



**Global
Justice Center**

Human Rights Through Rule of Law

Gender Equality Network

Working to improve gender equality in Myanmar



Report on Obstacles to Gender Equality in Myanmar

Prepared for the 64th session of the Committee
on the Elimination of Discrimination against Women
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ABOUT GLOBAL JUSTICE CENTER

The Global Justice Center is a US-based human rights organisation with consultative status to the United Nations that works to achieve sustainable justice, peace and security by building a global rule of law based on gender equality and universally enforced international human rights laws.



ABOUT GENDER EQUALITY NETWORK

Gender Equality Network (GEN) is a Myanmar-based diverse and inclusive network of more than a hundred civil society organisations, national and international NGOs and Technical Resource Persons, working to bring about gender equality and the fulfillment of women's rights in Myanmar. This is the first shadow report prepared by GEN for CEDAW and it has partnered with the Global Justice Center for the information gathering and preparation of this report. GEN brings solid in-country expertise and experience to the table, and as an in-country lobbying force it has worked closely on all the issues highlighted in this report.

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ABBREVIATIONS AND ACRONYMS

ASEAN	Association of Southeast Asian Nations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
Committee	Committee on the Elimination of Discrimination against Women
Constitution	Constitution of the Republic of the Union of Myanmar
CRSV	Conflict-Related Sexual Violence
CSO	Civil Society Organisation
EAO	Ethnic Armed Organisation
FPD	Framework for Political Dialogue
GEN	Gender Equality Network
GJC	Global Justice Center
GONGO	Government Organized Non-Governmental Organisation
Government	Government of Myanmar
GEWE	Gender Equality and Women's Empowerment Sectoral Working Group
ICC	International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MMCWA	Myanmar Maternal and Child Welfare Association
MNCWA	Myanmar National Committee for Women's Affairs
MNHRC	Myanmar National Human Rights Commission
MPC	Myanmar Peace Center
MSWRR	Ministry of Social Welfare, Relief and Resettlement
MWAF	Myanmar Women's Affairs Federation
NCA	Nationwide Ceasefire Agreement
NGO	Non-Governmental Organisation
NLD	National League for Democracy
NHRI	National Human Rights Institution
NRPC	National Reconciliation and Peace Centre
NSPAW	National Strategic Plan for the Advancement of Women
PoVAW	Prevention (and Protection) of Violence against Women
Reply	Government of Myanmar's Reply to the CEDAW Committee's List of Issues
State Report	Government of Myanmar's combined fourth and fifth periodic report to the CEDAW Committee
TSM	Temporary Special Measure
UN	United Nations
UNGTG	United Nations Gender Theme Group
UPC	Union Peace Conference
UPR	Universal Periodic Review
WCRC	Women and Child Sub-Committee (of the Myanmar National Human Rights Commission)
WPS	Women, Peace and Security

EXECUTIVE SUMMARY

Myanmar is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and, as such, must fulfil its obligations to ensure both *de jure* and *de facto* equality for women. Yet, despite these obligations, women and girls across Myanmar face serious obstacles to realising their rights to substantive equality and non-discrimination. In this report, the Gender Equality Network (GEN) and Global Justice Center (GJC) highlight multiple barriers facing women and girls in Myanmar and offer key areas in which reforms are necessary in order to promote women's rights and the equal enjoyment of freedoms. This report can be read as a baseline of the situation on key indicators that affect the situation of women and girls in Myanmar and, therefore, offers a starting point for dialogue with the newly elected government. The goal of such dialogue is to jointly tackle the systemic hurdles that impede the achievement of women's equality and reverse some of the repressions under previous regimes. This report highlights general inequalities and discrimination faced by all women in Myanmar, but it must be noted that certain marginalised groups, such as ethnic women, rural women and older women, are not specifically discussed herein, but nonetheless experience additional and intersecting forms of discrimination.

While it is encouraging that Myanmar's transition to a quasi-civilian government in 2011 has led to limited democratic reforms, increasing engagement with the international community and a sharp increase in foreign direct investment, women have, in large part, not been the beneficiaries of these reforms. Advances to ensure women's rights and improve the situation of women in Myanmar have, in general, been noticeably absent from reform efforts, in part due to the absence of women from decision-making positions and in politics. Even the Government's reporting to this Committee identifies efforts to improve women's rights as prospective rather than on-going, demonstrating the Government's lack of political will to prioritize women's issues. Gender equality continues to be viewed as a marginal area in ongoing democratization and development processes, as well as the peace process resolving decades of ethnic conflict. The Government must make actual progress, and not just present promises, to promote women's rights and fulfil its obligations under CEDAW.

A number of factors contribute to the current, and historical, lack of focus on women's rights. Decades of military rule since a military coup in 1962 have marginalized women and deeply-embedded gender stereotypes see women as nurturers rather than leaders in society. As a result, women have historically been excluded from politics and positions of power. Achieving advances to ensure women's equality in Myanmar is difficult because of an unchanged landscape shaped by a deep history of patriarchy, decades of oppressive military dictatorship and the continued power and influence of the military throughout society. Today, these legacies remain very much alive in the form of fundamental structural barriers that impede genuine legal reform, demonstrated through the presence of legal structures that discriminate against women (including in the Constitution), the lack of legal provisions that guarantee gender equality and the absence of adequate funding to promote policies and programmes that could contribute to women's empowerment.

The newly-formed government of Daw Aung San Suu Kyi's National League for Democracy (NLD), which took office at the end of March 2016, offers an opportunity to refocus attention on the achievement of equal rights for women in Myanmar. Encouragingly, the NLD Election Platform on Women committed to, among other things, effectively implement existing laws to promote women's rights, take action to end violence against women and ensure access to justice for women victims.

While there are expectations that the situation of women in Myanmar will improve, it is crucial to be clear now about the significant work that needs to be done and to detail the steps necessary to ensure compliance with CEDAW. To achieve full compliance with CEDAW, the Government must formulate – in

consultation with a broad array of civil society actors and women's groups – and implement concrete, immediately-effective and well-funded policies, regulations, laws and other measures to ensure women's *de jure* and *de facto* equality. Such a comprehensive effort will require coordination, commitment and significant political will, the dismantling of legal and other structures that discriminate against women and a significant reduction in the power and influence of the military.

ARTICLE 1

DEFINITION OF DISCRIMINATION

Under CEDAW, States parties must enact, at a minimum, formal legal frameworks to ensure equality as a matter of law (*de jure* equality).¹ In addition, CEDAW requires States parties to ensure *de facto* or *substantive* equality, by improving the actual position of women through concrete and effective laws, policies and programmes.² A critical first step towards achieving these goals is the adoption of a legal definition of discrimination against women, in conformity with CEDAW, within a State party's national constitution or other appropriate legislation.

Myanmar Needs a CEDAW-Compliant Definition of Discrimination

Myanmar has not adopted a legal definition of discrimination against women in conformity with CEDAW within the Constitution of the Republic of the Union of Myanmar (Constitution), legislation, or other domestic legal framework. Certain articles of the Constitution mention the notion of equal rights for women and non-discrimination but, even when considered together, these disparate provisions do not constitute a comprehensive definition of discrimination against women.³ The Government of Myanmar's (Government) failure to adopt a clear definition of discrimination: (1) hinders the formulation, interpretation, and dissemination of laws and policies impacting women's rights; (2) leaves the Government, as well as civil society actors and international monitors, without a critical benchmark for assessing progress on the elimination of discrimination against women; and (3) fails to provide victims of discrimination with fundamental guidance on how to engage the legal system. In addition, as discussed further below, the Constitution includes provisions, such as Articles 348, 351 and 352, that impede women's ability to realise their rights under CEDAW and specifically discriminate against them.

Furthermore, the Government has taken no steps to specifically incorporate its obligations under international human rights treaties, including by reference, into domestic law. This, coupled with the Government's failure to adopt a CEDAW-conforming definition of discrimination, limits the avenues of recourse for violations of fundamental human rights, including gender-based discrimination in Myanmar.

This Committee has previously raised concerns over Myanmar's failure to adopt a comprehensive definition of discrimination in line with CEDAW.⁴ More recently, during its Universal Periodic Review (UPR) in 2015, the Government accepted a recommendation to adopt a legal definition of discrimination against women that is in accordance with CEDAW and implement its obligations under CEDAW.⁵ Nevertheless, the Government has yet to incorporate this Committee's suggestion or UPR Recommendation into law.

Recommendations

- Amend the Constitution to include a CEDAW-conforming definition of discrimination and substantive gender equality.
- Amend the Constitution to prohibit direct and indirect gender discrimination, including: (1) Section 348 of the Constitution to guarantee basic human rights to all persons in Myanmar; (2) Section 351 to extend to all women and girls the legal enjoyment of rights; and (3) Section 352 to remove language that prohibits women from holding certain jobs and clarifying that women must not be discriminated against with respect to employment.
- Amend the Constitution to incorporate by reference international instruments to which Myanmar is a party, including CEDAW.

ARTICLE 2

POLICY MEASURES

Article 2 requires States parties “to adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women,” “to establish legal protection of the rights of women on an equal basis with men,” and “to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.” Critically, Article 2 is interpreted to mean that States parties must ensure the effective legal enforcement of women's entitlement to enjoy rights on an equal basis with men and the availability of legal remedies for women who experience gender-based discrimination.⁶

Myanmar Needs Legislative and Policy Measures Prohibiting Discrimination

The absence of a comprehensive definition of discrimination is compounded by a general absence of policies and laws which prohibit discrimination and ensure substantive gender equality. For example, no law ensures that women receive equal pay for equal work in both the public and private sectors or protects employees from workplace harassment. The opening of Myanmar to new economic opportunities since the transition to a quasi-civilian government in 2011 makes these laws critical.

As an important step toward compliance with CEDAW, the Government needs to conduct a gender impact review by examining and considering for amendment all policies and laws which may hinder women's rights, such as the National Land Use Policy, the Small and Medium Enterprises Law, the Labour Law, the Telecommunication Act and the Electronic Transactions Act, as well as environmental and health policies. With respect to education, the Government must develop and implement effectively a policy to ensure that all girls have access to schooling and material support to attend school, at a minimum through secondary school. This policy would align with Myanmar's international and regional commitments as well as recommendations from the Myanmar Comprehensive Education Sector Review and the National Network for Education Reform.

As part of this overall and comprehensive gender impact review, the Government must consult women, including civil society, and allow them to meaningfully participate in all processes related to the development of new laws and policies. Importantly, including the perspectives of women and girls from ethnic and rural is crucial.

Myanmar's Legal and Policy Framework Discriminates Against Women

Myanmar's legal and policy framework, including the Constitution, discriminates against or enables discrimination against women; many laws and policies incorporate restrictive gender stereotypes and are inconsistent with the promotion and protection of substantive equality, as required by CEDAW.

Discrimination in the Constitution

The Constitution contains multiple provisions that clearly constitute direct and indirect discrimination against women. For instance, Article 352 of the Constitution states that though there may be no discrimination on the basis of sex, "in appointing or assigning duties to civil service personnel," "nothing in this Section shall prevent appointment of men to the positions that are suitable for men only." This explicitly and formally legalizes discrimination against women and perpetuates negative and limiting stereotypes about women in violation of CEDAW, as this Committee recently found with respect to similar limitations on certain jobs in Russia.⁷ The Government attempts to legitimise this discrimination in its state report to this Committee (State Report), stating that "some placements are to positions that are suitable for men only in accordance with the situation of natural work-places (for example, in mining and petroleum), and women, therefore, cannot be appointed to those positions."⁸ This statement fully displays the deeply-rooted discrimination and patriarchy that influences and governs policy-making and law in Myanmar.⁹

Meanwhile, other Constitutional provisions indirectly discriminate against women, reinforcing gender inequality. Articles 109, 141 and 161 each mandate a specific quota of representatives directly appointed by Myanmar's Defence Services.¹⁰ Another example is Article 59(d), which requires the President and Vice-President to be well-acquainted with Defence matters. Since women have traditionally served only as medical or administrative support in the military, these articles constitute indirect discrimination against women. The discriminatory impact of these provisions is discussed fully under Article 7 below.

Furthermore, other Constitutional provisions directly contravene CEDAW. Article 381, which allows for the suspension of rights during times of emergency, conflicts with this Committee's guidance that Constitutions should ensure that women's rights are not subject to derogation in states of emergency.¹¹ Article 445 states that, "[n]o proceeding shall be instituted against the said [previously ruling] Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties." This in effect guarantees that the crimes committed by government actors will go unpunished, denying justice to countless women and girls, and ensuring a culture of military impunity in Myanmar.

Discrimination in the Race and Religion Laws

Myanmar's Parliament has adopted a package of four "Laws on the Protection of Race and Religion"¹² which further entrench widespread gender-based discrimination against women,¹³ in particular based on ethnicity or religion, in clear violation of the Government's obligations under CEDAW. They are: (1) the Religious Conversion Law; (2) the Buddhist Women's Special Marriage Law; (3) the Population Control Healthcare Law; and (4) The Monogamy Law.¹⁴ The Special Rapporteur on Minority Issues has stated that these laws "particularly discriminate against ethnic religious minorities and have the potential to fuel existing tensions in the country."¹⁵

The Buddhist Women's Special Marriage Law violates international norms protecting the rights of women to enter and fully participate in marriage on an equal basis with men¹⁶ and, by solely regulating the conduct of men with regard to women, reinforces stereotypes, negative prejudices and customs based on the supposed inferiority of women, in contravention of CEDAW.¹⁷ The Population Control Health Care Law, which aims to control population growth, violates women's rights to decide, on an equal basis with men, the number and spacing of children.¹⁸ Moreover, it contains no protections against the use of forced contraception, forced abortion, or forced sterilization as implementation or enforcement measures, which violates a broad range of fundamental rights, including women's rights to life, liberty, and security, and the right to be free from discriminatory barriers to health care. It also raises serious concerns of potential disproportionate targeting of marginalized and minority groups, and as United Nations (UN) experts have cautioned "can have discriminatory, coercive and punitive effects that go against basic rights and freedoms, particularly those of women."¹⁹ The Monogamy Law, which criminalises polygamy, as well as extramarital affairs, is also of serious concern as the "enforcement of laws criminalising adultery often leads to discrimination and violence against women" and "experience shows that in practice, adultery legislation, imposes disproportional criminal liability on women."²⁰

While the Government's reporting to this Committee aims to legitimise these laws as, *prima facie*, neutral and non-discriminatory, CEDAW requires that laws not only be assessed for their *de jure* impact, but also their *de facto* impact, realising that policies that may appear neutral on their face can be discriminatory in impact. Here, these laws pose problems of both *de jure* and *de facto* discrimination. Furthermore, the Government aims to legitimize these laws by stating that they serve to "protect" people (in large part women as these laws relate to marriage and reproduction), which further entrenches negative gender stereotypes of women as needing protection and as unable to make their own decisions.

Discrimination Against LGBTI Persons and Women with Disabilities

A further area needing immediate attention is the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) population groups who are systematically discriminated against in Myanmar. First, Myanmar law expressly discriminates against lesbian and transgender persons. Same-sex conduct is a crime under Section 377 of the Penal Code of 1861 and sections of the 1945 Police Act are interpreted to harass and intimidate lesbian and transgender persons. Moreover, Article 348 of the Constitution protects against

discrimination on the basis of race, birth, religion, official position, status, culture, sex and wealth, but not based on sexual orientation and gender identity.

Second, case studies collected by Colors Rainbow, an LGBT rights organisation in Myanmar, documents violence against transgender persons and lesbians at the hands of family members, law enforcement officials, and those in positions of authority. These human rights abuses include: arbitrary arrest and detention, intimidation, threats, physical and sexual assault, and denial of health services. Conservative cultural norms, including heteronormativity, and religious beliefs coupled with a culture of impunity towards violence against these marginalised population groups further exacerbates the discrimination against them.

Women with disabilities also face discrimination in Myanmar and do not receive adequate protection under law. While a new Rights of Persons with Disabilities Law was passed in 2015, it does not have specific provisions that address the needs of women with disabilities, where disability, in combination with gender, compounds women's inability to enjoy rights in various domains.²¹

Such discrimination against LGBTI populations and women with disabilities results in a lack of access to resources such as education, employment, and housing. This lack of access, coupled with a lack of family support and recognition, renders these population groups vulnerable to poverty, further discrimination and violence.

Others Laws Discriminate Against Women and Violate CEDAW

Furthermore, as discussed in further detail below in Access to Justice, many of Myanmar's law are outdated, provide inadequate legal protections for women and contain provisions which are considered discriminatory under CEDAW. For example, under Myanmar's 1861 Penal Code, abortion is illegal, even in situations involving rape and incest, unless the woman's life is in danger from the pregnancy.²² Complications from unsafe abortions are, in fact, a leading cause of maternal mortality in Myanmar.²³ The criminalisation of abortion under the Penal Code, without exceptions for women's physical and mental health or pregnancies resulting from rape, constitutes a discriminatory barrier to women's access to medical care and limits women's reproductive choices. The Government provides in its Reply to this Committee's List of Issues that while abortion is illegal, the Government is considering the provision of emergency contraception to women who become pregnant as a result of rape. While this is a step in the right direction, the Government must ensure universal access to comprehensive sexual and reproductive health services, including contraception and family planning as well as safe abortion services in all circumstances. The Penal Code also contains other discriminatory articles, including its provisions on rape and its exclusion of marital rape, which are discussed in further detail under General Recommendation 19 below.

Similarly, the Suppression of Prostitution Act of 1949 (as amended in 1956 and 1998) criminalises sex work and imposes harsh penalties, including prison time and fines. The terms of the law and its prohibitions are vague and overly broad; "brothel" is defined to include an expansive list of venues including massage parlours, beauty salons and karaoke lounges and prostitution can be proven by a showing of "lewdness," which is undefined in the statute. Furthermore, sex workers have no enumerated protections under the law when arrested and a number of sex workers report that they are often asked to provide sexual favours to the police, and that declining to do so may result in them being charged.²⁴ Finally, as a result of the law, sex workers who are raped or assaulted are reluctant to report such incidents and may avoid seeking medical care due to fears of arrest. There are limited vocational training opportunities provided to sex workers in detention by the Government and this impacts their ability to reintegrate into society upon their release.

During the UPR of Myanmar in 2015, in response to recommendations to ensure the rights of women, religious minorities and the LGBTI community, the Government claimed that “Myanmar never exercised discriminatory practices based on race, religion or gender.”²⁵ This demonstrates the difficulties in revisiting laws and regulations that impose restrictions on the rights of women, minorities, and the LGBTI community.

Recommendations

- Ensure that all laws and the Constitution comply with CEDAW mandates and do not discriminate against women.
- Conduct a gender impact review examining and considering amendment of all policies and laws that hinder women’s rights. In doing so, include women’s civil society and gender perspectives in any drafting or amendment procedures and discussions.
- Repeal and/or amend discriminatory Constitutional provisions which discriminate in law or in effect against women, including *inter alia* Sections 59(d), 109, 141, 161, 352, 381, and 445.
- Remove and repeal all discriminatory laws, including the Laws on the Protection of Race and Religion and policies related to restrictions on marriage, marriage registration, birth spacing, reproductive decision making, and religious conversion.
- Repeal legislation and any legal provisions that *de jure* and/or *de facto* discriminate against LGBTI persons. Adopt policies and laws that provide LGBTI persons protection from all forms of discrimination and abuse.
- Amend the new Rights of Persons with Disability law to protect women with disabilities.
- Amend the Penal Code and other laws to be in compliance with CEDAW, including by legalizing abortion at a minimum in circumstances of rape, incest, or threats to the life and/or or health of the woman, criminalising marital rape in all circumstances and decriminalising same-sex conduct and sex work.
- Develop a national, comprehensive, and inclusive education policy, with a strong focus on equity to ensure that all children, youth and adults, especially women and girls, are able to enjoy their rights to a quality education, regardless of gender, ethnicity, social or economic status, geographical location, religion, disability, or other attribute.

ARTICLE 3

GUARANTEE OF BASIC RIGHTS & FREEDOMS

CEDAW Article 3 recognises that States parties must take active steps to promote women's development and advancement and ensure access to basic rights and freedoms. To fulfill obligations under Article 3, government ministries or other agencies responsible for women's rights should rely on the expertise of women in creating programmes, which should be known to the public and must be consistent with principles of CEDAW. Further, in addition to competent legal tribunals and other public institutions, States parties should also create independent national human rights institutions (NHRIs) with a mandate to promote and protect the rights guaranteed under CEDAW.²⁶ Importantly, this Committee has emphasised that NHRIs must be established in compliance with international best practices as codified in the Paris Principles on the status of national institutions for the promotion and protection of human rights (Paris Principles).²⁷

Lack of Political Will to Implement the National Strategic Plan for the Advancement of Women

In part to fulfil its obligations under CEDAW, the Government in October 2013 unveiled a National Strategic Plan for the Advancement of Women (NSPAW), a ten-year plan embodying a “commitment to promoting and protecting the human rights of women” in Myanmar.²⁸ Framed as “an ambitious yet achievable”²⁹ plan for progress towards women’s equality from 2013 to 2022, NSPAW covers 12 Key Priority Areas. Importantly, general references to implementation of Myanmar’s international obligations, particularly those under CEDAW, are mentioned throughout NSPAW which is to be implemented through the establishment of a NSPAW Management Committee under the guidance of the Myanmar National Committee for Women’s Affairs (MNCWA).³⁰ MNCWA, chaired by the Ministry of Social Welfare Relief and Resettlement, is an institution with little negotiating power, a limited budget and limited capacity to implement NSPAW. Thus far, civil society organisations (CSOs) and women’s organisations have not been included in the structure of MNCWA while government-organised non-governmental organisations (GONGOs) hold seats as members of MNCWA.

The NSPAW Management Committee is charged with overseeing governmental implementation of NSPAW at all levels, including national, state and regional, and township.³¹ Importantly, NSPAW’s implementation involves “development of partnerships and coordinating mechanisms that are inclusive of a broad range of stakeholders” including national and international non-governmental organisations (NGOs) and UN monitoring bodies.³² Simultaneously, the Gender Equality and Women’s Empowerment (GEWE) Sectoral Working Group mechanism was set up to guide the Government in the process of mainstreaming gender equality, which includes a focus on implementing NSPAW. However, the Sectoral Working Group has not convened more than once a year since it was established, and met most recently in March 2016, after a gap of more than a year.

While NSPAW is a welcome step towards implementing Myanmar’s obligations to eliminate discrimination against women and ensure equality, NSPAW is hampered by structural barriers, such as those in the Constitution, that prevent the realisation of substantive gender equality. Further, NSPAW does not clearly articulate actual, meaningful steps that can be taken through legal reforms or other appropriate avenues. Practical actions and/or implementation measures have not been taken even though it has been three years since NSPAW was “adopted.” In fact, in submissions to this Committee, the Government mentions implementation of NSPAW in terms of future actions, e.g. that work plans “*will* be drawn up and implemented” [emphasis added].³³ The failure to make any progress on implementation plans over the past two and a half years indicates the lack of priority of women’s issues or NSPAW implementation within the Government. Finally, NSPAW contains no specificity with regard to measurable outputs and benchmarks for monitoring and evaluation, nor does it contain any specific commitments to provide and allocate adequate funding and resources. NSPAW, if implemented with sufficient programme and budget commitments, can further progress towards ensuring substantive equality for women and the elimination of direct and indirect discrimination against women. While no advances have been made towards this goal thus far, the recent election of a new government in November 2015 may present an opportunity to fully realise NSPAW’s goals.

Institutions Do Not Provide Effective or Adequate Protection or Remedy for Women

The Government claims that certain domestic institutions protect and promote women’s rights, including the right to access justice. Specifically, the Government cites the Myanmar National Human Rights Commission (MNHRC) and its Women and Child Sub-Committee (WCRC), as well as the MNCWA and the Myanmar Women’s Affairs Federation (MWAFF), as available channels to “receive and address complaints related to the violation of women’s rights.”³⁴ These institutions do not have the ability to provide effective

and adequate remedy for violations and do not conform to international best practices, codified in the Paris Principles.

Shortcomings of the Myanmar National Human Rights Commission and its Mandate

The MNHRC was established in 2011 by a Presidential Decree to safeguard rights in accordance with the Constitution.³⁵ The establishment of the MNHRC was met with scepticism due to structural deficiencies such as its executive (as opposed to legislative) mandate, lack of independence, and limited authority and powers of resolution.³⁶ To respond to these criticisms, a new enabling law for the MNHRC was passed by Parliament in March of 2014, and President U Thein Sein reconstituted a new MNHRC in September 2014.³⁷ Both actions were taken with limited input from civil society organisations.³⁸

Unfortunately, the new enabling law, while an improvement, fails to provide an adequate legal mandate or budgetary authority for the MNHRC in accordance with international principles and does not resolve serious concerns regarding the MNHRC's independence from government interference.³⁹ Moreover, the MNHRC lacks a gender perspective since only two of eleven members are women and only one member of the selection board is intended to represent the interests of women (an appointee from the MWAF, not a CSO).⁴⁰

In addition, the new law allows the MNHRC only to report, refer and recommend responses for each violation, as the Government admits in its submission to this Committee.⁴¹ The MNHRC's power to request materials is also limited to items that do not interfere with national security, which is a vague and broad exclusion.⁴² Finally, the MNHRC still appears to be limiting its mandate only to complaints from citizens and to complaints regarding the infringement of rights under the Constitution, rather than on the broader mandate outlined in the enabling legislation itself.⁴³

Another major concern is that the MNHRC does not ensure confidentiality of complaints and has complete discretion regarding disclosure of information, which could have a chilling effect on the filing of complaints.⁴⁴ This is a very real concern, since the Government has been known to retaliate against those who file grievances with the MNHRC. In particular, the case of Shayam Brang Shawng demonstrates that complaints to the MNHRC of human rights abuses at the hands of the military was punished with swift and forceful prosecution against the complainants.⁴⁵ The MNHRC has declined to open an investigation into the brutal rape and murder of two Kachin teachers, which some believe is a direct result of reluctance to investigate the military.⁴⁶

The shortcomings of the MNHRC are particularly harmful to women, whose interests are not fully represented. Women victims of sexual violence may be reluctant to come forward without guarantees of confidentiality. Women are also negatively affected by limiting the scope of complaints to only those rights under the Constitution rather than the broader human rights mandate required by the enabling law, which would include infringement of rights under CEDAW.

In November 2015, the MNHRC underwent a review by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The MNHRC was given a "B" status, indicating that it has yet to fully comply with the Paris Principles.⁴⁷ In particular, the ICC noted issues with the appointment process for members, lack of pluralism and gender diversity, undue Executive control especially with respect to budgeting, and a need to increase independence and presence considering the situation of armed conflict within Myanmar.⁴⁸

Need for an Independent and Effective National Mechanism to Advance Women's Rights

The Government identifies the MNCWA and MWAF as addressing “complaints related to the violation of women’s rights.”⁴⁹ Historically, these organisations, along with the Myanmar Maternal and Child Welfare Association (MMCWA), have been led by personnel with limited expertise in women’s issues and were staffed by appointees from within the regime.⁵⁰

While these organisations are meant to have an independent mandate, their decision-making is compromised by their close links to the regime in power. Furthermore, these organisations have not focused on strong advocacy for women’s rights or challenged Government policies and programmes that discriminate against women.⁵¹

Even the Government’s own response to this Committee describes the assistance given by these organisations only as referrals, counselling, and psychosocial support.⁵² Because they have no actual ability to remedy or resolve allegations of violations of women’s rights, these institutions are inadequate and unable to provide effective legal enforcement of women’s rights to equality and non-discrimination. Whether by design or due to personnel and budget constraints, the functionality, reach and resources of these organisations are limited so that women, especially in remote and conflict areas, do not receive adequate legal, health, psychosocial and other support services.⁵³ Since, these institutions have proved ineffective in furthering women’s rights and protecting women from abuse in multiple domains, the need for an independent and effective national level mechanism, such as a National Women’s Commission or National Gender Commission, is paramount.

In 2008 this Committee urged the Government and other bodies “to strengthen its legal complaints system to ensure that women, especially women of ethnic groups, have effective access to justice.” With regard to the MNHRC, this Committee called on the Government to “ensure that this institution will be provided with a broad mandate in respect of human rights, as well as sufficient human, financial and technical resources for its effective functioning, and that its composition and activities will be gender-sensitive and fully address the issue of women’s human rights.”⁵⁵ As the above analysis demonstrates, this Committee’s recommendations have not been realised, despite the transition to a quasi-civilian government.

Recommendations

- Establish an independent and effective national level mechanism – such as a National Women’s Commission or National Gender Commission – to advance women’s rights. This Commission should be under the auspices of the President’s office and be independent of all other ministries and have a mandate to oversee all ministries and coordinate between them on mainstreaming gender issues at all levels.
- Ensure that NSPAW is operationalized and fully implemented at all levels, with a budget and effective monitoring and evaluation mechanisms, designed with the input of women’s groups and CSOs.
- Ensure that broad-based civil society/grass-roots consultation takes place when developing NSPAW’s operational plan and monitoring mechanisms.
- Ensure that at least 5% of the national budget is allocated as a gender budget to support the implementation of NSPAW and enable the mainstreaming of gender into all policy making and agenda setting at the national level.
- Amend enabling legislation for the MNHRC to bring it fully in line with the Paris Principles, including by ensuring an adequate legal mandate, budgetary authority, confidentiality for complainants, and independence of its members.
- Ensure complete independence of the MNHRC from the Executive so that it can independently investigate human rights abuses and provide support and services to victims of human rights abuses, especially in conflict and ethnic areas.
- Ensure gender diversity of membership on the MNHRC and its selection board.

ARTICLE 4

TEMPORARY SPECIAL MEASURES

This Committee, in General Recommendations 23 and 25, gives specific guidance to States parties on how to achieve substantive equality, and emphasises that removing de jure barriers is not sufficient to comply with CEDAW mandates.⁵⁶ This Committee notes that women's failure to achieve parity is often the result of "outmoded practices and procedures that inadvertently promote men" and urges the use of Temporary Special Measures (TSMs) to ensure the equal participation of women.⁵⁷ TSMs mentioned in General Recommendation 23 include: setting numerical goals and quotas, electoral reform, and financial assistance and training for women candidates.⁵⁸ General Recommendation 25 clarified that these measures can include "regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems."⁵⁹ The application of these measures is "part of a necessary strategy by States parties directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms."⁶⁰

Myanmar Should Adopt Temporary Special Measures, including Quotas, to Accelerate the Achievement of Substantive Gender Equality

As outlined in this report, women in Myanmar experience both *de jure* and *de facto* inequality, especially within politics and ongoing ceasefire and peace negotiations. To combat this inequality, the Government must institute a combination of interventions including TSMs such as quotas, to increase women's participation, and actors should be held accountable for not meeting gender equality targets. Since a 25% Parliamentary quota for the military is embedded in the Constitution, a Parliamentary quota for women is warranted. Additional quota and other programmes are also necessary⁶¹ to achieve greater representation of women within all levels of decision-making and rank of political appointees, administrative officials, and even the military.

With respect to the peace process, research has shown that including women leads to better, more longer-lasting peace and ensures that policy priorities reflect the needs, concerns and issues of women. Two TSMs that have proven helpful are establishing quotas and creating thematic gender units as part of negotiations. Thus far, the peace process in Myanmar has failed to adequately include women or women's concerns and quotas without accountability measures have proved unsuccessful, as discussed in further detail under Article 7 below.

Other TSMs should be instituted to combat the pervasive inequalities faced by women, such as pay inequalities and the prioritisation of men for higher level positions, which are discussed below in Article 7. For example, the Government should institute affirmative action policies, including capacity-building and mentoring specifically for women on a national, regional and local level.

Recommendations

- Review current laws and regulations to determine areas in which women are discriminated against in law or effect and ensure the adoption of legislative, executive, administrative and regulatory policies and practices, including TSMs, to accelerate the achievement of non-discrimination and substantive equality.
- Amend the Constitution and introduce affirmative action laws to reserve for women, at a minimum, one-third of all seats in national, regional and state Parliaments and all governance institutions in order to accelerate women's enjoyment of equality.
- Develop detailed policies for implementing gender quotas, such as: gender and/or women's caucuses; targeted training and mentoring of women selected to participate through this mechanism; mechanisms for recording exclusionary practices; appointment of gender, peace and security advisers in the formal peace process architecture.
- Include women, women's civil society and a gender perspective at all stages and steps of peace process preparation, negotiation and implementation.
- Ensure a policy for prioritising women with equal skills for promotion in all levels of the public sector (from grass-roots to national level) and the private sector.

ARTICLE 5

STEREOTYPING

CEDAW requires the elimination of harmful gender stereotypes which often are so embedded within “language, images, practices, norms, and values” that people may not even be aware that their social actions are furthering them.⁶² Specifically, under CEDAW Article 5, States parties must take appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁶³ Ethnic, religious, and cultural traditions tend to further entrench stereotypical roles of women within society— particularly as it relates to women’s rights in marriage and family relations.⁶⁴ Moreover, traditional concepts of gender are further embedded by antiquated and discriminatory laws, policies, and practices.⁶⁵ Addressing the intersection of cultural practices and gender stereotypes, this Committee has emphasised that cultural traditions cannot undermine women’s inalienable and non-derogable human rights and cautions States parties to take “sufficient steps” to curb the effect of harmful practices.⁶⁶

Pervasive Stereotypes Discriminate Against Women and Impede the Realisation of Rights

Traditional gender stereotypes are pervasive in Myanmar and are supported by religious, cultural, political, traditional, and customary practices. Women in Myanmar are generally understood to be secondary to men.⁶⁷ They are perceived as weak, in need of protection, and incapable of making their own decisions.⁶⁸ Typically viewed solely as mothers, wives and daughters, it is believed that women's proper place is in the home.⁶⁹ Conversely, men are considered to be society's natural decision-makers, leaders, and bread-winners.⁷⁰ Norms and stereotypes which perpetuate gender inequality include those which hold women's menstruation to be dirty; place high value on women's virginity; hold sex to be a taboo topic; promote childbearing; and encourage women to sacrifice themselves for their families.⁷¹ Deeply embedded in the country's consciousness, traditional perceptions are often used to justify the political, socio-economic and cultural structures that give men dominance and control over women and limit women's ability to participate in Myanmar society. For example, male sexuality is assumed to be uncontrollable and potentially violent, which has the impact of normalizing and justifying violence against women.⁷² These traditional and harmful stereotypes pervade all aspects of public and private life in Myanmar, and are justified on grounds of preserving traditional, religious, and cultural integrity.⁷³ Women's rights advocates who oppose such norms face rebuke.

Furthermore, a central feature of cultural and religious narratives is male spiritual superiority.⁷⁴ For example, many of Myanmar's Buddhists believe in *hpon*, or an innate spiritual superiority⁷⁵ which women are unable to possess; therefore, men are spiritually superior to women.⁷⁶ Importantly, this notion of male spiritual superiority is often accepted by non-Buddhist, non-Bamar ethnic communities,⁷⁷ demonstrating the pervasiveness of negative stereotypes.⁷⁸ Another factor contributing to the pervasiveness of harmful stereotypes is the culture of militarisation that promotes a sense of hyper-masculinity and equates masculinity with the military's physical force.⁷⁹ The military's visibility within daily life and its dominant influence within political structures serve to embed stereotypical perceptions that women's "proper" place in society is in the home and subordinate to that of men. This norm of male dominance is found even in the context of ethnic conflicts, which has added to the paradigm of masculine dominance and feminine subordination in the country's border and ethnic regions as well.

Harmful Manifestations of Discriminatory Norms in Law, Society and the Media

These norms are socialised through peers, families, and health professionals, in some cases underpinned by laws and policies. The impact of these norms include: limited access to information about sexual and reproductive health and an inability to fully enjoy sexual and reproductive health rights, particularly among unmarried women but also among men; justification of men's violence against women; the reduction of women's health issues to maternal and child health concerns; women's inability to make decisions about their bodies; and the marginalisation and discrimination of women who do not conform to gendered norms.⁸⁰

One way in which these stereotypes manifest themselves in women's experience in Myanmar is in men's perceived entitlements to women's lives, bodies and sexuality. For example, Myanmar's Penal Code does not contain a provision for marital rape, reinforcing the traditional notion that wives, and their sexuality, are the property of their husbands. Further, the Laws on the Protection of Race and Religion discussed above under Article 2 threaten to further entrench widespread gender-based discrimination, including through propagation of harmful, negative stereotypes and practices concerning women. By solely regulating the conduct of men with regard to women, these laws reinforce negative prejudices and customs based on the supposed inferiority and superiority of women and men, respectively, and on stereotyped roles for women and men, in contravention of CEDAW.⁸¹ Such differential treatment of men and women is not only discriminatory, but also further entrenches the notion that women are unable to make their own decisions and need protection.

The media also maintains and perpetuates these norms. Globalisation of culture in Myanmar is generally met with scepticism, and women in the media are critiqued when they fail to conform to traditional gender norms. Media largely perpetuates a victimised, objectified and sexualised view of women and print media is elite-oriented and highly male-biased.⁸²

In 2008, this Committee noted its concern regarding “the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life...”.⁸³ This Committee also expressed its concern that “such customs and practices perpetuate discrimination against women and girls, as reflected in their disadvantageous and unequal status in many areas, including in public life and decision-making and in marriage and family relations.”⁸⁴

However, since 2008, the Government has not made significant efforts to combat negative or limiting stereotypes of women. The Government’s reporting to this committee cites a co-submitter of this report’s (GEN) extensive qualitative study, *Raising the Curtain: Cultural Norms, Social Practices and Gender Equality in Myanmar*, as progress on this issue and notes an intention to implement awareness raising and dialogue initiatives based on the findings and recommendations of that report. Developing such programmes is crucial and must be done by working closely with CSO organisations, including platforms such as GEN. Combatting these deeply entrenched norms and stereotypes is necessary to ensure that women and girls in Myanmar are able to realise and enjoy their rights under CEDAW.

Recommendations

- Engage in systematic gender analyses of laws, policies and budgets in order to ensure that norms built on gender stereotypes and ideas of unequal worth do not influence or predicate policies, programmes, directives and operating procedures and budgets.
- Utilise and implement the findings and recommendations from GEN’s *Raising the Curtain* and *Behind the Silence* research reports to design campaigns and awareness initiatives, in consultation with CSOs, for multiple platforms to target the general public and those in decision-making positions.
- Develop gender sensitive curricula, both in formal and informal education, to reduce stereotyped perceptions and to promote gender sensitivity.

ARTICLE 7

PARTICIPATION IN POLITICAL & PUBLIC LIFE

An essential goal of CEDAW is to ensure women's equal participation in all aspects of public and political life, including at decision-making levels. The relevant consideration is whether women, in fact, have fairly equal representation in political decision-making mechanisms, even if the domestic legal regime does not on its face impede access to such mechanisms. CEDAW provides that States parties must take affirmative actions to accelerate the realisation of substantive equality, also known as equality of results, if women do not actually play an equal role in public and political decision-making.⁸⁵ CEDAW mandates equal participation of women, both as individuals and as a collective political force.

In post-conflict situations, promotion of gender equality and women's participation in peace processes is often under-prioritised. CEDAW Articles 7 and 8 and General Recommendation 30 recognise that the exclusion of women from peace processes, however, can lead to irreversible losses for women, since crucial conflict-related issues of concern to women, such as sexual violence, go unmentioned and therefore unaddressed in peace accords.⁸⁶ If women are not included at the negotiation table, women's issues and views are not reflected in peace agreements, thereby exacerbating women's marginalisation in the economy, society, and politics.⁸⁷ These concerns are also echoed in UN Security Council Resolutions on Women, Peace and Security (WPS Resolutions).⁸⁸

Women's Lack of Equal Participation in Political Life

Historically, women have been largely excluded from positions of political power in Myanmar, as well as from the formulation of laws and policies, including the Constitution. Without a military background, women were ineligible for many political positions in ministries, the judiciary and the legislature.⁸⁹ In addition to militarisation, another important factor contributing to the absence of women in positions of political power is traditional norms, discussed above in Article 5, that ascribe authority and glory to men over women.⁹⁰ Finally, women's participation is hampered by the lack of legal and administrative protections, such as parental leave or prohibitions on workplace harassment.⁹¹

Even in professions with a higher percentage of women (such as education), women do not possess decision-making authority.⁹² In the important and powerful General Administrative Department ("GAD") of the military-controlled Ministry of Home Affairs, few women are in decision-making positions, even though they make up, on average, 38% of staff below "officer" level.⁹³ Women also often receive unequal wages for similar work, although equal pay for equal work is guaranteed by the Constitution.⁹⁴ Therefore, although individual women, such as Daw Aung San Suu Kyi, have been significant in public life, women as a whole do not play a role in decision-making or policy development. As Daw Aung San Suu Kyi herself has stated, "[w]omen are not playing a role in political life."⁹⁵

Structural Barriers in the Constitution Prevent Women's Equal Participation

The Constitution, drafted largely by the military without civic participation or input, has further entrenched barriers to women's political participation. Being well-acquainted with "defence" matters is required for powerful positions within the executive, legislative and judicial branches.⁹⁶ In an example of outright discrimination, the Constitution provides that certain positions are suitable only for men.⁹⁷ As discussed above under Article 2 as well, the State Report clarifies this Constitutional clause by stating that "some placements are to positions that are suitable for men only in accordance with the situation of natural work-places (for example, in mining and petroleum), and women, therefore, cannot be appointed to those positions."⁹⁸ The State Report concludes, however, that this is not discrimination, which displays a lack of understanding about discrimination and CEDAW.

Importantly, the Constitution allocates 25% of parliamentary seats to the male-dominated military.⁹⁹ Because any Constitutional amendment requires more than 25% approval, the military can single-handedly veto any Constitutional amendments, including those that would reduce the influence and privileges of the military; in fact, the military vetoed such amendments in June of 2015.¹⁰⁰ To compensate for the military quota, women need to win a greater portion of elected parliamentary seats in order to achieve a certain percentage of overall legislative representation. In other words, to gain a 40% representation in total parliamentary seats, women would need to garner approximately 53% of the parliamentary seats available through general public election. Succumbing to pressure, in January 2014 the military appointed two women as part of its 25% quota, giving women .01% of seats reserved to the military.¹⁰¹ Subsequently, the military has not increased this percentage.

Women Still Vastly Underrepresented After November 2015 Election

Historically, representation of women in Parliament has been very low.¹⁰² The elections of November 2015, in which the NLD swept to victory, represent a high water mark for women's participation.¹⁰³ Yet, even after that election, women account for only 13.6% of Parliamentary seats and 12.7% in State and Regional Parliaments.¹⁰⁴ In the new Government, no woman other than Daw Aung San Suu Kyi will hold any of the 21 ministerial posts.¹⁰⁵ In the previous regime, only 2 out of 33 Ministers were women.¹⁰⁶ At the Regional/State level only two out of 14 Ministers are women, in Tanintharyi Region and Kayin State.¹⁰⁷ Gender inequality is even greater at the village level, with data from 2014 showing women's participation

at just 0.25% (gender disaggregated data for the January 2016 local elections was not yet available as of writing).¹⁰⁸ [For an overview of women's exclusion from political life, please see Annex 2]

Exclusion of Women in Post-Conflict Transition

Thus far, women have been almost completely excluded from all stages of the peace process in Myanmar.¹⁰⁹ [For a gender breakdown of the peace process, see Annex 3.] This exclusion reflects the belief that political decision-making is a male responsibility, that men should be more involved in peace negotiations since they are direct combatants in conflict,¹¹⁰ and that security and ceasefire issues take priority over broader social and gender concerns.¹¹¹ As a result of these biases, U Thein Sein's peace negotiating team, the 52-member Union Peace Work Committee, included only two women (who were duly-elected representatives of Parliament).¹¹² The 11-member Union Peace Central Committee, responsible for policy and decision-making, did not include any women.¹¹³ It should be noted that women were generally absent from ethnic delegations as well.¹¹⁴ This gender exclusion is a result of biases as well as the fact that participants were drawn from the military and those already in power, who are mostly male. This marginalisation of women violates Myanmar's obligations under international law, including CEDAW and WPS Resolutions, which is notable since the peace process was funded largely with money from international donors.

Nationwide Ceasefire Agreement and Framework for Political Dialogue Excludes Women

After years of negotiations, on October 15, 2015 the Government signed a Nationwide Ceasefire Agreement (NCA) with eight Ethnic Armed Organisations (EOs); seven other EOs refused to sign and six were not allowed to sign.¹¹⁵ The NCA makes no reference to the international law regime of complementary protections under CEDAW and international humanitarian, refugee and criminal law that guarantees women's rights in all crisis situations, as elaborated in General Recommendation 30 and the WPS Resolutions. Nor does it reference commitments under the ASEAN Charter for Human Rights.

Further, while the EOs' summit of June 2015 agreed to a gender quota of *at least* 30%, the Government rejected this quota. Instead, the agreed language (Chp. 5, Clause 23) in the NCA states: "We shall include a reasonable number of women representatives in the political dialogue process." This vague clause was not a firm or adequate commitment to women's inclusion. Further, curiously, the clause refers to the "political dialogue process" rather than just the "political dialogue" as is the case in all other sections. This raises the spectre of diluting women's participation by more broadly categorizing a "process" to include support, preparatory or other administrative, as opposed to substantive, elements. The NCA also called for holding a Union Peace Conference (UPC), commencing a political dialogue within 90 days of signing, and drafting a Framework for Political Dialogue (FPD) within 60 days of signing. The FPD drafted in January 2016 lists gender as a ground for non-discrimination and identifies as one of its basic principles to "try to let women participate in the political dialogue 30% of the number of participants."¹¹⁶ It further states that attempts "would be made to let women representatives participate up to 30% of the total number" on Working Committees formed.¹¹⁷

An immediate result of the NCA's failure to guarantee women's participation can be seen in the formation of follow-on peace negotiating platforms. Various negotiating platforms, such as the Union Peacemaking Central Committee the Union Peacemaking Working Committee, the Union Peace Dialogue Joint Committee and the Joint Ceasefire Monitoring Committee, tasked with the peace process, have routinely failed to meet the 30% target as well as the minimum inclusion standards specified by CEDAW.¹¹⁸

Further, the FPD does not mainstream gender across the matters for discussion, but relegates it to a sub-issue under the category of social matters.¹¹⁹ Gender equality is only mentioned within the social agenda, rather than as an overall consideration in discussions regarding all topics, such as politics or security.¹²⁰

Section 4.2.2 of the FPD states that with respect to the UPC “in selecting delegates, women participation would be 30% or more.” However, women made up only 8% of delegates to the UPC convened in January of 2016, well below the 30% threshold in the FPD.¹²¹ Moreover, 17 women delegates to the UPC reported that their concerns were marginalised and that they were not given sufficient air time.¹²²

On May 2016, the Government replaced the Myanmar Peace Center (MPC) with the National Reconciliation and Peace Centre (NRPC) and underscored its intention to try to include all parties in peace talks. In an indication of continuing exclusion of women in the peace process, however, none of the ten members of the NRPC are women.¹²³

Following its 2008 review, this Committee called on the Government to increase women’s political participation, with a specific recommendation encouraging the use of “targets and quotas, as appropriate,” in this respect.¹²⁴ While progress has been made since 2008, women still face significant barriers. Improving women’s participation in politics and the peace process requires an extensive and coordinated government plan to: remove structural legal barriers (in particular those contained in the Constitution), disassemble paternalistic cultural stereotypes, install TSMs (including quotas), undertake an extensive public awareness campaign and execute major improvements in women’s access to education, livelihood, and health opportunities in all regions of the country. During its 2015 UPR, the Government, in fact, accepted recommendations made regarding improving women’s participation, such as: ensure better representation of women in the peace process; continue promoting the participation of women in public affairs and socio-economic activities; and promote women’s rights through increased participation in political, socio-economic and administrative decision making processes.

Recommendations

- Adopt laws, regulations, programmes, mechanisms, policies and TSMs, such as a quota of at least 30%, to increase women's participation at all levels, including at decision-making levels, in government, Parliament, and public life and conduct gender power analyses and gender inclusion audits.
- Ensure that the electoral system is supportive for women so that they have equal opportunity to participate, including by instituting TSMs and amending electoral laws.
- Provide broad-based support for women who seek to enter public and political life (including those involved in the peace process) with gender-friendly policies and laws and ensure adequate funding to support these initiatives.
- Dismantle any structural impediments, including in the Constitution (e.g. Sections 59(d), 351 and 352), which either directly or indirectly impede women's participation and equality or result in direct or indirect discrimination.
- Mainstream gender and women's issues across the Government, including by forming a national mechanism to advance women's rights under the President's Office and/or appointing a gender advisor or advisors to the President.
- Ensure that gender concerns are mainstreamed across all substantive and procedural aspects of the peace process by establishing a gender thematic unit as well as agree on inclusion policies within all negotiation processes and at all levels; guaranteeing the appointment of at least 30% women in all processes, including as ceasefire monitors and commissioners.
- Develop mechanisms for recording and reporting exclusionary practices in the peace process such as gender justice scorecards and complaints mechanisms/ombudsperson functions.

GENERAL RECOMMENDATION 19

VIOLENCE AGAINST WOMEN

Women cannot enjoy and exercise their human rights and fundamental freedoms on an equal basis with men if they fear for their physical safety.¹²⁵

Accordingly, under CEDAW, the obligation of States parties to eliminate discrimination against women and ensure women's equality necessarily includes an obligation to enhance women's physical security and end violence against women.¹²⁶

Notably, this Committee has recognised that situations of armed conflict often lead to increased violence against women, particularly sexual violence, requiring protective and punitive measures.¹²⁷

Under CEDAW, violence against women is defined broadly, creating a wide scope of circumstances implicating a State party's obligation to act.¹²⁹

For all forms of violence against women, this Committee has emphasised that States parties must take appropriate and effective legal measures to provide protection for women and punishment for perpetrators, including establishing laws and legal mechanisms such as penal sanctions, civil remedies, and compensatory provisions.¹²⁹

In addition, gender-sensitivity training of judicial, law enforcement and other public officials is deemed essential for the effective implementation of CEDAW obligations¹³⁰ and public information and education programmes to change attitudes concerning the roles and status of men and women are essential.¹³¹

Pervasive Violence Against Women in Myanmar

Violence against women in Myanmar takes many forms and is carried out by many different types of actors.¹³² Throughout their lives, women in Myanmar often face emotional, economic, physical, sexual, and intimate partner violence and harassment at home and in public.¹³³ GEN's recent qualitative study of violence against women in Myanmar found not only that all women interviewed for the study had experienced at least one type of violence, but also that almost all women had experienced at least one form of physical abuse by an intimate partner.¹³⁴ GEN's research also shows that half of women surveyed experienced one or more forms of non-partner sexual abuse in public spaces.¹³⁵ The pervasiveness and universality of women's experiences of violence in Myanmar demonstrated that such violence is not a series of isolated incidents, and that different types of violence often overlap.¹³⁶ Gendered values and norms grounded in stereotypes about women contribute to a social environment in which violence against women is both practiced and sanctioned, while simultaneously dismissed or normalised.¹³⁷

While gender-based violence threatens all women in Myanmar, women in conflict-affected areas are particularly at risk. Ethnic women in multiple regions face real and ever-present threats of conflict-related sexual violence (CRSV) at the hands of the military, which for decades has used CRSV against them.¹³⁸ Women in IDP camps are also vulnerable to sexual violence and lack access to legal and other support services. Therefore, violence against women is a grave concern, especially in ethnic and conflict areas.

Inadequate Knowledge of Rights, Ineffective Legal Framework and Insufficient Support Services for Victims

In Myanmar, violence against women is beginning to be openly recognised as a key development concern. Yet to date, work to respond to and prevent violence against women in an effective countrywide, systematic and collaborative manner has not yielded results. There is limited public awareness that violence against women is a significant issue, and a violation of human and women's rights. Myanmar remains one of only two ASEAN countries lacking a specific law criminalising domestic violence.¹³⁹ Moreover, Myanmar currently has no comprehensive laws to prevent violence against women or sexual harassment and no law allowing victims to obtain protection orders against abusers.

The existing legal framework is insufficient to ensure justice, protection and rehabilitation for victims.¹⁴⁰ Provisions of Myanmar's Penal Code reflect outdated stereotypes.¹⁴¹ For instance, while Section 375 of the Penal Code includes non-consensual "sexual intercourse" as a criminal element of rape, the undefined requirement of "penetration" as a component of "sexual intercourse" leaves the overall definition of rape insufficiently ambiguous, for instance in cases of forced non-penile penetration.¹⁴² Nor does the Penal Code include any specific provisions concerning unwanted sexual touching or sexual harassment outside the context of sexual intercourse, although Section 354 does criminalize assault intended to "outrage [a woman's] modesty" (a troubling example of outdated and ambiguous language justifying scrutiny of a woman's "modesty" as a pre-condition for access to justice, which was reiterated in the State Report).¹⁴³ The definition of rape under Section 375 applies only to women who are not married to their attacker; the Penal Code neither prohibits nor punishes the rape of women by their husbands, unless the victim is less than 15 years of age.¹⁴⁴ The Penal Code does not criminalise domestic violence, or provide a legal mechanism allowing women to obtain restraining orders to protect them against aggressors.¹⁴⁵

Meanwhile, neither Myanmar's Code of Criminal Procedure nor its Evidence Act contains comprehensive substantive protections for the integrity and dignity of women during the investigation and prosecution of cases involving violence against women.¹⁴⁶ The law also permits judges to both compel victims of rape to testify against their attackers *and* to draw an adverse inference from a victim's refusal to answer questions about the rape.¹⁴⁷ The "inconsistencies and vagaries" of the legal process is one cause of low reporting of violence.¹⁴⁸

Access to justice for victims of violence by the military is even more difficult. The Constitution guarantees in Article 445 that no proceeding shall be instituted against any member of the Government “in respect to any act done in the execution of” his duties, which has been identified by the Special Rapporteur on the human rights situation in Myanmar as a “blanket immunity for State agents, contrary to the very essence of accountability for human rights violations.”¹⁴⁹ In addition, a provision in the January 2016 Presidential Security Law stipulates that no legal action can be taken against a former head-of-state, offering immunity to former and current military leaders.¹⁵⁰ The Constitution also establishes military autonomy over all its own judicial processes and gives the Commander-in-Chief “final and conclusive” authority over all cases and complaints.¹⁵¹ Therefore, the military justice system asserts both formal, and informal, control over all CRSV cases through a system that is neither known nor accessible to victims. These factors translate into a lack of accountability for military-perpetrated CRSV, far from the “zero tolerance policy” claimed in the State Report.¹⁵² In fact, the Government’s follow-up response admits that only cases involving “non- active duty time” are eligible for transfer to civilian courts.¹⁵³

These shortcomings are compounded by a failure to provide medical, legal, financial and psychological support services to victims.¹⁵⁴ The lack of official support not only reinforces an environment of impunity for perpetrators, but also contributes to a lack of faith in the justice system, lower reporting of incidents of abuse, isolation of victims, and physical and mental health consequences.¹⁵⁶ These systemic and structural deficiencies violate CEDAW and illustrate precisely why legal measures required under CEDAW can help frame issues in a domestic context.

Draft Prevention and Protection of Violence against Women Law Should Be Fully Compliant with CEDAW

Three years ago, U Thein Sein’s Government commenced a process of drafting comprehensive legislation to address violence against women. The previous Government, however, did not approve this legislation during its tenure. The lack of progress is notable since the Government amended, passed or revoked approximately 200 laws since 2011.¹⁵⁶

GEN, along with the UN Gender Theme Group (UNGTG), was part of the core law drafting working group that advised the previous Government on key provisions to be included in the draft “Prevention (and Protection) of Violence against Women” (“PoVAW”) legislation. This draft underwent several changes and towards the end of its tenure the previous government sought to finalise the draft without taking into consideration the substantive suggestions made by CSOs and women’s organisation to bring the law into compliance with CEDAW. The process, while allegedly consultative, left little room for CSO involvement. In May 2016, the new Government extended an invitation to the law drafting working group (including GEN and UNGTG) to review the draft law as it stands at the moment. This draft suffers from deficiencies, including because it does not provide a comprehensive definition of rape that is in compliance with international standards or an easily understood process for obtaining restraining orders. Violations of reproductive and sexual rights are included, yet comprehensive pre-trial and testimonial safeguards are not.¹⁵⁷ Moreover, the law does not determine how conflicts with existing laws and regulations will be resolved.

Another significant concern is that the current law does not allow for trials of accused military personnel in civilian courts. This exempts a range of perpetrators, creates conditions for impunity to thrive and allows for different legal frameworks to be applied depending upon the position of the perpetrator. Therefore, at least in its current draft form, the PoVAW law does not come close to embodying CEDAW-compliant protections for women and will leave women vulnerable and without sufficient legal protections under law.

This Committee in 2008 recognised the deficiencies in Myanmar's legal framework and urged the Government to "give priority attention to combating violence against women and girls" and to adopt comprehensive measures to ensure that "violence against women and girls, including domestic violence and all forms of sexual abuse, constitutes a criminal offence; that perpetrators are prosecuted, punished and rehabilitated; and that women and girls who are victims of violence have access to immediate means of redress and protection."¹⁵⁸ Thus far, the Government has not met its CEDAW obligations to enact and revise laws so that women's physical and mental integrity is respected.

Encouragingly, during its 2015 UPR, the Government accepted multiple recommendations and committed itself to take positive action to protect women from violence, enact and enforce legislation that guarantees comprehensive protection from all forms of violence against women and address impunity for all perpetrators. However, the Government rejected recommendations to prevent and combat domestic violence and sexual violence committed by military personnel and police officers against young girls and adolescents. This demonstrates the lack of Governmental political will to ensure accountability for crimes committed by state actors and to eliminate impunity.

Recommendations

- Ensure the PoVAW law includes definitions and provisions that adhere to accepted international conventions and ensure that CSOs working for gender equality are consulted fully in drafting, implementation and monitoring of the law. A comprehensive law should address the needs of women in all contexts with no exception and should ensure that it respects the integrity and dignity of women who have experienced violence, including during the investigation and prosecution of cases and offer them effective protective measures and health and psychosocial support.
- Ensure that the PoVAW law guarantees women and girls comprehensive protection against all forms of violence, including emotional, economic, domestic and sexual violence (including marital rape) and includes clear criminal penalties, civil remedies, and rehabilitation and reparations for victims.
- Ensure that an adequate budget is allocated for the implementation of the PoVAW law and that related initiatives are developed, such as crisis shelters and one-stop service centres, and that linkages with police, health care workers, legal service providers and psychosocial counsellors who have been trained to effectively respond to incidents and support women are available.
- Implement gender-sensitive training of justice implementers and service providers.
- Ensure accountability for CRSV perpetrated by the military, and reparations for victims, and ensure these cases are handled within the ambit of the PoVAW law.
- Ensure adequate protections for women and girls in IDP camps.
- Include rehabilitation mechanisms and services for the perpetrators of VAW.

GENERAL RECOMMENDATION 33

ACCESS TO JUSTICE

The ability of women to access justice is essential to a State party's implementation of CEDAW obligations, including the fundamental obligation to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women."¹⁵⁹ Indeed, CEDAW's guarantees of women's fundamental rights are meaningless unless those rights can be asserted through independent, impartial, and effective systems of justice. Critically, such systems must enforce prohibitions against gender-based discrimination, provide redress, reparation, and compensation for women who experience gender-based discrimination, and hold perpetrators of gender-based discrimination accountable for their actions..¹⁶⁰

Access to justice is therefore fundamental to the rule of law and a critical means for women to assert their rights under CEDAW.¹⁶¹

In General Recommendation 33, this Committee identified six "interrelated and essential components" necessary to ensure access to justice: (1) justiciability; (2) availability; (3) accessibility; (4) good-quality; (5) accountability of justice systems; and (6) the provision of remedies for victims.¹⁶² Taken together, these six components highlight that States parties must ensure their justice systems adhere to international standards of competence, efficiency, independence and impartiality.¹⁶³

A Weak and Outdated Legal System, the Lack of an Independent Judiciary and Low Levels of Legal Awareness Impede Women's Access to Justice

Since 1962, successive military juntas in Myanmar have used the rule of law as a tool of subjugation and social control. Laws were used to repress, rather than protect the people of Myanmar.¹⁶⁴ In addition, the mechanisms for protecting and enforcing the law—judges, courts, law schools, and professional associations—were co-opted and manipulated by the military to serve its purposes.¹⁶⁵ As a result, “the legal system suffers from high levels of corruption, cronyism and public distrust.”¹⁶⁶ Significant obstacles to the fair administration of justice continue despite the transition in 2011 to a nominally civilian Government.¹⁶⁷ As discussed above, the Constitution is a major hindrance as it formally entrenches military influence over the rule of law in Myanmar and establishes the military’s complete independence over its own affairs and from Executive and Legislative oversight.¹⁶⁸ As a result, access to justice remains elusive for the women of Myanmar.¹⁶⁹

One key weakness in the legal system is its outdated and repressive laws which successive military juntas have used as a tool to deny civil and political rights.¹⁷⁰ Repressive legal edicts and statutes still exist, such as the State Secrets Act of 1923 and the Unlawful Associations Act of 1908,¹⁷¹ and amendments to certain restrictive laws, such as the Peaceful Procession and Assembly Law, have failed to address their shortcomings.¹⁷² Prosecutions against activists have been made using the Telecommunications Act, the News Media Law, and the Electronic Transactions Act.¹⁷³ In contrast, none of these laws establish protections for women from information and communication technologies—or cyber—crimes.

Legal awareness and knowledge of rights amongst the populace is low, which impedes utilisation of the formal justice system.¹⁷⁴ The situation is exacerbated by the Government’s practice of drafting laws in secret, with limited public involvement or broad-based civil society consultation.¹⁷⁵ Furthermore, there is inadequate knowledge, by residents and justice implementers, of women’s rights generally, and more specifically, of their rights under CEDAW.

Another major stumbling block to establishing the rule of law in Myanmar is the significant shortcomings of Myanmar’s Judiciary.¹⁷⁶ Decades of authoritarian rule and Executive interference in the judicial sector have led to the Judiciary acting as an enforcer for military and political actors rather than an independent arbiter of disputes.¹⁷⁷ The subordinate position of the Judiciary is formalised by the Constitution, which allows the executive branch extensive control of the Judiciary.¹⁷⁸ In addition, the judicial process in general is seen as expensive and daunting, making the cost of utilising the formal justice system prohibitive.¹⁷⁹

The legal profession has been repressed and weakened by successive military regimes in retaliation for the active role lawyers played during times of protest.¹⁸⁰ In addition, legal education, the foundation of the legal profession, has been systematically demolished over the past three decades by previous regimes.¹⁸¹ Politically-active lawyers have been targeted for prosecution under repressive state laws and subject to disciplinary proceedings.¹⁸² This harassment, as well as restrictions on freedom of association and expression, continues despite a transition to civilian rule.¹⁸³

Women are disproportionately affected by the access to justice challenges outlined above. For example, prohibitive legal costs and processes are especially harmful to women who often are unable to take the time necessary to pursue legal action since they are the primary caretakers of children and must contribute economically to the household.¹⁸⁴ Colonial-era laws, such as the Penal Code of 1861,¹⁸⁵ remain in effect and they reflect and perpetuate outdated gender assumptions resulting in inadequate legal protection for women.¹⁸⁶ Moreover, a gender perspective and sensitivity to gender issues is almost completely absent in the drafting of laws, law enforcement practices and the administration of justice.¹⁸⁷ Women who have been subjected to discrimination and violence often have little faith in the formal legal

system and fear that nothing will be done if they bring complaint about violations.¹⁸⁸ Finally, women's human rights defenders lack protection, are frequently threatened, including with sexual violence, face harassment and intimidation and lack access to justice for violations of their rights.¹⁸⁹

In 2008 Concluding Observations, this Committee expressed concern over “inadequate knowledge of the rights of women under [CEDAW], its concept of substantive gender equality and the [CEDAW Committee's] general recommendations . . . among the judiciary at all levels, as indicated by the absence of information on any court decisions that refer to [CEDAW].”¹⁹⁰ Accordingly, it requested that the Government “ensure that judges at all levels be adequately trained in human rights and the provisions of [CEDAW], and that women have access to the courts on equal terms with men.”¹⁹¹ This Committee also called on the Government to “remove any impediments faced by women in gaining access to justice” and for implementation of training for the judiciary, among others, to ensure appropriate sensitisation to gender inequality.¹⁹²

The Widespread Use of Customary Law and Informal Justice Mechanisms Violates Women's Rights

A major obstacle to access to justice for women in Myanmar is the widespread use of informal justice mechanisms based on customary laws, including laws drawn from traditional social and religious practices, to resolve disputes concerning the rights of women.¹⁹³ This is particularly problematic for women living in rural areas and/or within ethnic minority communities. Customary law is recognised by Myanmar's courts and is typically applied in family disputes impacting the rights of women, including cases of divorce, property succession, and adoption.¹⁹⁴ However, these customary laws are not codified, leaving interpretation to the discretion of arbitrary or village elders, who almost exclusively are male.¹⁹⁵ Furthermore, Myanmar's relevant customary laws view women differently from men, largely confining them to roles defined under traditional social norms and values, such as homemakers, wives, and child-bearers.¹⁹⁶ For example, under Myanmar's customary laws, the right of women to seek divorce is limited compared to men. Specifically, women are typically required to prove that their physical safety is in immediate danger or that the marriage has already terminated in order to substantiate a claim for child support or alimony.¹⁹⁷ Additionally, due to the social stigma surrounding divorce, women are encouraged to stay married to their husbands, even in the face of abuse.¹⁹⁸

In 2008, this Committee urged the Government to “harmonise [*sic*] its civil, religious and customary law” in conformance with CEDAW and to complete “law reform in the area of marriage and family relations in order to bring its legislative framework into compliance” with CEDAW.¹⁹⁹ This Committee's calls for the Government to take measures to improve access to justice have not been addressed, despite the transition to a quasi-civilian government. Few of the reforms instituted since 2011 address women's issues or women's difficulty in accessing justice in Myanmar. For example, in the State Report, the Government asserted that “8 [*sic*] laws related to women's rights have been amended or enacted.”²⁰⁰ An examination reveals that only one of these laws specifically relates to women,²⁰¹ the rest are general protections for certain categories of people in Myanmar, such as labourers.²⁰²

Recommendations

- Undertake a review of existing laws dating back to previous regimes and repeal and/or amend those that are outdated, repressive and were/could be used to deny civil and political rights.
- Initiate a campaign to grow and strengthen the legal profession.
- Enact a PoVAW law and measures to counter the harmful effects of traditional, customary, tribal or religious laws that discriminate against women or are in contravention of CEDAW.
- Eliminate barriers to women's access to justice and ensure an independent, impartial and effective Judiciary and Bar.
- Ensure transparency in the judicial system and process while maintaining safeguards for the privacy and confidentiality of complainants and witnesses.
- Review legal mechanisms to ensure that judicial or other legal review is a viable option for infringements of women's rights, including those guaranteed by CEDAW.
- Ensure all women and girls, including those from remote and ethnic areas, can easily access courts and judicial services, including educational information about legal rights.
- Eliminate impunity for the military and Government actors, including by eliminating immunities provided for in the Constitution and by legislation; ensure that cases, including for CRSV, against military personnel are tried in civilian courts or in military courts under the PoVAW law.
- Ratify the Optional Protocol to CEDAW.
- Ensure that women's rights to marriage, inheritance and divorce apply regardless of race and religion and are in compliance with CEDAW principles.

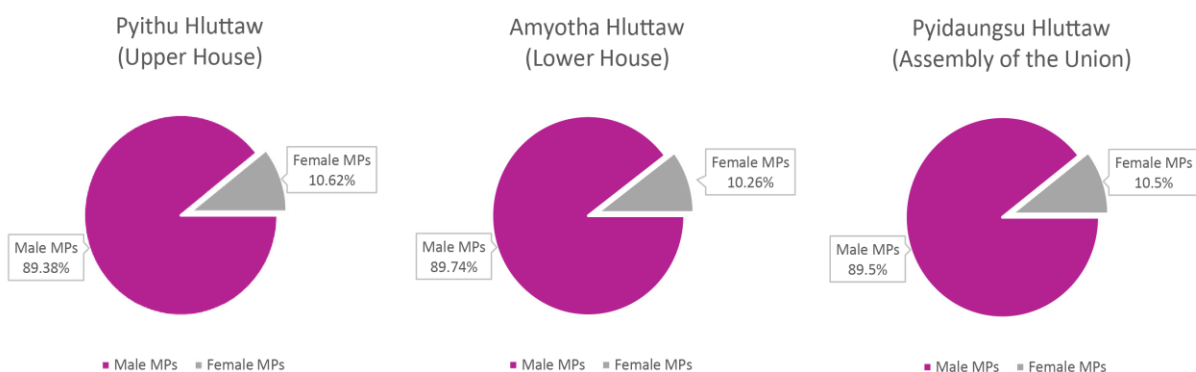
ANNEX 1 LIST OF GEN MEMBERS WHO CONTRIBUTED TO THIS REPORT

No.	Type of Organisation	Organisation's Name
1	CSO/NGO	Colors Rainbow
2	CSO/NGO	Equality Myanmar
3	CSO/NGO	Kachin Women Peace Network
4	CSO/NGO	Myanmar Women Entrepreneurs' Association
5	CSO/NGO	Pyi Gyi Khin
6	CSO/NGO	SPECTRUM
7	CSO/NGO	Student Christian Movement
8	CSO/NGO	Thingaha Gender Organization
9	CSO/NGO	Yaung Chi Thit
10	Alliance	AGIPP (Alliance for Gender Inclusion in the Peace Process)
11	INGO	ActionAid Myanmar
12	INGO	CARE International in Myanmar
13	INGO	Ipas
14	INGO	The Lutheran World Federation
15	INGO	Marie Stopes Myanmar
16	INGO	Norwegian People's Aid
17	INGO	Oxfam
18	INGO	Population Services International
19	INGO	Plan International Myanmar
20	INGO	Pyoe Pin
21	INGO	Progetto Continenti
22	INGO	Trocaire
23	Technical Resource Person	Kyawt Kyawt Khaing
24	Technical Resource Person	Pansy Tun Thein
25	Technical Resource Person	Nan Khan Yone
26	Technical Resource Person	Nyo Yamone

ANNEX 2 WOMEN'S POLITICAL PARTICIPATION IN 2016

Women in Parliament in 2016

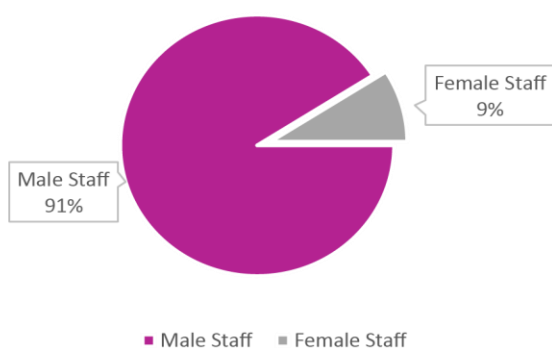
	Elected MPs			Military Appointed MPs			Total MPs		
	Number of Female MPs	Total Number of MPs	% Female MPs	Number of Female MPs	Total Number of MPs	% Female MPs	Total Number of Female MPs	Total Number of MPs	% Female MPs
Pyithu Hluttaw (Upper House)	44	323	13.6%	2	110	1.81%	46	433	10.62%
Amyotha Hluttaw (Lower House)	23	168	13.7%	0	56	0%	23	224	10.26%
Pyidaungsu Hluttaw (Assembly of the Union)	67	491	13.6%	2	166	1.20%	69	657	10.5%



Women in the Central Government Administration^a

Administration	Number of Women	Total (Men & Women)	Percentage of Women
Union Government	1	25	4%
Union Ministers	1	21	5%
Region/State Chief Ministers	2	14	14%
Constitutional Tribunal of the Union	2	8	25%
Union Election Commission	0	5	0%
Union Financial Commission	2	21	10%
Total	8	94	9%

Number of Women in the Central Government Administration



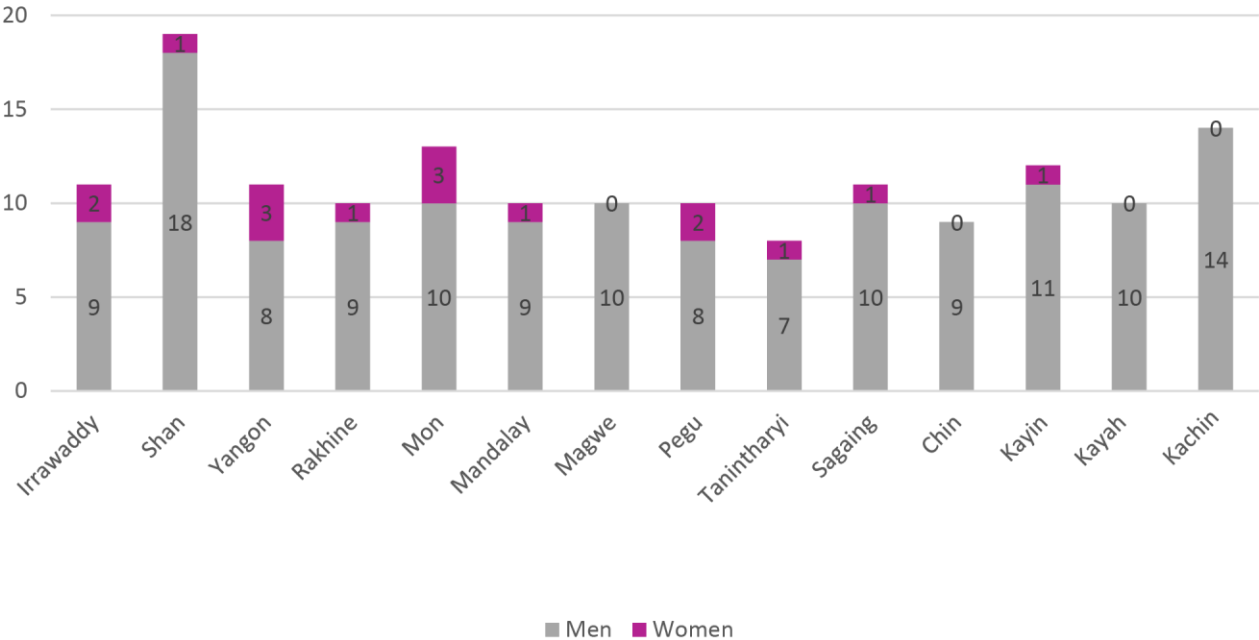
^a OFFICE OF THE PRESIDENT OF THE UNION OF MYANMAR – CENTRAL OFFICES OF THE CABINET, <http://www.president-office.gov.mm/zg/?q=cabinet/central-offices> (last visited Jun. 10, 2016); OFFICE OF THE PRESIDENT OF THE UNION OF MYANMAR, THE CABINET – REGION AND STATE GOVERNMENT, <http://www.presidentoffice.gov.mm/zg/?q=cabinet/region-and-state-government> (last visited Jun. 10, 2016); OFFICE OF THE PRESIDENT OF THE UNION OF MYANMAR, LIST OF MINISTRIES, <http://www.president-office.gov.mm/zg/?q=ministry-list> (last visited Jun. 10, 2016).

Women in the Regional and State Government^b

Region/State	Women	Total (Men & Women)	Percentage of Women
Irrawaddy	2	11	18%
Shan	1	19	5%
Yangon	3	11	27%
Rakhine	1	10	10%
Mon	3	13	23%
Mandalay	1	10	10%
Magwe	0	10	0%
Pegu	2	10	20%
Tanintharyi	1	8	13%
Sagaing	1	11	9%
Chin	0	9	0%
Kayin	1	12	8%
Kayah	0	10	0%
Kachin	0	14	0%
Total	16	158	10%

^b OFFICE OF THE PRESIDENT OF THE UNION OF MYANMAR – MEMBERS OF THE CABINET, <http://www.presidentoffice.gov.mm/zg/?q=cabinet/region-and-state-government/id-11081> (last visited Jun. 10, 2016).

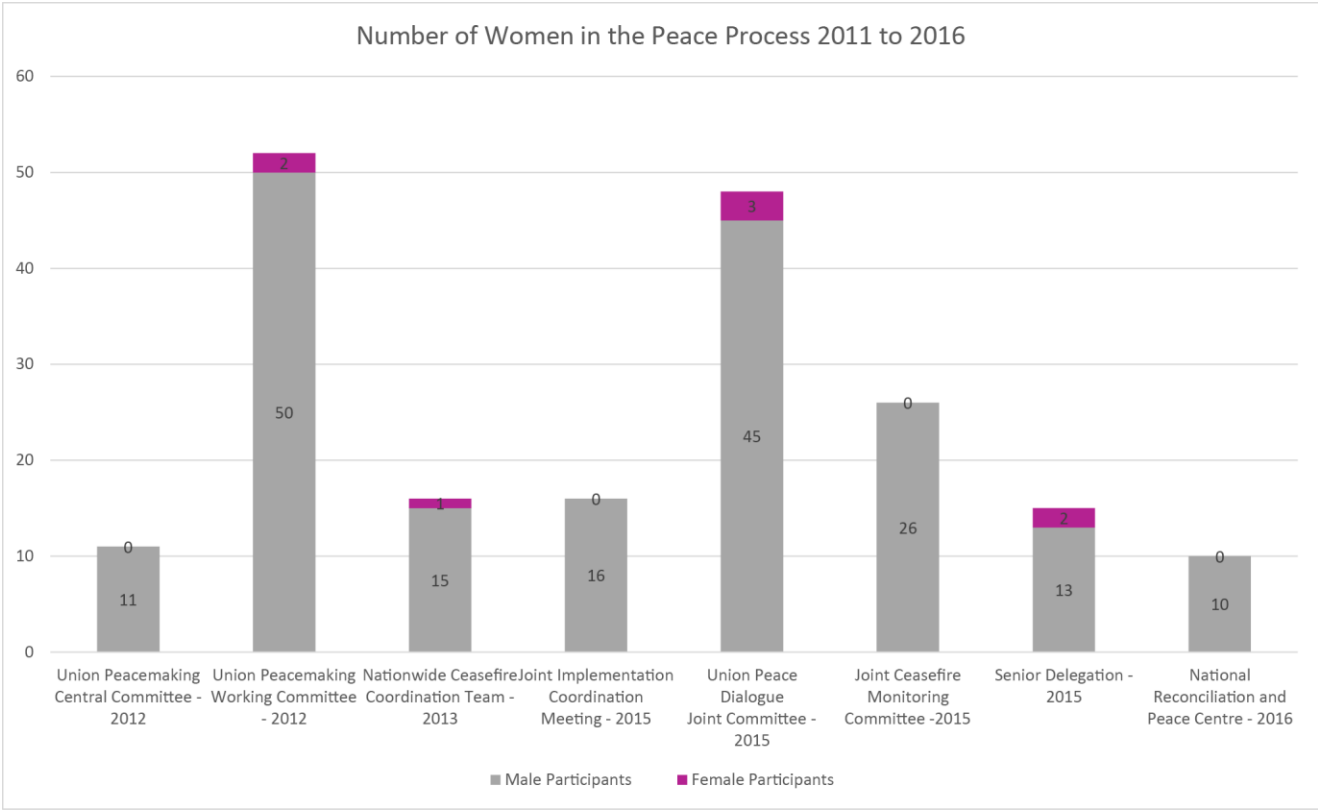
Number of Women in Regional Government Administrations



ANNEX 3 WOMEN IN THE PEACE PROCESS FROM 2011 TO 2016^c

Peace Process Stakeholders/Meeting	Number of Female Participants	Total number of Participants	Percentage of Female Participants
Union Peacemaking Central Committee - 2012	0	11	0%
Union Peacemaking Working Committee - 2012	2	52	4%
Nationwide Ceasefire Coordination Team - 2013	1	16	6%
Joint Implementation Coordination Meeting - 2015	0	16	0%
Union Peace Dialogue Joint Committee - 2015	3	48	6%
Joint Ceasefire Monitoring Committee -2015	0	26	0%
Senior Delegation - 2015	2	15	13%
National Reconciliation and Peace Centre - 2016	0	10	0%

^c The Alliance for Gender Inclusion in the Peace Process (AGIPP), *Women Peace and Security Policy Making in Myanmar: Context Analysis and Recommendations Paper*, at 15, Ed. 1, (Dec. 2015); President Office, Republic of the Union of Myanmar, President Office's Notification 25/2016, May 31st 2016, <http://www.presidentoffice.gov.mm/en/?q=briefing-room/news/2016/06/01/id-6381>.



ANNEX 4 LIST OF REPORTS FOR FURTHER INFORMATION

1. Gender Equality Network, *Raising the Curtain Research Report*, available at:
<http://www.genmyanmar.org/publications/GEN%20Raising%20the%20Curtain%20Full%20Eng.pdf>.
2. Gender Equality Network, *Behind the Silence Research Report*, available at:
<http://www.genmyanmar.org/publications/Behind%20the%20SilenceFullReportEnglish.pdf>.
3. Gender Equality Network, *Myanmar Laws and CEDAW*, available at:
<http://www.genmyanmar.org/publications/Myanmar%20Law%20and%20CEDAW%20Book%20%28English%20%29.pdf>.
4. Gender Equality Network, *Gender Equality and Public Life*, available at:
<http://www.genmyanmar.org/publications/Gender%20Equality%20in%20Public%20Life%20%26%20Elected%20Offic>
[e%20%28English%292014%2c%20Nov2014.pdf](http://www.genmyanmar.org/publications/Gender%20Equality%20in%20Public%20Life%20%26%20Elected%20Offic)
5. Global Justice Center, *Promises Not Progress: Burma's National Plan for Women Falls Short of Gender Equality and CEDAW*, available at: <http://globaljusticecenter.net/blog/20-publications/briefs-and-white-papers/243-promisesnot-progress-burma-s-national-plan-for-women-falls-short-of-gender-equality-and-cedaw>.
6. The Alliance for Gender Inclusion in the Peace Process (AGIPP), *Women Peace and Security Policy Making in Myanmar: Context Analysis and Recommendations Paper*, available at: <https://www.inclusivesecurity.org/wp-content/uploads/2016/04/AGIPP-Policy-brief-1-Eng.pdf>.
7. Gender Equality Network, *Gender and Land*, available at:
<http://www.genmyanmar.org/publications/Gender%20and%20Land%20GEN%20%28English%29.pdf>.
8. Gender Equality Network, *Women's Needs Assessment in IDP Camps Kachin State*, available at:
<http://www.genmyanmar.org/publications/Women%27s%20Needs%20Assessment%20IDP%20Camps%20Kachin%20State%20Feb%202013%20FINAL.pdf>.
9. Gender Equality Network, *Taking the Lead*, available at:
<http://www.genmyanmar.org/publications/Taking%20the%20Lead%20Full%20Report-.pdf>.
10. Global Justice Center, *Submission to the Human Rights Council's Universal Periodic Review concerning human rights and rule of law in Myanmar*, available at:
<http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=2132&file=EnglishTranslation>
11. Gender Equality Network, *Submission to the Human Rights Council's Universal Periodic Review concerning human rights and rule of law in Myanmar*, available at:
<http://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1978&file=EnglishTranslation>
12. Gender Equality Network, *Addressing Violence against Women Law in Myanmar: Advocating for a Comprehensive Law*, available at: <http://www.genmyanmar.org/publications/PoVAW%20brief.pdf>
13. Gender Equality Network, *Briefing Paper on The Constitution of the Republic of the Union of Myanmar*, available at: <http://www.genmyanmar.org/publications/GEN%20Submission%20Constitutional%20Reforms.pdf>.

ENDNOTES

¹ Convention on the Elimination of All Forms of Discrimination against Women, art. 2(a), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.7 (2004) [hereinafter CEDAW, *General Recommendation 25*].

² CEDAW, *General Recommendation No. 25*, *supra* note 1, at ¶¶ 7-8.

³ CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR (2008) arts. 347, 348, 350, and 352, [hereinafter Constitution].

⁴ Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., ¶ 8, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter Concluding Observations].

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Myanmar*, 31st Sess., ¶¶ 143.57, 143.58, U.N. Doc. A/HRC/31/13 (Dec. 23, 2015).

⁶ CEDAW, *supra* note 1, art. 2.

⁷ OHCHR, *Russia's list of banned jobs for women violated women's rights, needs amending – UN experts* (Mar. 15, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17226&LangID=E>.

⁸ Combined fourth and fifth periodic report of the Government to the CEDAW Committee, ¶ 97 CEDAW/C/MMR/4-5, (Jan. 8, 2015) [hereinafter State Report].

⁹ See generally Gender Equality Network, Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws (Jan. 2013) [hereinafter GEN Report (Jan. 2013)].

¹⁰ Constitution, *supra* note 3, arts. 109, 141, and 161.

¹¹ Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, ¶ 73(c), U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013) [hereinafter CEDAW, *General Recommendation 30*].

¹² Library of Congress, *Burma: Four "Race and Religion Protection Laws" Adopted*, Global Legal Monitor (Sept. 14, 2015), http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205404604_text.

¹³ Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), ¶ 28, U.N. Doc. A/HRC/28/72 (Mar. 23, 2015) [hereinafter Special Rapporteur Report (Mar. 2015)].

¹⁴ The Religious Conversion Law, Pyidaungsu Hluttaw Law no. 48, 2015, Aug. 26, 2015, <http://mm.myanmars.net/laws/myanmar-laws-in-myanmar/1191-23>; The Buddhist Women's Special Marriage law, Pyidaungsu Hluttaw Law no. 50, 2015, Aug. 26, 2015, <http://www.presidentoffice.gov.mm/zg/?q=hluttaw/law/2015/08/31/id-11450>; The Population Control Healthcare Law, Pyidaungsu Hluttaw Law no. 28, 2015, May 19, 2015, <http://www.presidentoffice.gov.mm/zg/?q=hluttaw/law/2015/05/22/id-11442>; The Monogamy Law, Pyidaungsu Hluttaw Law no. 54, 2015, Aug. 31st 2015, <http://www.presidentoffice.gov.mm/zg/?q=hluttaw/law/2015/09/01/id-11454>.

¹⁵ Press Release, UN Office of the High Commissioner of Human Rights, *Myanmar, UN human rights experts express alarm at adoption of first four of "protection of race and religion" bills*, Geneva (May 27, 2015) <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E> [hereinafter OHCHR, *UN rights experts alarm*].

¹⁶ Special Rapporteur Report (March 2015), *supra* note 13, at ¶ 28.

¹⁷ CEDAW, *supra* note 1, art. 5(a).

¹⁸ CEDAW, *supra* note 1, art. 16(f).

¹⁹ OHCHR, *UN rights experts alarm*, *supra* note 15.

²⁰ OHCHR, *UN rights experts alarm*, *supra* note 15.

²¹ See INT'L LABOR ORGANIZATION, MYANMAR – EMPLOYMENT POLICY, PROMOTION OF EMPLOYMENT AND EMPLOYMENT SERVICES,

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=100494&p_count=8&p_classification=08

²² MYANMAR PENAL CODE, ¶¶ 312, 315; UNFPA, *Report on Situation Analysis of Population and Development, Reproductive Health and Gender in Myanmar*, at p. 22 (Jul. 10, 2010).

²³ Ibis Reproductive Health, *Separated by borders, united in need: An assessment of reproductive health on the Thailand-Burma border*, (2011) at 5, 6, 8, 11; RAISE, *Safe Abortion in Emergencies: Myanmar* (June 2014); State Report, *supra* note 8, ¶ 120.

²⁴ Gender Equality Network, Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws (Jan. 2013) at 11, 12 [hereinafter GEN Report (Jan. 2013)].

²⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review*, 31st Sess., ¶ 14, U.N. Doc. A/HRC/31/13/Add.1 (Mar. 10, 2016).

²⁶ Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, ¶¶ 28, 36, U.N. Doc. CEDAW/C/2010/47/GC.2 (Oct. 19, 2010) [hereinafter, CEDAW, *General Recommendation 28*].

²⁷ Comm. on the Elimination of Discrimination against Women, *Results of the fortieth session of the CEDAW Committee*, Annex II, ¶¶ 2, 4, U.N. Doc. E/CN.6/2008/CRP.1 (Feb. 11, 2008). See also G.A. Res. 48/134, U.N. Doc. A/RES/48/134 (Dec. 20, 1993). Critically, the Paris Principles emphasize the responsibility of NHRIs to continually monitor situations of human rights violations which it has undertaken to pursue; the power of NHRIs to advise their respective governments on both specific violations and broader issues related to implementation of international human rights obligations; the capacity of NHRIs to interact with regional and international partners; the mandate of NHRIs to educate and inform on human rights; and the need for NHRIs to have quasi-judicial competence, where appropriate. Moreover, the Committee also expects NHRIs to ensure that their work is fundamentally based on the principles of formal and substantive equality between women and men, with attention to addressing gender discrimination both in law and in effect. This includes consideration of individual complaints, preparation of recommendations on laws and policies, and human rights education programmes. At a minimum, this means that women must enjoy easy access to all NHRI services for the protection of their rights and that the composition of NHRI members and staff is gender balanced at all levels.

²⁸ Myanmar National Committee for Women's Affairs, *National Strategic Plan for the Advancement of Women* ("NSPAW"), Preface (2013-2022), Myanmar 2013 [hereinafter NSPAW].

²⁹ NSPAW, *supra* note 28, at Preface.

³⁰ NSPAW, *supra* note 28, at Management Committee §§ 22-23. NSPAW also calls for the establishment of subcommittees for each of the 12 Key Priority Areas comprised of relevant ministry representatives and related stakeholders.

³¹ NSPAW, *supra* note 28, at Implementation §§ 24(a)-(c).

³² NSPAW, *supra* note 28, at Implementation § 24(f).

³³ State Report, *supra* note 8; Comm. on the Elimination of Discrimination against Women, *List of issues and questions in relation to the combined fourth and fifth periodic reports of Myanmar—Addendum, Replies of Myanmar to the list of issues*, ¶ 16, U.N. Doc. CEDAW/C/MMR/Q/4-5/Add.1 (May 3, 2016) [hereinafter List of Issues – Replies].

³⁴ State Report, *supra* note 8, at ¶ 19.

³⁵ *Myanmar National Human Rights Commission Formed, Notification No. 34/2011*, published in THE NEW LIGHT OF MYANMAR, Vol. XIX, No. 138, Sept. 6, 2011.

³⁶ Asian NGO Network on National Human Rights Institutions (ANNI), *2013 Report on the Performance and Establishment of National Human Rights Institutions in Asia*, pp. 13-21.

³⁷ The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014, The 13th Waning of Tabaung 1375 M.E., Mar. 28, 2014 [hereinafter MNHRC Law].

³⁸ Radio Free Asia, *Myanmar Revamps Human Rights Panel Amid Criticism from Rights Groups*, Sept. 25, 2014; Shwe Aung, *Shake up at Rights Commission doesn't fix problem, say Activists*, DEMOCRATIC VOICE OF BURMA, Sept. 26, 2014.

³⁹ For example, The MNHRC selection board is overwhelmingly populated by government appointees; the two civil society representatives on the selection board must be from "officially registered" organizations, limiting the range of civil society actors that can contribute. The procedures for selection are not transparent, since they are set entirely at the discretion of the selection board. Furthermore, while the law provides, in vague terms, for pluralism regarding membership of the MNHRC itself, the law is silent with respect to pluralism of staff members. (Asian NGO Network on National Human Rights Institutions (ANNI), *2015 Report on the Performance and Establishment of National Human Rights Institutions in Asia*, pp. 23-29; see MNHRC Law, *supra* note 37, at ¶ 5(h), 6, 51.

⁴⁰ State Report, *supra* note 37, at ¶ 20. For composition of selection board, see MNHRC Law, *supra* note 37, at ¶ 5; Republic of the Union of Myanmar: Myanmar Nation Human Rights Commission – Commissioners, <http://www.mnhrc.org.mm/en/about/commissioners/> (last visited Jun. 7, 2016).

⁴¹ MNHRC Law, *supra* note 37, at ¶¶ 38-39; List of Issues – Replies, *supra* note 33, ¶ 11.

⁴² MNHRC Law, *supra* note 37, at ¶ 36.

⁴³ State Report, *supra* note 8, at ¶¶ 20, 21. For "human rights" as defined by the enabling legislation, see MNHRC Law, *supra* note 37, ¶ 2(c).

⁴⁴ MNHRC Law, *supra* note 37, at ¶ 65.

- ⁴⁵ *Joint Letter from Human Rights Watch, Amnesty International, Fortify Rights, Harvard Law School International Human Rights Clinic, International Commission of Jurists, Physicians for Human Rights, to President Thein Sein Regarding Prosecution of Shayam Brang Shawng* (Dec. 18, 2014). In fact, the military has threatened legal action against accusers in other contexts as well. (See Press Release, Fortify Rights, *Prosecute Perpetrators not Human Rights Defenders* (Feb. 3, 2015), <http://www.fortifyrights.org/publication-20150203.html>.)
- ⁴⁶ Ye Mon, *One year after Kachin teacher's death justice still elusive*, MYANMAR TIMES (Jan. 19, 2016) <http://www.mmtimes.com/index.php/national-news/18525-one-year-after-kachin-teachers-death-justice-stillelusive.html>. (For MNHRC's general unwillingness to investigate the military, see Equality Now & Myanmar Partnership, *All the President's Men*, Sept. 25, 2014, <http://www.burmapartnership.org/wpcontent/uploads/2014/09/All-the-Presidents-Men1.pdf>.)
- ⁴⁷ International Coordinating Committee of the National Institution for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, pp. 2, 11-14, (Nov. 16-20, 2015), <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Documents/SCA%20FINAL%20REPORT%20-%20NOVEMBER%202015-English.pdf>.
- ⁴⁸ See Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), ¶ 74, U.N. Doc. A/HRC/31/71 (Mar. 18, 2015) [hereinafter Special Rapporteur Report (March 2016)].
- ⁴⁹ State Report, *supra* note 8, at ¶¶ 19, 29, 30, 32.
- ⁵⁰ JENNIFER HARRIDEN, *THE AUTHORITY OF INFLUENCE: WOMEN AND POWER IN BURMESE HISTORY* 240, 246, 257 (2012) [hereinafter Authority of Influence]; see also Minoletti, Paul, *Gender (in)Equality in the Governance of Myanmar: Past, Present, and Potential Strategies for Change*, at 27 (Apr. 2016) [hereinafter Minoletti (2016)].
- ⁵¹ *AUTHORITY OF INFLUENCE*, *supra* note 50, at 258-65.
- ⁵² List of Issues Replies, *supra* note 33, ¶ 10.
- ⁵³ Minoletti (2016), *supra* note 50, at 27.
- ⁵⁴ Concluding Observations, *supra* note 4, ¶¶ 14-15.
- ⁵⁵ Concluding Observations, *supra* note 4, at ¶¶ 14-15.
- ⁵⁶ CEDAW, *General Recommendation 25*, *supra* note 1, at ¶ 18.
- ⁵⁷ Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 23 on political and public life*, ¶15, U.N. Doc. A/52/38 (1997) [hereinafter, CEDAW, *General Recommendation 23*].
- ⁵⁸ CEDAW, *General Recommendation 23*, *supra* note 58, at ¶ 15.
- ⁵⁹ CEDAW, *General Recommendation 25*, *supra* note 1, ¶ 22.
- ⁶⁰ CEDAW, *General Recommendation 25*, *supra* note 1, at ¶ 18.
- ⁶¹ Gender Equality Network, *Gender Equality in Public Life & Elected Office*, Jan. 8, 2013, [http://www.genmyanmar.org/publications/Gender%20Equality%20in%20Public%20Life%20%26%20Elected%20Office%20\(English\)2014,%20Nov2014.pdf](http://www.genmyanmar.org/publications/Gender%20Equality%20in%20Public%20Life%20%26%20Elected%20Office%20(English)2014,%20Nov2014.pdf).
- ⁶² THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 149 (Marsha Freeman, Christine Chinkin, Beate Rudolf, eds., 2012) [hereinafter CEDAW: A COMMENTARY].
- ⁶³ CEDAW, *supra* note 1, Art. 5(a).
- ⁶⁴ CEDAW: A COMMENTARY, *supra* note 63, pp. 154-55, 411.
- ⁶⁵ S. Cusack & R. Cook, *Stereotyping Women in the Health Sector: Lessons from CEDAW*, 16 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 47, 55 (2009).
- ⁶⁶ CEDAW: A COMMENTARY, *supra* note 63, pp. 59 (citing the importance of reading Articles 2(f) and 5 together for women to access their rights) (citations omitted).
- ⁶⁷ See Oxfam, Trocaire, CARE, ActionAid, *Women and Leadership in Myanmar*, at 29 (Sept. 2013) http://ingoforummyanmar.org/sites/ingoforummyanmar.org/files/report-files/OXFAM_-_Women_Leadership_Full_Report_English.pdf [hereinafter Oxfam *et al.*, *Women and Leadership*]
- ⁶⁸ Oxfam *et al.*, *Women and Leadership*, *supra* note 68, at 16, 29; MYANMAR NATIONAL COMMITTEE FOR WOMEN'S AFFAIRS (MNCWA), STATUS OF MYANMAR WOMEN, <http://mncwa.tripod.com/mncwa/id8.html> (last visited June 22, 2015) ("The eight area [*sic*] in Myanmar media gives a positive image of women in her [*sic*] varied roles as mother, friend and life-partner. Thus the media gives women an equal status [*sic*] as men.") See also GEN, *Myanmar Laws and CEDAW*, *supra* note 22, at 5.
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- ⁷⁷ Authority of Influence, *supra* note 50, at 21.
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- ⁸² CEDAW, *supra* note 1, art. 5(a).
- ⁸³ GEN, Raising the Curtain, *supra* note 72, at 122.
- ⁸⁴ Concluding Observations, *supra* note 4, ¶ 20.
- ⁸⁵ Concluding Observations, *supra* note 4, ¶ 20.
- ⁸⁶ Concluding Observations, *supra* note 4, at ¶ 15.
- ⁸⁷ UN Women, *Forging a new path: Women at the peace tables in Myanmar* (Oct. 31, 2012); Myanmar Partnership, *Tension, Discord and Insecurity: The State of Myanmar/Myanmar's Peace Process* (Oct. 2, 2014), <http://www.Myanmarpartnership.org/wp-content/uploads/2014/10/Tension-Anxiety-and-Insecurity-the-State-of-Myanmars-Peace-Process-FINAL.pdf>.
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- ⁹⁹ State Report, *supra* note 8, at ¶ 97.
- ¹⁰⁰ Constitution, *supra* note 3, at art. 109(b), 141(b), respectively.
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¹¹⁷ Framework for Political Dialogue, ¶ 2(j), <http://www.eprpinformation.org/files/recent-events/the-framework-forpolitical-dialogue-unofficial-translation--22dec2015--eng.pdf> [hereinafter FPD].

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¹¹⁹ AGIPP Report, *supra* note 88, at 15.

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¹⁷⁰ *The Rule of Law in Myanmar* (2012), *supra* note 166, at 29; ICTJ, *Navigating Paths to Justice in Myanmar’s Transition*, at 8, (July 18, 2014).

¹⁷¹ See generally MORTEN B. PEDERSEN, *PROMOTING HUMAN RIGHTS IN MYANMAR: A CRITIQUE OF WESTERN SANCTIONS POLICY* (2008); DAVID I. STEINBERG, *MYANMAR: THE STATE OF MYANMAR* (2001). See generally UNDP, *Fast Facts Rule of Law and Access to Justice in Myanmar* (Aug. 16, 2013) [hereinafter UNDP, *Fast Facts* (2013)].

¹⁷² *The Rule of Law in Myanmar* (2012), *supra* note 166, at 30; Human Rights Watch, *Myanmar: World Report* (2015); US DEPARTMENT OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: MYANMAR* 8 (2013); Reporters Without Borders, *Police Investigations and Prosecutions Used to Harass Media* (Jul. 24, 2014); Roy Greenslade, *Five Burmese Journalists Jailed for 10 Years for a Single News Report*, *THE GUARDIAN*, July 18, 2014; Reporters Without Borders, *Four Detained Newspaper Journalists Appear in Court on Emergency Provisions Act Charges* (July 25, 2014).

¹⁷³ Special Rapporteur Report (Mar. 2015), *supra* note 13; Amnesty International, *The State of the World’s Human Rights* (2015) at 261; Matthew Bugher, *Old Laws, Same Military*, *THE IRRRAWADDY*, Mar. 26, 2015; Human Rights Watch, *Myanmar: “Peaceful Assembly Law” Fails to End Repression* (Jan. 25, 2015), <http://reliefweb.int/report/myanmar/Myanmarpeaceful-assembly-law-fails-end-repression>.

¹⁷⁴ Human Rights Watch, *Letter to President U Htin Kyaw: Human Rights Priorities for the New Myanmar Government* (May 4, 2016).

¹⁷⁵ US Institute of Peace, *Myanmar/Myanmar Rule of Law Trip Report*, (Jun. 11, 2013), at 28; *The Rule of Law in Myanmar* (2012), *supra* note 166, at 63. See also The Asia Foundation, *Myanmar 2014: Civic Knowledge and Values in a Changing Society*, 60, (2014); The Asia Foundation, *Myanmar 2014: Civic Knowledge and Values in a Changing Society*, (2014).

¹⁷⁶ Rep. of the Special Rapporteur on the situation of human rights in Myanmar, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar* (Tomás Ojea Quintana), ¶ 72, U.N. Doc. A/HRC/69/398 (Sept. 23, 2014); UNDP, *Fast Facts* (2013), *supra* note 171; *The Rule of Law in Myanmar* (2012), *supra* note 166, at 43.

¹⁷⁷ One commentator calls the rule of law “lexically present but semantically absent.” See NICK CHEESMAN, *OPPOSING THE RULE OF LAW: HOW MYANMAR’S COURTS MAKE LAW AND ORDER* (2015). See also Rep. of the Special Rapporteur on the situation of human Rights in Myanmar, *Progress Report of the Special Rapporteur on the*

Situation of Human Rights in Myanmar (Tomás Ojea Quintana), ¶ 12, U.N. Doc. A/HRC/19/67 (March 7, 2012); Rep. of the Special Rapporteur on the Situation of Human Rights in Myanmar, *Progress Report of the Special Rapporteur on the situation of human rights in Myanmar* (Tomás Ojea Quintana), ¶ 64, U.N. Doc. A/HRC/68/397 (Sept. 23, 2013); see also Women's League of Myanmar, *Same Impunity, Same Patterns* (Jan. 2014).

¹⁷⁸ US Institute of Peace, *Myanmar/Myanmar Rule of Law Trip Report*, (Jun. 11, 2013), at 23; N. Cheesman & K. Min San, *Not Just Defending; Advocating for Law in Myanmar*, 31(3) Wisconsin Int'l L.J. 714 (2014).

¹⁷⁹ Bertelsmann Stiftung's Transformation Index (BTI) 2016, *Myanmar Country Report*, (2016), at 10-11; Constitution, *supra* note 3, at arts. 299, 302, 308, 311, 327; ICJ, *Country Profile of Myanmar* (2014), *supra* note 167, at 7-8.

¹⁸⁰ ICJ, *Country Profile of Myanmar* (2014), *supra* note 167, at 11-12; *The Rule of Law in Myanmar* (2012), *supra* note 166, at 29.

¹⁸¹ *The Rule of Law in Myanmar* (2012), *supra* note 166, at 61.

¹⁸² Int'l Commission of Jurists, *Right to Counsel: The Independence of Lawyers in Myanmar*, (2013), at 31; UNDP, *Fast Facts* (2013), *supra* note 171, at 182.

¹⁸³ *The Rule of Law in Myanmar* (2012), *supra* note 166, at 61, 63.

¹⁸⁴ Human Rights Watch, *Letter to President U Htin Kyaw: Human Rights Priorities for the New Myanmar Government* (May 4, 2016); Special Rapporteur Report (Mar. 2015), *supra* note 13, at ¶¶ 4-20; US DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: MYANMAR 9, 25 (2013); ND-Myanmar, *Extreme Measures: Torture and ill treatment in Myanmar since the 2010 elections*, (May 2012).

¹⁸⁵ Women's League of Burma, *If They Had Hope, They Would Speak*, (Nov. 2014); GEN Report (Jan. 2013), *supra* note 9, at 50.

¹⁸⁶ MYANMAR PENAL CODE, INDIA ACT XLV (May 1, 1961).

¹⁸⁷ GEN Report (Jan. 2013), *supra* note 9, at 7.

¹⁸⁸ See Hanna Hindstrom, *Monks and Misogyny*, DEMOCRATIC VOICE OF MYANMAR, Jul. 1, 2013; see also GEN Report (Jan. 2013), *supra* note 9, at 7, 10; Yen Snaing, *MPs Demand Parliament Considers Violence Against Women Measures*, THE IRRRAWADDY, Feb. 3, 2015.

¹⁸⁹ GEN Report (Feb. 2015), *supra* note 135, at 51; Women's League of Burma, *"If they had hope, they would speak"*, *The ongoing use of state-sponsored sexual violence in Myanmar's Ethnic Communities*, Nov. 2014, at 9.

¹⁹⁰ Int'l Service for Human Rights, *The Situation of Human Rights Defenders, Myanmar – UPR Briefing*, (Mar. 2015), at 1.

¹⁹¹ Concluding Observations, *supra* note 4, at ¶ 12.

¹⁹² Concluding Observations, *supra* note 4, at ¶ 13.

¹⁹³ Concluding Observations, *supra* note 4, at ¶ 23.

¹⁹⁴ Buddhist customary law draws on *Dhammathats*, prevailing customs, judicial precedent and legislation. (Yee Yee Cho, *Women's Rights under Myanmar Customary Law*, 57(4) DAGON UNIV. RESEARCH JOURNAL at 57 (2012); GEN Report (Jan. 2013), *supra* note 9, at 4-5.

¹⁹⁵ Nang Yin Kham, *An Introduction to the Law and the Judicial System of Myanmar*, at 3 (National Univ. of Singapore, Working Paper No. 001, Mar. 2014), http://law.nus.edu.sg/pdfs/cals/working_papers/Myanmar/MWPS001.pdf; GEN Report (Jan. 2013), *supra* note 9, at 15.

¹⁹⁶ BELAK, *supra* note 78, 230 (2002).

¹⁹⁷ For example, Buddhist customary law allows polygamy for men but not women, and adultery by a woman is considered a grievous matrimonial fault but by a man only an ordinary matrimonial fault. Yee Yee Cho, *Women's Rights under Myanmar Customary Law*, 57(4) DAGON UNIV. RESEARCH JOURNAL at 59-60, 62 (2012); see also BELAK, *supra* note 78, at 247.

¹⁹⁸ BELAK, *supra* note 78, at 247.

¹⁹⁹ GEN Report (Jan. 2013), *supra* note 9; BELAK, *supra* note 78.

²⁰⁰ Concluding Observations, *supra* note 4, at ¶ 27.

²⁰¹ State Report, *supra* note 8, ¶ 8

²⁰² Maternity Leave, Leave and Holiday Act, Pyidaungsu Hluttaw Law, No. 58, Jan. 1, 1952 (amended Jul. 2014).

²⁰³ State Report, *supra* note 8, at ¶¶ 9-18; Social Security Law, Pyidaungsu Hluttaw Law No. 15./2012, Aug. 31, 2012; Minimum Wage Law, Pyidaungsu Hluttaw Law No. 21/2013, Mar. 22, 2013; Labour Organization Law, The Pyidaungsu Hluttaw Law No. 7/2011, The 14th Waxing day of Thadinkyut 1373. ME., Oct. 11, 2011; Settlement of Labour Dispute Law, The Pyidaungsu Hluttaw Law No. 5/2012, The 6th Waxing day of Tagu 1373, M.E., Mar. 28, 2012; Employment and Skills Devt Law, Pyidaungsu Hluttaw Law No. 29/2013, 9th Wanning of Wargoung 1375 M.E., Aug. 30 2013; The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014, The

13th Waning of Tabaung 1375 M.E., Mar. 28, 2014; Mass Media Law (Mar. 14, 2014); Law on the Registration of Organizations, Pyidaungsu Hluttaw Law No. 31/2014, Jul. 18, 2014.

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