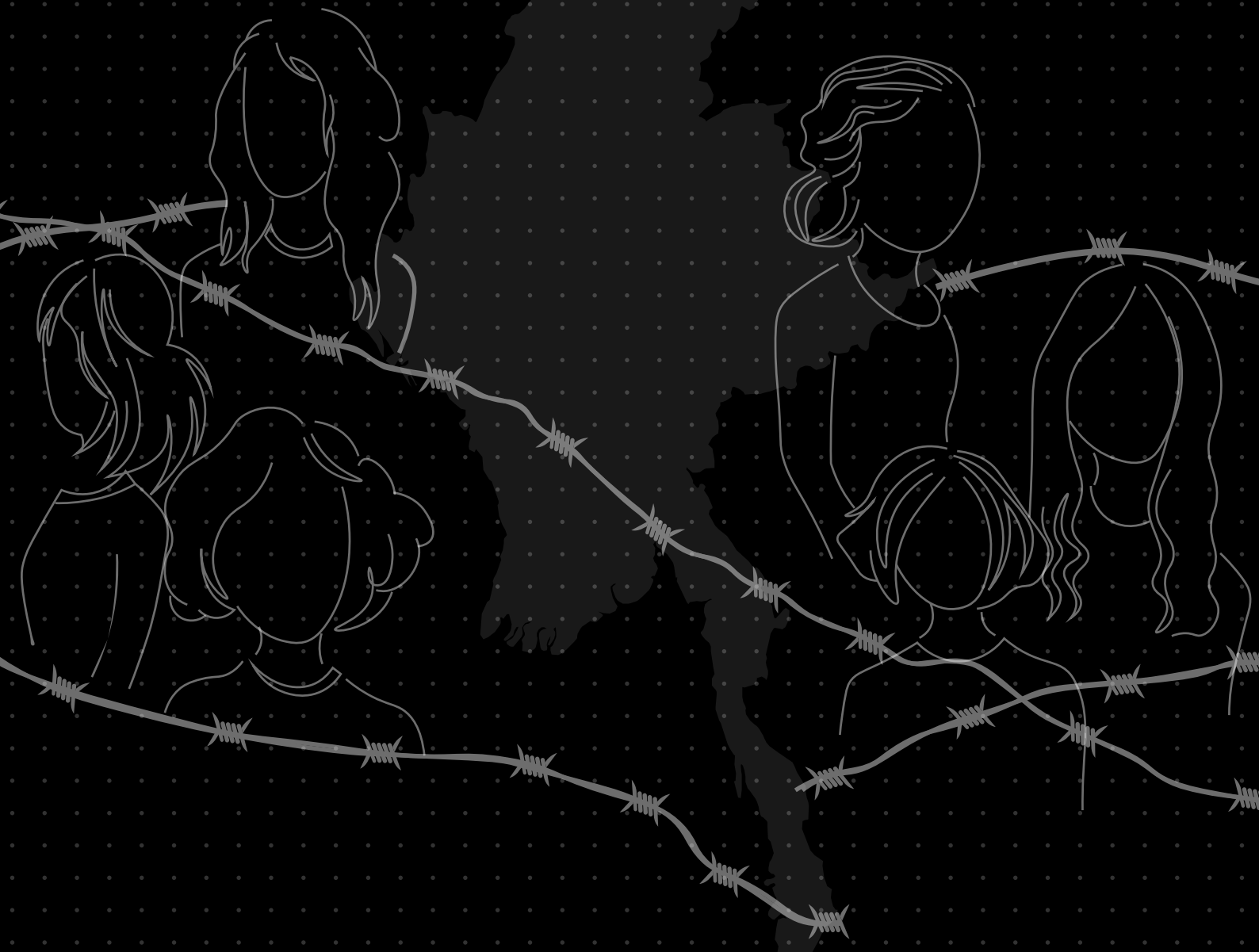


Barriers at Every Turn

GENDER-BASED VIOLENCE AGAINST
ETHNIC WOMEN IN BURMA



List of WLB Member Acronyms

BWU	Burmese Women's Union
KNWO	Karenni National Women's Organization
PWU	Pa-O Women's Union
RWU	Rakhaing Women's Union
KWAT	Kachin Women's Association Thailand
SWAN	Shan Women's Action Network
KWHRO	Kuki Women's Human Rights Organization
TWO	Ta'ang Women's Organization
KWO	Karen Women's Organization
TWU	Tavoyan Women's Union
KyWO	Kayan Women's Organization
LWO	Lahu Women's Organization
WJ	Women for Justice

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This report could not have been written without the brave girls, women and other community members who dared to share their stories despite continued risk to their own security. WLB firmly hopes that their courage in speaking out will motivate leaders inside and outside of Burma to effect the genuine legal, political and social change that will protect women and restore peace and security to Burma. WLB would also like to thank Michelle Onello and Phyu Phyu Sann of Cetana Consulting who coordinated the data analysis and writing of this report.

About the 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

Introduction

The National League for Democracy (“NLD”) won a landslide victory in national elections held in November 2020, polling even better than in 2015, when its decisive victory ushered in a democratically-elected regime and paved the way for Daw Aung San Suu Kyi to assume the mantle of government. Yet, during the NLD’s first term in power, ethnic women in Burma did not experience greater security or safety despite promises to improve their lived experiences. In fact, the Women’s League of Burma (“WLB”) has found that from 2017 to 2020 women and girls continued to experience alarming rates of gender-based violence in Burma, the result of a dangerous combination of legal and societal factors that discriminate against women and preclude accountability for violence.¹ This epidemic of violence has been exacerbated by the lockdown measures imposed to combat the coronavirus pandemic.² The new NLD-led government must use its strengthened political position to prioritize ensuring that women, especially ethnic women, are fully protected from gender-based violence and that survivors receive justice.

Representative documentation from a subset of WLB’s members reveals the prevalence and wide variety of gender-based violence in ethnic areas. Violence includes domestic violence, sexual violence, rape and attempted rape. Perpetrators are most frequently known to the victims as spouses and family members, yet also may be teachers, religious leaders, police officers, soldiers and village administrators. This scourge of violence against women results from deeply-entrenched patriarchal attitudes in society which lead to women’s lack of power and authority in private and public life, women’s exclusion from male-dominated institutions of power, such as the military, security forces and religious orders, and the marginalization of women’s issues in society.

Women and girls impacted by gender-based violence often suffer from physical and mental trauma. These harms are amplified by gendered social stigma throughout society that blame and shame victims. Survivors and their families are often pressured into silence and are ostracized from their communities if they speak out.

Services to support survivors, especially in ethnic areas, are woefully inadequate. The government’s failure to provide sufficient social, legal, medical and other services to survivors leaves civil society organizations (“CSOs”) responsible for filling the gap. Yet, local

CSOs, such as WLB's constituent members, lack the funding or training to effectively meet the breadth and depth of these needs.

In many cases, survivors are not able to utilize the legal system to ensure accountability for violence. The domestic legal framework, including the 1861 Penal Code, is out of date and efforts to pass a comprehensive violence against women law, begun in 2013, have yet to succeed. Women are often pressured to use informal justice mechanisms, forced to settle the matter between families or, even worse, stay silent for fear of bringing shame to the family. In cases that do make it through the formal legal system, women and girls are re-traumatized by compulsory participation in public trials, lack of gender sensitivity training among justice actors and inadequate evidentiary and other protections for survivors and witnesses.

The result of these combined societal and legal forces is that impunity for perpetrators has become the norm. This is especially true for perpetrators, including the military, whose power, money and/or connections allow them to evade justice by exerting their influence, leaving survivors without redress. Even when police, judges and local authorities become involved, they do not have the capacity, political will or specialized training to intervene effectively.

The government's failure to provide for adequate social, legal, medical and other services and to ensure justice for survivors represents a violation of women's basic human rights. Under international human rights law, women and girls must be protected against violence, a form of gender-based discrimination, and survivors of violence must be provided with adequate remedy and support services. The government pledged to protect these rights and ensure women's safety when it became party to international agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the Convention on the Rights of the Child ("CRC").³

WLB continues to document cases of gender-based violence in ethnic areas to highlight the dearth of social support services as well as the entrenched gender discrimination and gaps in the legal and judicial systems faced by survivors when seeking redress for these crimes. Without systemic change, including vast improvement in service provision as well as social change, legal reform, and stricter adherence to the rule of law, women will continue to be abused and perpetrators will continue to evade justice. This troubling situation has only worsened of late, as the coronavirus pandemic has intensified violence against women and girls, especially domestic violence.⁴ The new NLD-led government must use its renewed mandate to immediately address this public health crisis and fulfill its obligations to ensure the safety and well-being of the ethnic women of Burma during its next term.

Overview

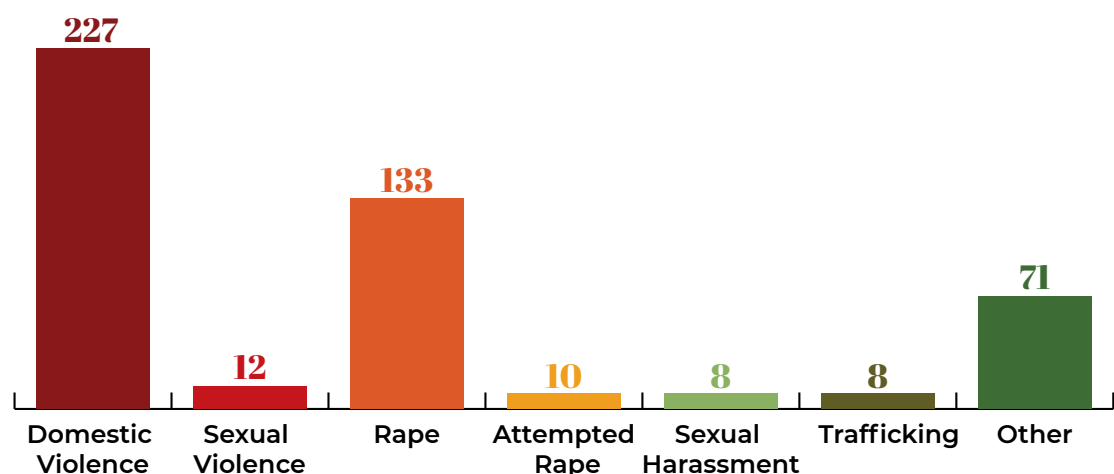
of Gender-Based Violence Against Ethnic Women in Burma (2017-2020)

OVERVIEW OF REPORTED CASES OF GENDER-BASED VIOLENCE

Gender-based violence in Burma is a common occurrence, due in part to patriarchal attitudes and cultural mores, and women’s vulnerability is exacerbated by the absence of effective legal recourse for survivors.⁵ From 2017 to 2020, 11 members of WLB reported 469 cases of gender-based violence, including domestic violence, sexual violence, rape and attempted rape. We believe that these figures barely scratch the surface as documentation was reported only by a subset of constituent groups and from a limited geographic area. This documentation does not encompass most regions that have seen renewed conflict and increased militarization which are particularly dangerous, as unrest and instability fuel violence in both public and private life.⁶ Thus, we believe the actual figures, and the number of cases of conflict-related sexual violence (“CRSV”), are much higher.

The documentation provided to WLB demonstrates that women experience a wide variety of violence, including domestic violence, sexual violence, rape, attempted rape, sexual harassment and trafficking. Reports of domestic violence accounted for almost half of reported cases and rape and attempted rape accounted for almost a third of reported cases. See Graph 1 below.

Graph 1: Documented Cases (2017-2020)



DOMESTIC VIOLENCE

The significant number of reported domestic violence cases indicates that women face serious threats in their private lives, almost exclusively from current or former intimate partners. Of the 227 reported cases of domestic violence, 98% were committed by intimate partners, including spouses and ex-spouses. The range of domestic violence included hitting, punching, slapping, beating, kicking, throwing/pushing and hair-pulling as well as violence with weapons including objects like knives and sticks. There are many cases of severe physical violence such as repeated beatings, kicking and smothering.

The vast majority of domestic violence cases involved abuse of women by spouses or partners who were under the influence of alcohol or drugs and are linked to social and economic problems in ethnic areas such as depression due to unemployment, failed crops and other economic stress and anxiety. The majority of domestic violence cases resulted from financial instability, dislocation and unemployment and the male partner's inability to provide adequate financial support to his family is the overwhelming cause of arguments between couples that escalate into physical violence. Societal gender norms play a role as men facing poverty and lack of livelihood opportunities feel that they are not fulfilling their duties as head of the household, which fuels substance abuse and violence. Infidelity by the male partner is also reported as a major source of conflict leading to physical abuse. Details regarding individual cases reveal economic instability was a factor in almost all cases and substance abuse was identified in two-thirds of cases.

Survivors of domestic violence report overwhelmingly that their lack of education and employment opportunities leave them without power and authority within their intimate partner relationship. In most cases, economic vulnerability prevented women from leaving their abusers and many survivors did not seek justice for domestic violence out of fear of losing potential financial support from a spouse or partner. Other causes cited were reluctance to break up the family unit, societal pressure and religious concerns.

Thus, domestic violence figures reflect the vast gender power imbalances and unequal norms in society which cause women harm. See Graph 2 below.

Graph 2: Perpetrators of Domestic Violence

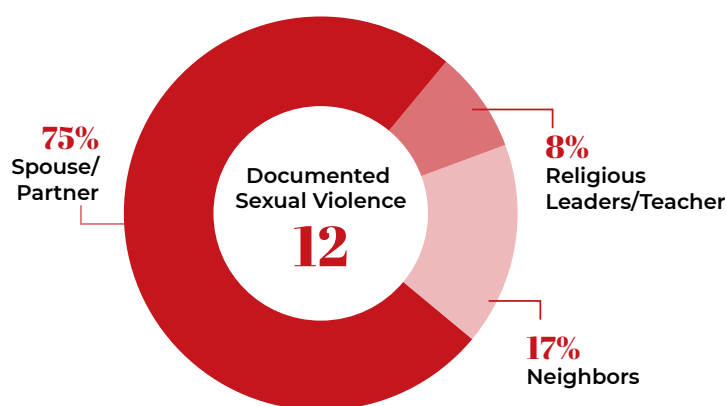


SEXUAL VIOLENCE

Most cases of reported sexual violence are actually intimate partner violence, as perpetrators beat their partner for refusing to have sex or force their partner to perform sexual acts against her will. Opportunistic violence was committed by religious leaders and relatives and a few cases were committed by unknown neighbors in remote areas as women and girls were on their way to farms and school.

Thus, a large portion of reported violence (domestic and sexual violence) was not random but a means for male intimate partners to exert their power and authority over their female partners and vent their frustrations over challenging life circumstances. See graph 3.

Graph 3: Perpetrators of Sexual Violence



RAPE AND ATTEMPTED RAPE

Out of the 133 documented rape cases, the vast majority – upwards of 80% - involved particularly vulnerable women and girls, such as the mentally disabled, orphans and women and girls facing economic difficulties. Over 80% of documented rape cases (109 out of 133) involved very young child victims, with the youngest being five years old, and over half of attempted rape cases (six out of 10) involved minors. This percentage is even higher than official government statistics, which reported a surge in rapes, up to 1,405 rape cases in 2017 from 1,110 the year before, with approximately two-thirds committed against children.⁷

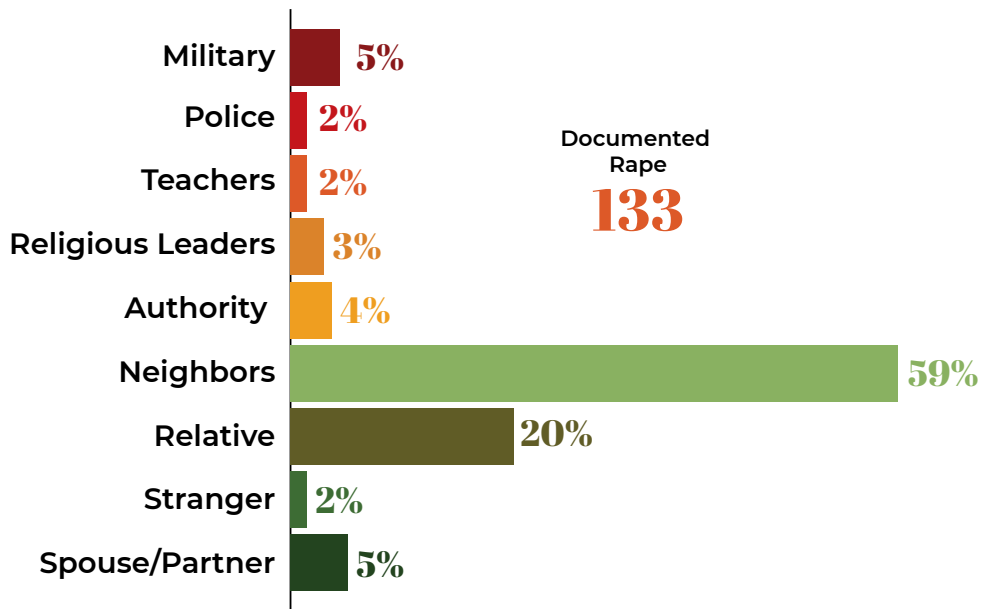
Although data was not reported from conflict areas, there were six cases of rape perpetrated by members of government security forces.

In a fifth of rape cases, perpetrators were family members, such as a step-father or other relative. In over half of cases, perpetrators were neighbors and in the vast majority of cases, the perpetrator was someone known to the survivor. Many cases involved men abusing their influence and power over

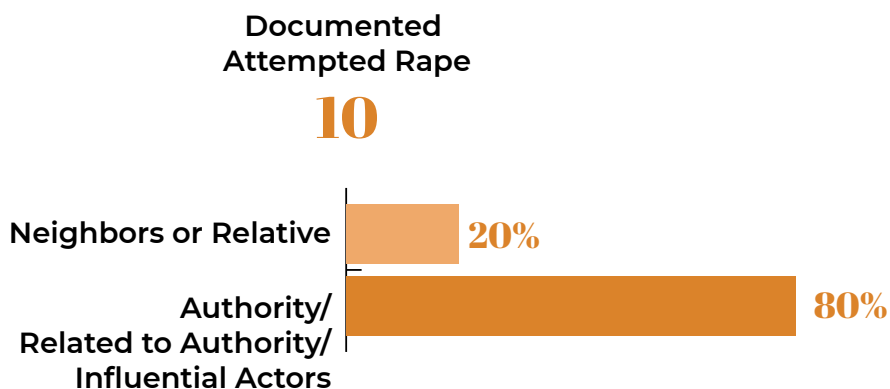
women and children. A few rape cases included abduction, often perpetrated by strangers encountered in the village. See graph 4 below.

The vast majority of attempted rape cases involved neighbors known to the victim. The remaining cases were committed by persons of authority within the community. See graph 5.

Graph 4: Perpetrators of Rape



Graph 5: Perpetrators of Attempted Rape



TRAFFICKING

Trafficking victims were economically unstable young women who were either unemployed or earning minimal income. In most cases, women were deceived by brokers who promised them better job opportunities and wages abroad. These promises were not kept as these women were trafficked to China for marriage and child-bearing purposes.⁸

OTHER CASES

The other cases reported involved sexual harassment, child molestation, sexual slavery, and other offenses related to marriage such as false promises and adultery.

OVERVIEW OF ACCESS TO JUSTICE FOR SURVIVORS

The documentation provided to WLB reveals that survivors of gender-based violence rarely achieved justice. Of the 469 cases identified, survivors were able to access the formal justice system in only a third of cases. Since the actual number of cases is much higher and the reported cases represent survivors that have the personal strength and resources to report cases, we believe that the overall percentage of cases resolved by the formal justice system is much lower. Perpetrators received sentences ranging from one month to 20 years.

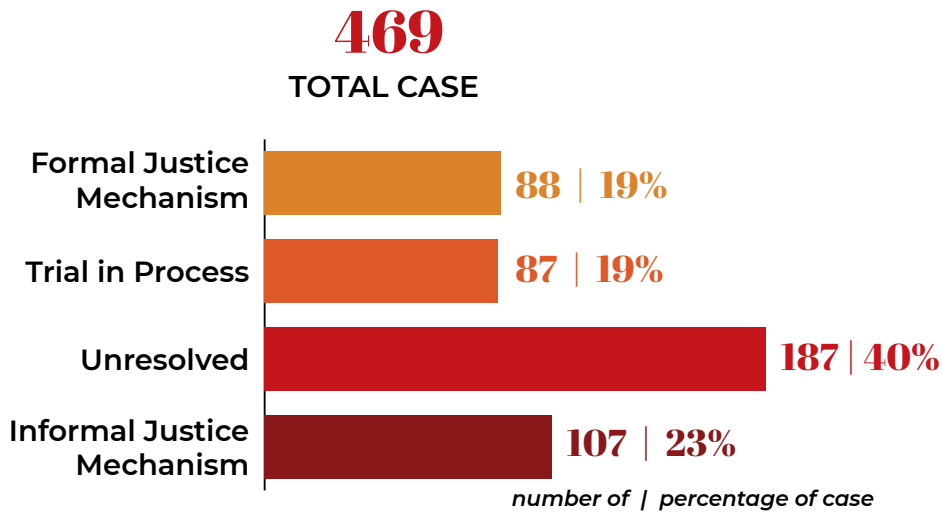
Logistics were a serious obstacle as courts are located far from rural areas and it requires a considerable investment of time and money to travel back and forth and to absorb the lost income. Ethnic women also face communication barriers since many have little knowledge of the Burmese language, and therefore cannot understand what is being said during official proceedings.

Almost a quarter of cases were resolved through informal justice mechanisms, which involved payment of money to the family of the victim, marriage to the survivor or other unofficial means of resolution. Informal justice mechanisms do not represent true justice for victims as their needs are not seen as primary and often the survivor is not involved in negotiations as it is viewed as a community or family matter.

Information also indicated that no matter the system employed, justice outcomes were influenced by the status of the perpetrators. In many cases, perpetrators with ties to authority figures, such as the military or police, were not held accountable or were treated leniently.

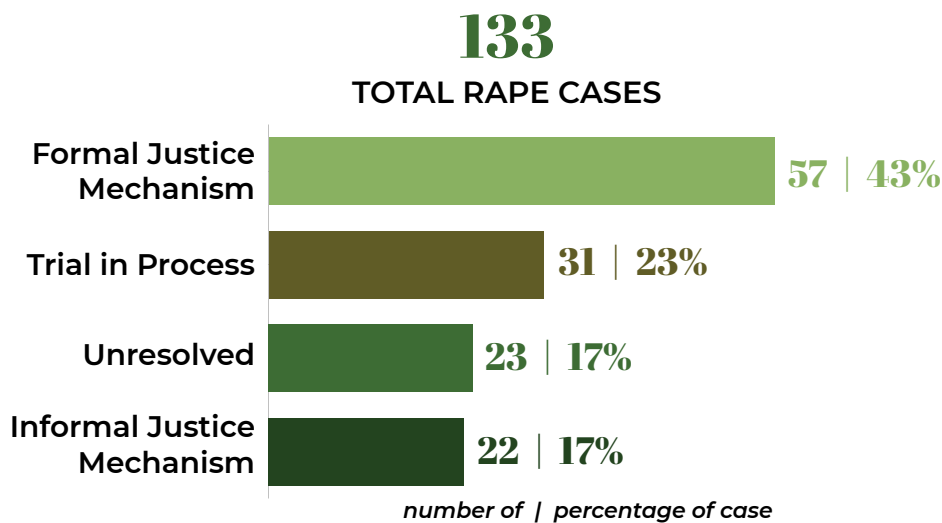
Almost 40% of cases were unresolved which means that victims did not receive any measure of justice. See Graph 6 below.

Graph 6: Access to Justice Total Cases



With respect to access to justice for rape survivors, one out of three (45 out of 133) avoided going through the formal justice system due to the difficulties associated with the legal process, including cost and language barriers. Of the cases that were formally adjudicated (88 out of 133), 57 cases reached guilty verdicts with sentences ranging from two to 20 years imprisonment. Of the remainder, 31 cases are still being litigated and 22 cases were tried through the informal justice system, with resolutions such as negotiated settlements, marriage to the victim or monetary compensation. Survivors reported feeling pressured by their family or village leaders to accept these settlements. Most of the survivors were vulnerable, poor and could not afford to go through the formal judicial system so they felt compelled to accept compensation as a settlement. See Graph 7 below.

Table 13: Access to Justice for Rape Cases



OVERVIEW OF SERVICE PROVISION TO SURVIVORS

The information provided to WLB indicates that there is a huge service and protection gap for survivors. Survivors lacked access to assistance negotiating the legal process as well as to support services covering their emotional, psychological, medical and physical needs. Moreover, the majority of victims had no access to protection measures, either informally or formally, as through restraining orders. As a result, many survivors continue to grapple with trauma and face stigma within their communities long after the violence, and many face the threat of continued violence.

With very few legal support services available, survivors were often unwilling to press charges. Survivors, especially those from ethnic areas, were in dire need of guidance regarding how to access, negotiate and understand the judicial system, sometimes literally as the proceedings are taking place in a language that they do not understand. Psychosocial and medical support services are also insufficient, magnifying the emotional and physical toll of violence.

Since government assistance in ethnic areas is sparse, local CSOs are the only means of support for victims. While local groups provide as much assistance as they can, they lack the funds and training to deal with the scope of the problem and can only provide ad hoc assistance to a small subset of survivors. Reports indicate that much more needs to be done at the government level to protect women from violence, provide survivors with sufficient social, legal, medical and other services and ensure that perpetrators are held accountable.

Barriers at Every Turn: **Legal, Political and Social Impediments Faced by Survivors**

The documented cases outlined above reveal common trends, causes and experiences that highlight the complex mix of forces in Burma that leave ethnic women vulnerable and preclude true accountability for gender-based violence. Broadly, these factors are: an inadequate domestic legal system, the absence of social, legal, medical and other services and unequal gender norms in society.

Barriers to Justice: **Inadequate Domestic Legal System to Address Gender-Based Violence**

INADEQUATE DOMESTIC LEGAL FRAMEWORK

All survivors of gender-based violence face serious obstacles bringing perpetrators to justice since Burma's legal framework and outdated, colonial-era criminal and procedural laws provide insufficient protections, do not adequately address the breadth and scope of issues relating to gender-based violence crimes, represent antiquated concepts and stereotypes and do not meet international standards.

Burma currently has no comprehensive law protecting women from violence or allowing for restraining orders, and overlapping and contradictory legal provisions complicate justice efforts.⁹ The existing legal framework is woefully inadequate as it relies on outmoded definitions of core concepts, such as rape which excludes spouses in certain circumstances, allows only for male perpetrators, limits the acts of penetration that can be considered rape and precludes the rape of men and boys.¹⁰

To address the accountability gap, the government began drafting a Protection and Prevention of Violence Against Women Law (“PoVAW Law”) in 2013, finally introducing a draft of the law in Parliament in January 2020. After a seven year drafting process, the PoVAW Law still does not sufficiently or completely address important issues and falls far short of international legal standards for protecting and providing recourse and restitution for survivors, including inadequately addressing CRSV by state actors.¹¹ In fact, military and security personnel rarely are held accountable for CRSV due to legal protections in the 2008 Constitution, the Penal Code, the 1959 Defense Services Act and the 1995 Police Force Maintenance of Discipline Law that shield them from public criminal prosecutions.¹²

Some of the most troubling shortcomings and omissions of the PoVAW Law include the failure of definitions to meet international standards (including those for rape, domestic violence, sexual harassment and consent); the insufficient, cumbersome and confusing process for emergency measures and protection orders; the inadequacy of support services and the failure of the law to make adequate service provision mandatory; the failure to establish procedural and evidentiary safeguards, including survivor impact statements; the exclusion of women and CSOs in implementation schemes; the lack of mandatory funding sources and the absence of uniformity in justice actor and service provider training.¹³

That the draft law fails on so many fronts indicates that the government may not be serious about its responsibility to protect women from harm since international law provides much readily-available guidance for best practices in this area. In fact, the government is required by its voluntary international commitments to ensure that the domestic legal framework meets international law standards to protect women and girls from sexual violence in all situations, including conflict.¹⁴ In particular, Myanmar is a signatory to CEDAW, which establishes that women and girls have the right to be free from violence, and is bound by the CRC, the International Covenant on Economic, Social and Cultural Rights and United Nations Women, Peace and Security Resolutions regarding women in conflict, as well as international humanitarian law and the laws on state responsibility.¹⁵

The government has failed to ensure that the domestic legal framework protects women from gender-based violence and to incorporate its international legal obligations into domestic law. During its next term, the NLD-led government must reform domestic laws to ensure accountability for gender-based violence and comply with international law, repeal laws that perpetuate impunity for gender-based violence including CRSV, expedite the investigation and prosecution of gender-based violence crimes, ensure sufficient and readily-available legal services for survivors and establish an independent panel to investigate allegations of CRSV in ethnic areas.¹⁶

LACK OF EFFICIENCY, INADEQUATE TRAINING AND CORRUPTION OF THE JUDICIARY, POLICE AND OTHER JUSTICE ACTORS

The formal judicial system of civilian courts is notoriously weak and ineffective in Burma, leading to a high level of public distrust in the judiciary. The country ranks 112 out of 128 countries in a rule of law assessment made annually by the World Justice Project, and its score is unchanged since 2015.¹⁷ In addition to distrust there is a knowledge gap as most survivors are not aware of legal procedures and logistical challenges, such as cost and distance, lead them to turn to informal justice mechanisms.¹⁸

For survivors, reporting to local, predominantly male authorities can be ineffective.¹⁹ WLB has documented cases of undue influence and corruption of justices and judicial actors at the local district level, and township courts are limited in their ability to mete out adequate punishment.²⁰ The legal system does not provide sensitivity training at any level for judges, prosecutors or police, making it harder for survivors to trust the system and achieve justice.²¹

Police frequently do not respond actively or thoroughly to reported cases of gender-based violence and corruption is prevalent, which causes distrust in legal procedures.²² Police investigations are impeded by insufficient sensitivity training and evidence-collection methods, requests for payment by police, inadequate record-keeping and lack of human and financial resources.²³ Police also require support not called for by the law to pursue cases, such as evidence of genital injury or the provision of the survivor's clothing worn during the attack.²⁴ This reluctance trickles down to



Insufficiency and Insensitivity of the Formal Judicial System

A 23 year-old woman with an intellectual disability and limited speech disorder lived in municipal public housing with her aunt. Falling ill, she was admitted to the hospital where doctors discovered that she was six-months pregnant. Upon further investigation by the doctors and her aunt, she revealed that she was raped by her neighbor when she was doing laundry. The perpetrator, a supervisor in charge of the municipal department and also a head of the municipal public housing, threatened to kill her if she told anyone. A judge dismissed the rape case because the victim's limited speech capabilities precluded her from describing in detail the attack.

(April 27, 2018, Municipal Public Housing, Dawei Township, TWU)

other actors, as when hospitals won't treat survivors unless a police report has been filed, despite passage of the 2014 Emergency Care and Treatment Bill.²⁵ These trends are exacerbated when perpetrators have power or money, as is the case with CRSV.

The documentation provided to WLB indicates that the judicial and security sectors do not prioritize the well-being of women and girls and there is no evidence of a "survivor-centered" approach to gender-based violence by judges, local justice officials or the police.

The Myanmar National Human Rights Commission ("MNHRC") is not a viable option for justice as it lacks independence, autonomy, and transparency. Moreover, it has interpreted its mandate to investigate abuses narrowly and has chosen to focus on human rights education rather than protection.²⁶ The MNHRC has not examined cases of CRSV, in part due to its unwillingness to incur the disapproval of the government or the military.²⁷

IMPACT OF INFORMAL JUSTICE SYSTEM

Women face many barriers accessing the formal justice system: geographic limitations since courts are located far from rural areas; financial considerations as the cost of proceedings is high and most women cannot afford the lost wages from missing work; communication barriers since many have little knowledge of the Burmese language; and social stigma since gender-based violence is associated with shame.²⁸

Unfortunately, informal justice mechanisms are not a satisfactory alternative to the formal justice system as they frequently do not result in appropriate justice outcomes for women. Local administrators are the first line of authority in ethnic areas and serve an important dispute resolution function, yet these administrators are overwhelmingly male, with women making up only 1% of the total number countrywide.²⁹ When confronted with cases of gender-based violence, these local male officials do not prioritize ensuring justice for survivors, either dismissing cases or settling what they consider disputes between parties through some form of negotiated settlement or monetary restitution. Women survivors have little input into these negotiations and are then precluded from accessing the formal justice system, either for the original crime or if the restitution remains unpaid. As with the formal legal system, the needs of the survivor often are secondary to the needs of the community, the family or the power structures within society.



Informal Justice at Work

A 14-year-old girl was raped on her way to the bathroom while working as a laborer at night. She did not tell anyone or report the perpetrator to the authorities out of fear and shame. The perpetrator raped her several more times. One day, when the perpetrator came to her home, she told him that she had begun menstruation. Her mother overheard the conversation and became suspicious about why she was telling a stranger about her menstrual cycle. After questioning by her mother, the victim admitted that she had been raped. Her mother reported the rape to the village head who resolved the case by instructing the perpetrator to pay 700,000 kyats (U\$500) no later than December 2017. However, the perpetrator paid only 300,000 Kyat (U\$220) to the survivor's family by that date. When the victim and her mother went to the village head to report the shortfall, the village head said he could not do anything further for them and that they should be satisfied with what they had already received. They went to the police station to report the case but the police did not act and the perpetrator subsequently moved from the village to avoid responsibility.

*(January 16, 2017, Hteepaakhu Village,
Demoso Township, Kayah State, KNWO)*

Impunity for Powerful Perpetrators

A mentally-disabled girl made friends through social media with a soldier stationed in her village. The man asked her to meet in person and she was raped when they were together. The village head and village residents were fearful of taking action given that the perpetrator was a military officer. The officer agreed to pay a settlement of 500,000 kyat (U\$ 350). The family did not want to stay in the village so used this money to relocate.

*(June 6, 2019, Kone Sote Village,
Loi Leng Lay Township, Kayah State, KNWO)*

IMPUNITY FOR POWERFUL PERPETRATORS

Justice outcomes for women are heavily influenced by the power and status of the perpetrator. This is especially true when perpetrators have ties, directly or indirectly, to the security services, such as the military and police. In these cases, perpetrators use their authority and power to avoid legal consequences for their crimes, either by exerting pressure on the survivor or local officials or by the survivor's fear of challenging authority. The military in particular possesses significant clout over politics and the judicial system which often prevents survivors from filing complaints due to threats or other forms of suppression to discourage prosecution.³⁰ In fact, the 2008 Constitution prevents accountability for crimes committed by the military since it grants the military complete control over its own affairs, and provides that all decisions of the Commander-in-Chief, including regarding military justice, are “final and conclusive” and cannot be challenged, even by the civilian government.³¹



Impunity for Powerful Perpetrators

A soldier from an infantry battalion stationed near a village raped a woman at her house. A neighbor alerted the victim's brother about seeing a soldier entering his house. The brother immediately returned home and witnessed the soldier raping his sister. He shouted and the soldier pointed his gun at the brother and fled. The brother went to the army camp and informed the captain in charge about the incident. The captain punished the perpetrator by slapping his face numerous times. When the brother asked for compensation, the captain gave him 200,000 kyats (U\$150) and responded that since the incident had already occurred there was no way to turn back the clock. The captain told the brother not to pursue any legal action and promised that it would not happen again. Three days later, the battalion left the village.

(January 7, 2017, Pan Htan Village, Mai Lone Township, Kyaukme District, Shan State, TZO)



Impunity for Powerful Perpetrators

The victim was born blind in Shan State but moved to Yangon to work at the Myanmar National Association for the Blind. In 2017, the President of the organization took her to his home where he raped her. After the incident, she wanted to resign from her job but she was not allowed to quit by the President. The President took her to a hotel and sexually assaulted (raped) her again. She could not deny him out of fear and worry that she would not receive her salary. She was also forcibly given morning-after contraceptives which caused her stomach pain. When the circumstances became known, a case was brought against the President but was dismissed for lack of evidence and witnesses. After the lawsuit was dismissed, the survivor returned to her hometown in Shan State.

(July 7, 2020, Kachin State, KWAT)

Intimidated into Silence

An 18 year-old woman who was born with an intellectual disability lived with her grandmother, who was deaf, and her grandfather, who was debilitated by a stroke. Her younger brother, the sole breadwinner of the family, noticed that she was returning home late at night, so one night he waited for her and saw her being dropped off by a male stranger. Her brother asked her about the stranger but, trembling and scared, she refused to tell him. He beat her hard twice with a stick to prompt an answer. She then revealed that the stranger had threatened to murder her family if she did not comply with his demands, so out of fear, she went along with him and was raped on three different occasions. The perpetrator also had threatened and committed sexual assault against other poor women in the village. The victims felt that it was impossible for the poor to file a case with the police and to win a case in court, so they kept silent.

(June 30, 2020, Kalay Township, Sagaing Region, WJ)

ABSENCE OF SPECIALIZED PROCEDURAL PROTECTIONS AND INTIMIDATION OF SURVIVORS

Judicial actors, security personnel and local officials have little if any specialized training to deal with cases of gender-based violence. Moreover, features of the legal system negatively impact survivors, such as the requirement that survivors attend the trial of their perpetrators, and fail to provide adequate protections for survivors.³²

Survivors of gender-based violence are often re-traumatized if forced to provide testimony directly at judicial proceedings and no rules of evidence protect survivors from painful lines of questioning, such as regarding prior sexual activity.³³ Burma's legal system lacks important evidentiary protections, such as the allowance for pre-recorded testimony, private (i.e. in camera) testimony, protection for witnesses or counseling services.³⁴ Protections that are provided by the Code of Criminal Procedure, Code of Civil Procedure and Evidence Act are regularly flouted.³⁵

Survivors of violence, especially women without power or resources, fear coming forward and are intimidated into silence. Perpetrators, or their representatives, warn survivors not to come forward and those who do speak out suffer retribution. Fear is also a factor in cases of domestic violence as women fear the economic and social insecurity that would result from identifying their spouse or partner as a perpetrator of violence. Many survivors feel that they have no option other than to keep silent and accept the abuse. Since the legal system makes no provision for protective orders, survivors and their families often choose silence rather than face the consequences of coming forward, especially if the perpetrator is a spouse or partner or wields power in the community, as discussed above.³⁶



Intimidated into Silence

A police clerk committed three rapes of a village resident who became pregnant. She was fearful of taking legal action given the position of the perpetrator as a police officer. The officer's wife pressured the victim, asking that she not take legal action as they have children and it would ruin his reputation. They offered nominal monetary compensation for the baby in exchange for her silence.

(May 21, 2019; Ka Nat Thri Village, Thayetchaung Township, Dawei District, Tanintharyi Region, TWU)

Impact of Economic Instability and Substance Abuse

A domestic violence victim was married to her husband for 11 years and they had four children together. Four years into the marriage, her husband began physically abusing her after drinking. Although he did not consume alcohol before the marriage, the husband started drinking heavily due to stress from his inability to provide adequate money and food to the household. She and her husband struggled in their work as rice farmers due to vermin that destroyed their crops. This financial struggle and insecurity caused her husband to lash out against her in tirades of domestic abuse.

(January 2019, Ba Home Village, Thantaunggyi Township, Kayin State, KNWO)

Barriers to Services:

Lack of Social and Other Support Services to Assist Survivors

An additional challenge for survivors is inadequate social, legal, medical and other support services to assist them both immediately following the violence and as they consider appropriate justice alternatives. The service gap includes insufficient primary prevention programs, health and medical services, psycho-social services, socio-economic support, legal assistance and emergency safe houses and shelters. At the macro level, there is a lack of coordination among service providers and no overall case management or referral system.³⁷

The limited services offered by the government are scattered throughout country, yet are not readily available in ethnic areas. This leaves survivors without sufficient avenues to find support. Local CSOs, including WLB member organizations, often fill in the gaps and provide about three-quarters of services to survivors.³⁸ These local CSOs are not given government support and lack training and resources to meet demand. The government must do much more to support local advocates who have stepped up to provide desperately-needed assistance to survivors.

Moreover, inadequate attention has been paid to two main drivers of violence – the overwhelming majority of domestic violence cases are physical violence by spouses or partners driven by economic security and/or substance abuse. Moreover, survivors stay in abusive relationships often for economic reasons as victims fear losing financial support provided by the spouse or partner.

With respect to economic instability, the government has not prioritized economic development in ethnic areas that would benefit local communities which has had vast consequences for ethnic populations and contributes to gender-based violence. Poverty levels are estimated to be a quarter of the population, with poverty twice as high in rural areas where 70% of the population lives. Poverty is especially endemic to remote border areas populated by minority ethnic groups, as well as in areas experiencing conflict or emerging from conflict.³⁹ Conflict and economic instability are main drivers of instability within the home.

Another related driver of violence is drug cultivation and trade which takes place in ethnic areas and fuels addiction.⁴⁰ Many ethnic areas are under the control of militia forces, many of which are involved in various illicit activities. The military allows militia to operate, conduct business and carry arms in exchange for providing security against anti-government insurgency activities in their areas of influence.⁴¹ The presence and availability of illicit substances contributes to addiction which is a factor in many cases of gender-based violence.⁴²

Government policy has neither adequately addressed the problems caused by drug cultivation, in part because the military has been implicated in drug-related activities, nor provided alternative revenue sources for producers. The government also has failed to address the high rate of substance abuse in ethnic areas or provide adequate social services for addicts, all of which exacerbate gender-based violence.⁴³ These multiple systemic government failures leave women vulnerable to harm and violence.

Barriers within Society: Discriminatory Gender Norms and Embedded Patriarchy

At a basic level, gender-based violence in Burma is a result of the unequal gender attitudes, patriarchy and discrimination against women that is endemic to society. Women are perceived as easy targets and gender-based violence is not viewed as a serious crime but rather as a domestic or family issue.⁴⁴ Perpetrators rely on these attitudes to commit gender-based violence and in order to evade accountability for those crimes, especially if they are powerful members of the community. This is also true of CRSV, which reflects not only unfair stereotypes and unequal gender norms, but the military's desire to assert its dominance as men and members of the military, as well as to stoke fear in the public.⁴⁵

There is enormous social stigma and shame about reporting cases of gender-based violence.⁴⁶ Making public accusations is fraught and the ensuing gossip is damaging to the survivor and her family. Blaming the survivor is prevalent, with survivors being scrutinized for their actions and violence being interpreted as punishment for a bad act in a prior life.⁴⁷ In 2018, the Ministry of Home Affairs, under the control of the military, published a five-page document that blamed women's dress and behavior for sexual violence.⁴⁸

Survivors who report gender-based violence suffer from harassment, threats and intimidation, which often extend to their families and advocates.⁴⁹ The relevant concern is not for the well-being of survivors but for the reputation of the perpetrator, maintaining community harmony or promoting the continued power of male-dominated actors, such as the military. Ethnic women face the additional burdens of cultural discrimination and language barriers.

Since there are inadequate legal protections for survivors, negative stereotypes often make their way into criminal proceedings which limits justice opportunities for survivors. For example, there have been cases of judicial

actors inferring consent unless presented with evidence of a physical struggle.⁵⁰ At a societal level, little progress can be made to eliminate gender-based violence unless discriminatory gender norms are acknowledged, addressed and dismantled.

Conclusion

Documented cases of gender-based violence analyzed in this report indicate that ethnic women are susceptible to violence in both private and public spheres. It is likely that this vulnerability has only increased during the coronavirus pandemic. The government has failed to ensure that women, especially ethnic women, are safe from violence and failed to ensure independent, impartial and effective investigation and prosecution of gender-based violence or sufficient remedy and reparations for harms that survivors have suffered. The government does not provide adequate social, legal, medical and other support services to ensure the emotional and physical well-being of survivors. Moreover, the government has not taken effective measures to dismantle societal norms and gender imbalances that contribute to gender-based violence. These failures constitute violations of women's fundamental human rights and are violations of the government's international legal obligations. The new NLD-led government must do more during its next term to address these serious gaps in protection and accountability so that women in Burma, especially those from ethnic areas, may fully enjoy and exercise their basic human right to be free from violence. Until these goals are accomplished, women will continue to suffer and will be forced to shoulder too much of this burden alone.

Recommendations

THE GOVERNMENT MUST:

- Take effective measures to end impunity and ensure access to justice for women survivors of gender-based violence, including CRSV.
- Revise, in consultation with women's organizations, the PoVAW Law to ensure that it meets international best practices and fully protects women, especially ethnic women, from gender-based violence and fast-track the law for passage.
- With respect to CRSV, amend the 2008 Constitution to provide for civilian control and oversight over security forces, ensure that all cases of CRSV are heard by civilian courts, incorporate international legal obligations into domestic law and establish and fund a fair and impartial panel to investigate CRSV.
- Revise the Penal Code and all other relevant laws to broaden the scope of criminalized gender-based violence, to provide adequate evidentiary and other protections for survivors and witnesses and to meet international standards.
- Revise the Child Law to establish a minimum sentence for sexual violence against children.
- Reform the Myanmar National Human Rights Commission to ensure that it discharges its functions full and independently in accordance with international standards.
- Eliminate all customary laws and practices that discriminate against women and ensure that informal justice systems prioritize the well-being of survivors and comply with international human rights standards.
- Take all measures to ensure an independent, impartial and effective judiciary.
- Coordinate and fund gender-sensitivity training for judges, police officers, counselors and other service providers who work with survivors and increase the number of women in all positions.
- Provide adequate and well-funded services for survivors, including primary prevention programs, health and medical

services, psycho-social services, socio-economic support, legal assistance and emergency safe houses and shelters and institute a coordinated tracking system for cases.

- Provide funding for local CSOs which are providing on-the-ground services to survivors.
- Conduct public awareness-raising about gender norms, gender discrimination, gender-based violence and the rights of women and children in both urban and rural ethnic areas and among Members of Parliament and government staff.
- Invest greater resources to promote the human rights of and equality for women and girls in ethnic areas.
- Immediately put an end to ongoing armed conflicts throughout the country and withdraw all troops from ethnic areas.
- Effectively address the problems created by economic insecurity and drug addiction in ethnic areas that are drivers of gender-based violence, including by prioritizing education and economic opportunities for ethnic women, improving services to treat drug addiction and ensuring economic development opportunities benefit local actors in ethnic areas.

RECOMMENDATION FOR THE JUDICIARY:

- Work to increase the independence, fairness and impartiality of judges and increase efforts to eliminate corruption within the judicial system.
- Increase the number of women judges at all levels of the judiciary.
- Provide gender- and child-sensitivity training to all judges and judicial staff.
- Provide free-of-charge translation and interpretation services in all ethnic languages for all parties to legal proceedings.
- Ensure that the safety, rights and confidentiality of survivors are respected at all stages of the judicial process.
- 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 women and children can use to describe the acts committed.

- Facilitate circuit courts to travel to rural and ethnic areas to reduce the burden of travel for survivors who live outside of urban centers.
- Improve consistency in sentencing and the application of the law for similar offences.
- Ensure the timely administration and conclusion of legal cases involving gender-based violence against women and children.

RECOMMENDATIONS FOR VILLAGE OFFICIALS:

- Ensure that all village administrators undergo legal-, gender- and child-sensitivity training to better understand issues of gender-based violence against women and children, and become better informed and prepared to take allegations of such violence seriously, and provide survivors with comprehensive information about their legal options.
- Facilitate, in consultation with women's organizations, the development of standardized procedures for addressing gender-based violence within village communities and ensure that all such policies adopt a survivor-centered approach which puts the needs of the victim before other considerations.
- Take responsibility for facilitating awareness-raising on gender-based violence and the rights of women and children to members of their communities.
- Increase the number of women village administrators.
- Recommendations for service providers:
 - Ensure that the safety, rights and confidentiality of survivors are respected during all stages of service provision.
 - Increase sexuality education for children, facilitate discussions about appropriate body contact and encourage women and children to speak up if they are victims of gender-based violence.
 - Provide community legal education workshops in ethnic areas to increase understanding of legal rights, responsibilities and procedural options to obtain formal legal redress for gender-based violence.

Endnotes

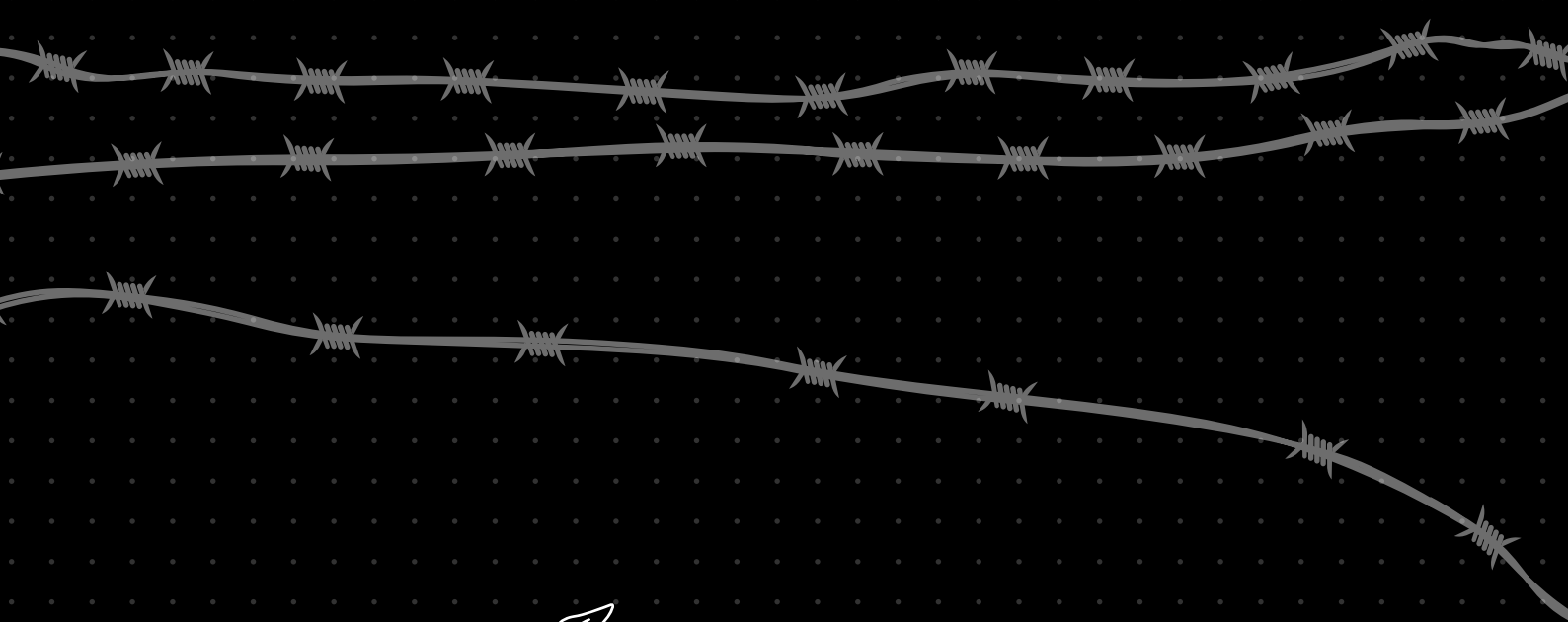
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