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May 22, 2014

Luke Simpkins MP  
Chair, Human Rights Sub-Committee  
Joint Standing Committee on Foreign Affairs, Defence and Trade

PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

Re: Inquiry on Women's Rights in the Asia-Pacific

Dear Mr. Simpkins,

Thank you for inviting Human Rights Watch to contribute to the inquiry on human rights issues confronting women and girls in the Indian Ocean – Asia Pacific region. Based on our research on women's rights in Burma, Indonesia and Brunei, we are raising key concerns that we hope will influence Australian policy and aid decisions.

### Burma

We draw your attention to three key issues affecting women and girls in Burma: a) sexual violence in conflict; b) Australia's support for the national census and its impact; and c) proposed legislative reforms and the danger they pose for women's and girls' rights, especially within minority communities.

#### 1. Burma's reforms and sexual violence in conflict

The 2012-2014 Australia aid strategy gave credit to Burma's reform process, and specifically committed to support reform and governance efforts. At the same time, the strategy states that "[a]ny setbacks to the reform process will be responded to according to their significance and the risk they present to the effectiveness of our aid."

A key continued failure of the reform process is the lack of civilian control over the military, which has been abetted by constitutional provisions that limit effective oversight of the military.

Burmese civil society groups and international human rights organizations have long documented sexual violence perpetrated by the Burmese military and non-state armed groups in areas of ethnic conflict. Local women's rights groups have reported on recent episodes of sexual violence committed during military offensives in Kachin and northern Shan States.

Despite the number of cases that have been reported, thus far, the government has investigated and prosecuted eight cases of sexual violence perpetrated by its troops, trying them in civilian courts and imposing heavy sentences, over the past year.

Peace processes and ceasefire agreements have thus far not committed to integrating women's participation or the specific concerns that emerge for women in conflict, including sexual violence and its impact on women's and girls' sexual, reproductive, and mental health. Only a handful of women have participated in peace negotiations between the government and non-state armed groups.

Australia should make a priority reforms needed to ensure accountability and reparations for women who have suffered sexual violence in conflict, including urging constitutional reforms that would allow the military to be held accountable for its failure to prevent and respond to complaints of sexual violence. Australia should also ensure that its aid is directly used to facilitate better access to health care for women and girls and urgently promote greater participation of women in peace processes. It should ensure that conflict-affected women and women's rights groups have adequate representation in peace negotiations and their concerns are fully reflected any agreements reached.

## 2. The national census and its humanitarian impact

As we discussed at the Human Rights Subcommittee, Australia together with other bilateral donors supported the US\$74 million census in Burma. The United Nations Population Fund (UNFPA), the lead technical agency, pressed ahead with a flawed census process in 2014 despite repeated warnings from domestic and international human rights organizations that the data collection processes risked alienating minority communities and deepening inter-religious and inter-ethnic conflict. We urge Australia to revisit its support for the flawed census process and take more responsibility for the negative fallout.

The census questionnaire included 41 questions ranging from the number of persons in the household to specifics about age, gender, education level, birth rates, and members of households living overseas. There has been major concern surrounding questions related to ethnicity and religion. Unfortunately, since the initial days of the census planning, the Burmese government's deeply flawed and highly contested

classification of its population into “135 national races” has been accepted by the UNFPA and several key international donors.

First, the census further alienated the Rohingya Muslim population and consolidated virulent anti-Rohingya sentiments in Arakan State. Following the census boycott campaign led by nationalist Buddhists, including those in the 969 movement, the government withdrew its permission to allow Rohingya Muslims, who have been effectively denied citizenship under the 1982 Citizenship Law, to self-identify as such in the census. They cannot call themselves Rohingya, but only “Bengali,” meaning foreigners. This not only defeats a key purpose of the census, but the violent census boycott by ethnic Arakanese groups deepened the humanitarian crisis for displaced Rohingya. The boycott campaign targeted humanitarian agencies, forcing them to suspend operations in Arakan State. The government canceled its mobile health clinics to displaced persons camps during the census period, further cutting access to health care. This was particularly problematic given the widespread deaths from diarrhea in these camps, and has posed grave dangers for women’s reproductive health, especially preventable maternal and child deaths, exacerbated by the government’s suspension of operations by Medicines Sans Frontiers (MSF) in late February, which was the main provider of basic health services to displaced Rohingya.

The Australian government should work to ensure unfettered humanitarian access to all civilians in need, especially women and girls; call for an end to abuses against the Rohingya; demand the return of all international humanitarian and UN agencies to Arakan State; and work with UNFPA to rectify problems with the census and develop an urgent plan for additional corrective work.

### 3. Legislative measures impacting on women

Despite promising legal reform, the Burmese government has proposed a law that will directly harm women. The bill would curb interfaith marriages between Buddhist women and non-Buddhist men, introducing criminal penalties if the woman marries without the consent of her parents and the non-Buddhist man does not convert to Buddhism. The law is being proposed against a backdrop of the ultra-nationalist “969” movement, led by the Buddhist monk U Wirathu, which is essentially a hate campaign targeted at the broader Muslim population across Burma.

Burma’s government also needs to publicly revoke discriminatory population control regulations that restrict Rohingya Muslims to having two children. For instance, a 2005 local regulation remains in force in Buthidaung and Maungdaw townships in Arakan state. The discriminatory two-child rule has been enforced alongside regulations that require Rohingya couples seeking to marry to obtain permission from the authorities by paying hefty bribes. Couples often have to wait for extended

periods, sometimes as long as two years, before receiving permission. Officials have also forced many women to undergo pregnancy tests as part of the marriage application process.

We urge the Australian government to press the Burmese Parliament and Government to reject proposals for a discriminatory marriage law that would strip Buddhist women of the right to freely choose whom they marry. We also urge the Australian government to press the Burmese authorities to immediately rescind local restrictions on rights to movement, work, religion, number of children, and access to health and education.

### Indonesia

Discriminatory laws have become increasingly common across Indonesia, many of them disproportionately affecting women and girls. An August 2013 update by Indonesia's official Commission on Violence against Women reported that the national and local governments have passed 342 discriminatory regulations since 1999, including 79 local bylaws requiring women to wear the hijab, backed by various sanctions, especially for female civil servants and school girls. These local regulations are common in provinces such as Aceh, South Sulawesi, West Java and West Sumatra.

In West Sumatra, for example, the regulations are enforced for Christian women and girls attending public schools. Public schools often introduce a penalty system where girls who do not wear hijab accumulate a penalty on a scale and risk expulsion from school.

Calls for “virginity tests” for high school girls emerge regularly in Indonesia, with education officials, politicians and religious leaders proposing such tests every few years. In 2013, officials in Prabumulih district in South Sumatra and Pamekasan in East Java were considering such tests, that received condemnation internationally as well as from local women’s groups. Leading Indonesian rights activists and even some government officials have strongly criticized such calls, as did the National Commission on Violence Against Women (Komnas Perempuan).

In its support for expansion of education, the Australian government should promote schools that do not require virginity tests for girls, or take a discriminatory approach to employing or promoting teachers who do not adhere to mandatory rules governing

the wearing of the hijab. The Australian government should speak out against public schools that exclude or otherwise discriminate against children based on their attire.

### Brunei

We urge the Australian government to issue a public statement denouncing Brunei's new Sharia penal code provisions that introduce death by stoning, amputations, and long prison sentences for various offenses that are discriminatory toward women. The Brunei government plans to introduce the provisions in a phased manner. Australia should work with other countries in the Commonwealth to press Brunei to repeal all Sharia penal code provisions that violate due process and basic human rights.

The new Sharia penal code also contains provisions that could be misused to target women who are reporting domestic violence. For instance, the code punishes with imprisonment and fine, any person who "entices" a Muslim woman to leave a marital home, making it risky to intervene and provide shelter for women experiencing domestic violence. Anyone who is seen as encouraging a Muslim woman to leave her parents or guardian's home may also be punished with imprisonment and fine. This makes it risky for women to challenge any abusive treatment at home, and to seek employment or support services outside.

The treatment of migrant domestic workers (MDWs) in Brunei echoes the mistreatment of MDWs documented by Human Rights Watch elsewhere in Asia and in the Middle East. MDWs are at a particularly high risk of spurious accusations of theft, and are often accused of theft when they try to claim their rightful wages, ask for better treatment, or complain about abuse. Under the new code, theft will carry the severe *hadd* punishment of amputation. The new penal code also criminalizes black magic, and once again, MDWs are particularly at risk of being accused of black magic because of cultural differences, superstition, the scapegoating of foreign workers for household misfortunes.

The difficulty in proving sexual harassment or rape that takes place behind closed doors is especially of concern to MDWs given the harsh criminal penalties attached to *zina* or sex outside marriage. Domestic workers who are victims of rape can be punished for adultery if the court does not believe it was forced. Language barriers, lack of knowledge about rights, and ineffective assistance from their consulates

further mean that domestic workers who come into conflict with the law could suffer disproportionately under this new law.

We hope you find this information useful. Please do not hesitate to contact us for additional information.

Sincerely,

Elaine Pearson  
Australia Director

For more information please visit:

‘Burma: Revoke ‘Two-Child Policy’ For Rohingya,’ May 28, 2013 at  
<http://www.hrw.org/news/2013/05/28/burma-revoke-two-child-policy-rohingya>

‘Burma: The Government Should Have Stopped This,’ August 1, 2012 at  
<http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>

‘Denying Freedom of Choice in Burma,’ January 14, 2014 at  
<http://www.hrw.org/news/2014/01/13/dispatches-denying-freedom-choice-burma>

‘Burma: Postpone flawed Census to Avert Violence,’ March 28, 2014 at  
<http://www.hrw.org/node/124250>

Indonesia: Policing Morality, December 1, 2010 at  
<http://www.hrw.org/reports/2010/12/01/policing-morality-o>