

Report on Obstacles to Gender Equality in Myanmar

Prepared for the 64th session of the Committee on the Elimination of Discrimination against Women

July 2016

Introduction:

As a signatory to CEDAW, Myanmar must fulfill its obligations to ensure both de jure and de facto equality for women. Yet, despite these obligations, women and girls across Myanmar face multiple obstacles to realizing their rights to substantive equality and non-discrimination. A deep history of patriarchy and negative gender stereotypes, decades of oppressive military dictatorship, and the continued power of the military have left an unfavorable legacy in the form of legal structures that discriminate against women, legal provisions that do not guarantee gender equality or adequately protect women, and inadequate resource allocation to promote policies and programmes to ensure women's empowerment. These deeply-embedded shortcomings have meant that women in large part have not been the beneficiaries of the democratic reforms begun in 2011 and continue to be marginalized in politics and the peace process. With a new government in charge, there is a unique opportunity in Myanmar to undertake wide-ranging legal and institutional reform to ensure that women are able to enjoy rights as equal citizens. The Government must work in tandem with civil society to ensure progress, to promote women's rights and fulfill its obligations under CEDAW.

Challenge: Discriminatory Laws and Policies

Without a comprehensive legal definition of discrimination against women or anti-discrimination laws, the rights granted to women under CEDAW have not been realized. There is a general absence of policies and laws which prohibit discrimination and ensure substantive gender equality. Certain laws and policies are discriminatory on their face while many others result in disparate impacts or incorporate restrictive gender stereotypes. As a result, women do not have domestic recourse when their rights are violated. (Articles 1 & 2)

Cases, Facts, Comments:

- The Constitution does not include a CEDAW-compliant definition of discrimination, yet it contains provisions that directly and indirectly discriminate against women. Article 352 of the Constitution states that there may be no discrimination on the basis of sex in appointing or assigning duties to civil service personnel, yet continues that “nothing in the Section shall prevent appointment of men to the positions that are suitable for men only.”
- Article 381 contravenes CEDAW by allowing the Government to suspend people's rights in times of emergency. Government actors are also given immunity when acting “in the execution of their respective duties” under Article 445, effectively allowing crimes by Government actors to go unpunished.
- Historically, women in Myanmar have served only as medical or administrative support on the military. Constitutional provisions, such as Articles 109, 141, and 161 which mandate a specific quota of representatives directly appointed by

the military and Article 59(d) which mandates that the President and Vice-President be well-acquainted with Defence matters indirectly discriminate against women and hinder women from attaining positions of political power.

- Women and women's concerns have not been included in the formulation or amendment of laws and policies leading to disparate and negative gender impacts are not considered or addressed in law making processes. Laws, such as the Suppression of Prostitution Act of 1949, do not adequately protect women's rights. Further the Protection of Race and Religion Laws, passed in 2015, blatantly target and constrict women's rights, in particular with regard to whom they marry, religion, and family size.
- Section 377 of the Penal Code makes same-sex conduct a crime, and sections of the 1945 Police Act are interpreted to harass and intimidate lesbian and transgender persons. The Constitution does not protect against discrimination on the basis of sexual orientation or gender identity. Women with disability face discrimination and do not receive adequate legal protection.

Recommendations:

1. Amend the Constitution to include a comprehensive legal definition of discrimination in accordance with CEDAW and eliminate existing provisions that discriminate against women.
2. Conduct a comprehensive gender impact review—with women's participation—of all policies and law which may impact or hinder women's rights.
3. Repeal and/or amend legislation that discriminates in law or in effect against women, 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.

Challenge: Institutions do not provide effective or adequate protection or remedy for women

There have been limited efforts to advance women's rights in practice. Existing institutions meant to protect and promote women's rights remain under-resourced and lack autonomy. (Article 3 & 4)

Cases, Facts, Comments:

- The 2013 National Strategic Plan for the Advancement of Women (NSPAW) has not promoted or protected women's rights and the Government still speaks of NSPAW implementation in the future tense.
- The Government identifies the Myanmar National Committee for Women's Affairs (MNCWA) and Myanmar Women's Affairs Federation (MWAF) as addressing violations related to women's rights. These organizations do not have an independent mandate and have not focused on strong advocacy for women's rights or challenged existing policies and programmes that discriminate against women.
- The Myanmar National Human Rights Commission (MNHRC) does not have an adequate legal mandate or budgetary authority and is not independent from government interference. The shortcoming of the MNHRC are particularly harmful to women, as victims of sexual violence may be reluctant to come forward without confidentiality guarantees. Women are negatively affected by limiting the scope of complaints to only those rights under the Constitution rather than the guarantees that should be made under the broader human rights mandate.

Recommendations:

1. 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.
2. Ensure complete independence of institutions, including the MNCWA and MNHRC, so that they can independently and effectively promote women's rights, investigate human rights abuses and provide support and services to victims.
3. Ensure that NSPAW is operationalized and fully implemented at all levels, with a budget and effective monitoring and evaluation mechanisms, designed with input from women's groups and CSOs.
4. 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.

Challenge: Pervasive stereotypes impede the realization of rights and prevent women from participating in political and public life

Many laws perpetuate negative gender stereotypes, in violation of Article 5. Women have been largely excluded from positions of political power, as well as the formulation of laws and policies, including the Constitution, and in the peace process. The Government has not developed adequate policies and laws to dismantle harmful stereotypes or ensure women's political participation. (Article 5 & 7)

Cases, Facts, Comments:

- Women in Myanmar are generally perceived as weak, in need of protection, and incapable of making their own decisions. Through ideas such as *hpon* (male spiritual superiority), stigmas around sex and virginity, and the historic and continuing impact of a male-dominated military, male superiority is ingrained in society. Certain provisions of Myanmar's Penal Code incorporate and perpetuate negative stereotypes, for example by not recognizing marital rape of victims over 15.
- The media perpetuates traditional gender norms and frequently portrays women as victimized, objectified, and sexualized. The Government has not made significant efforts to combat these negative and limiting stereotypes.
- After the 2015 election, women account for only 13.6% of Parliamentary seats and 12.7% in State and Regional Parliaments. Aung San Suu Kyi is the only woman to hold any of the 21 ministerial posts. Gender inequality is even greater at the village level; data from 2014 shows women's participation at just 0.25%. Women have been almost completely excluded from all stages of the peace process in Myanmar. U Thein Sein's peace negotiating teams included only a few women and this exclusion has continued into current peace negotiations. The Union Peace Conference in January 2016 included only 8% women and the new National Reconciliation and Peace Centre does not include any women. This stands in contrast to language in foundational documents for the peace process that a "reasonable number of women representatives" would be included.

Recommendations:

1. Include women, women's civil society and a gender perspective at all stages and steps of the peace process to ensure that gender concerns are mainstreamed across all substantive and procedural aspects of the peace process by establishing a gender thematic unit and commit to 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.
2. Adopt affirmative action laws, regulations, programmes, mechanisms, policies and temporary special measures, such as a quota of at least 30%, and amend the Constitution to increase women's participation at all levels of decision-making in Government and public life, including by reserving for women, at a minimum, one-third of all seats in national, regional and state Parliaments and all governance institutions.
3. Develop gender sensitive curriculum, both in formal and informal education, to reduce stereotyped perceptions and to promote gender sensitivity.

Challenge: Violence Against Women

Both physical and sexual violence against women remains a serious problem in Myanmar, especially for women in conflict areas. The existing legal framework does not include adequate protections for women; for example there is no comprehensive law to prevent violence against women, no law criminalizing sexual or workplace harassment or allowing victims to obtain protection orders, and no comprehensive policies to ensure adequate support services for victims. Government forces are also immune from prosecution for acts of sexual violence perpetrated against ethnic minorities in the context of ongoing conflict. Thus, the Government has not met its CEDAW obligations to ensure justice, protection and rehabilitation for victims of violence. (GR 19)

Cases, Facts, Comments:

- Myanmar remains only one of two ASEAN countries lacking a specific law criminalizing domestic violence. Current provisions of the Penal Code do not adequately protect victims of violence; for example, by including an ambiguous definition of rape. Neither the Code of Criminal Procedure or Evidence Act contains substantive protections for women.

- Nearly three years ago, the Government commenced a process of drafting the Prevention and Protection of Violence Against Women (PoVAW) Law, but thus far no legislation has been passed. The current draft PoVAW law does not have a definition of rape in compliance with CEDAW or a simple process for obtaining restraining orders. While violations of reproductive and sexual rights are included, comprehensive pre-trial and testimonial safeguards are not, despite repeated advocacy efforts by civil society organizations.
- Under current law and according to the Constitution, active-duty military personnel may not be tried in civilian court for any crime, including sexual violence. This blanket immunity for military personnel is retained under the current draft law.

Recommendations:

1. Ensure the PoVAW law includes definitions and provisions which adhere to accepted international conventions and that CSOs working for gender equality are consulted fully in drafting, implementation and monitoring the law.
2. Ensure that the PoVAW law guarantees women and girls comprehensive protection against all forms of violence, including economic, emotional, domestic, and sexual violence (including marital rape) and includes clear criminal penalties, civil remedies, and rehabilitation and reparations for victims.
3. Ensure accountability for conflict-related sexual violence perpetrated by the military, and reparations for victims, and ensure these cases are handled under the civilian justice system and under the ambit of the PoVAW law.
4. 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 centers, and that linkages with police, health care workers, legal service providers and psychosocial counselors who have been trained to effectively respond to incidents and support women are available.

Challenge: Access to Justice

The Government has not ensured that women can assert their rights through independent, impartial, and effective systems of justice, as required by CEDAW. The legal system is weak and outdated, the Judiciary has been an instrument for perpetuating military power, lawyers lack capacity and training and customary law are discriminatory. Women are not aware of their rights and often lack faith in the judicial and legal system. (GR 33)

Cases, Facts, Comments:

- The Constitution formally entrenches military influence over the rule of law in Myanmar and establishes the military's complete independence. Outdated and repressive laws, such as the State Secrets Act of 1923 and the Unlawful Associations Act of 1908, continue to be used as tools to deny civil and political rights.
- The Constitution places the Judiciary in a subordinate position of power, giving the Executive branch extensive oversight. Apart from this lack of independence, the Judiciary is also seen as expensive and inaccessible.
- The legal profession and legal education has been repressed and weakened. Lawyers have been targeted for prosecution to punish activism, and women human rights defenders in particular have faced harassment and intimidation.
- The widespread use of informal justice mechanisms based on customary laws, including laws drawn from traditional social and religious practices, to resolve disputes is a major obstacle to women's access to justice, particularly for rural and ethnic women. Customary law is recognized by Myanmar's courts and is typically applied in family disputes impacting the rights of women, including cases of divorce, property succession, and adoption. However, these customary laws are not codified, leaving interpretation to the discretion of arbitrary or village elders, who almost exclusively are male.
- Women remain unaware of their legal rights, including those provided by CEDAW, in part due to a lack of education.

Recommendations:

1. Enact laws and adopt other measures to counter the harmful effects of traditional, customary, tribal, or religious laws that discriminate against women or are in contravention of CEDAW.
2. Eliminate all barriers to access to justice, including corruption, and ensure an independent, transparent, impartial and effective Judiciary and Bar.
3. Ensure that all women and girls, including those from ethnic and rural areas, are informed of their legal and CEDAW rights, and can easily access courts and judicial services that are capable of adequately and effectively enforcing those rights.