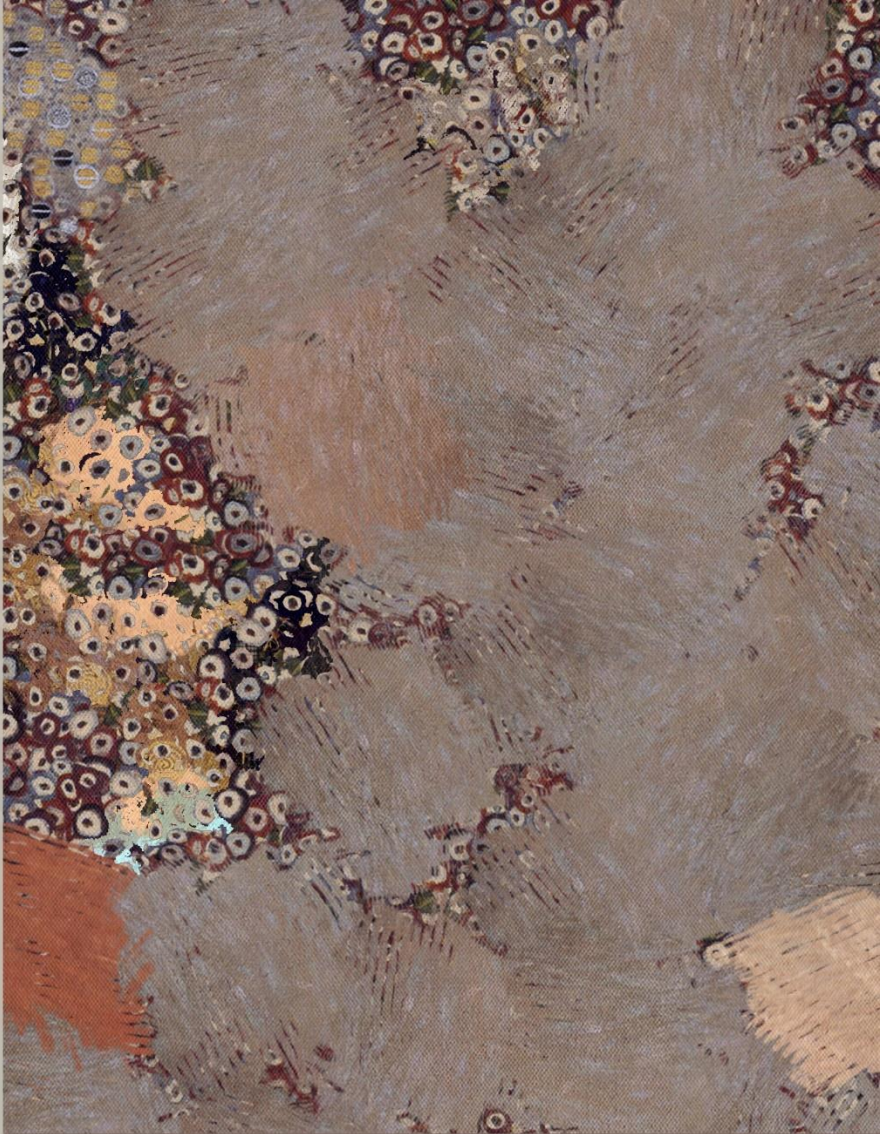
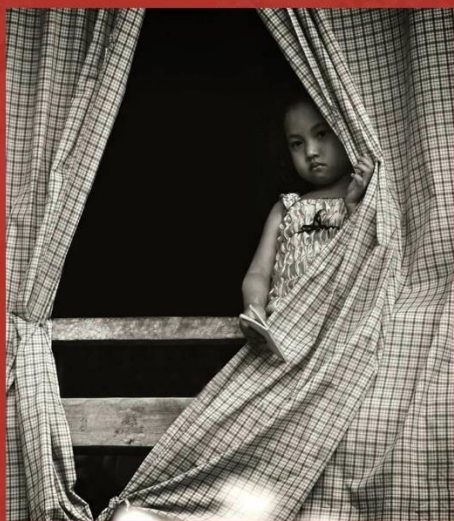
- ❖ Continue to campaign and raise awareness on the issue of sexual violence.
- ❖ Continue to educate communities, especially in remote locations, on sexual violence, child rights, and legal rights and procedures when reporting incidents of violence toward children. Training should include all members of society, including village administrators.
- ❖ Continue to provide education which challenges traditional beliefs surrounding the stigma and shame associated with sexual violence.
- ❖ Continue to provide support to survivors of sexual violence and encourage communities to do the same.

HURFOM recommends the International Community to:

- ❖ Continue to fund and promote education in Burma on sexual violence, child rights, and women's empowerment.
- ❖ Continue to pressure the Burma government to meet its obligations under CEDAW and the CRC.

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