

## **Observations and Topics to be Included in the List of Issues**

On the occasion of Myanmar's Combined Fourth and Fifth Periodic Reports on the Implementation of the Convention on the Elimination of All Forms of Discrimination Against Women

Submitted by:

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**The Global Justice Center** is a US based human rights organization 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.

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## **I. Introduction**

1. With this submission, the Global Justice Center (GJC) aims to provide guidance to the pre-session Working Group in its preparation of the list of issues to be examined during the Committee to Eliminate Discrimination against Women's ("Committee") review of Myanmar's combined fourth and fifth periodic reports. It highlights several violations of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by Myanmar and is based on a report by GJC and the Leitner Center for International Law and Justice (Fordham School of Law) comparing Myanmar's national plan for the advancement of women against its CEDAW obligations ("*Promises Not Progress: Burma's National Plan for Women Falls Short of Gender Equality and CEDAW*" (attached hereto)).

## **II. Analytic Framework**

2. Since 2011, limited democratic reforms in Myanmar have not improved women's rights or made any strides towards ensuring gender equality in general. This can be attributed, at least in part, to the fact that the focus of the reforms has been on readying Myanmar's economy for an influx of capital and encouraging foreign investment, rather than on ensuring human rights. Additionally, the way the Government characterizes reforms needs to be carefully considered. For example, in its 2015 periodic report to the CEDAW Committee ("Periodic Report"), the Government asserts that eight laws related to women's rights have been amended or enacted. However, consideration of these laws reveals that they are laws which provide labor and economic protections generally, not laws seeking to ameliorate the situation of women in Myanmar. In fact, only one of the laws discussed, the Social Security Law, includes specific provisions related to women (maternity leave).
3. Threats to women's equality in Myanmar exist against an unchanged landscape shaped by a deep history of patriarchy and decades of oppressive military dictatorship. Today, these legacies remain very much alive in the form of fundamental defects that impede genuine legal reform, including legal structures guaranteeing gender equality.
4. In particular, three underlying themes are critical to understanding the complexity of injustice against women in Myanmar and the need for structural reforms in order to effect genuine positive change: (1) ongoing supremacy of military power; (2) entrenchment of military power and gender inequality in the Constitution of the Republic of the Union of Myanmar ("2008 Constitution"); and (3) lack of an independent judiciary.
5. In this submission, the GJC presents a condensed summary of the facts relating to the violations of the following articles of CEDAW: Articles 1 & 2 (definition and prohibition of discrimination, access to justice, violence against women); Article 3 (guarantee of basic human rights and fundamental freedoms); Article 7 (political participation); Article 10 (education); Article 11 (employment); Article 12 (health); Article 14 (rural women); Article 18 (precise and disaggregated data); General Recommendations 28 and 30 (conflict, post-conflict and conflict prevention).
6. At the end of each section, we suggest a list of issues, questions and clarifications for the Working Group's consideration.

### **III. Observations Regarding Violations of CEDAW in Myanmar**

#### **A. Articles 1 and 2**

#### **Myanmar Has Failed to Adopt Necessary Legislative Measures to Ensure Gender Equality and Prohibit Discrimination against Women and to Eliminate Laws which Discriminate against Women**

7. A critical first step towards the implementation of the Government of Myanmar's ("Government") obligations to eliminate discrimination against women is the adoption of a legal definition and prohibition of discrimination against women, in conformance with CEDAW, within the national Constitution or other appropriate legislation. The Government must also ensure that laws do not discriminate against women.
8. The Government's Periodic Report refers to the notion of equal rights for women in Articles 348, 350, 351, 352, and 368 of the 2008 Constitution.<sup>1</sup> However, even taken together, these Articles do not constitute a comprehensive definition of discrimination against women that encompasses both substantive equality and prohibitions of discrimination in law and in effect, as required of all States parties under CEDAW. This failure: (1) hinders the formulation, interpretation, and dissemination of laws and policies impacting the rights of women; (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.
9. The absence of adequate definitional language was raised in the Concluding Observations of the Committee following its review of Myanmar in 2008 (2008 Concluding Observations). Specifically, the Committee expressed concern that the 2008 Constitution did not "include an effective constitutional guarantee of substantive equality" and that the 2008 Constitution's definition of discrimination was therefore not in accordance with CEDAW, and rejected the Government's assertion that such a definition was not needed.<sup>2</sup> The 2008 Constitution has not been amended since that review and thus, the Committee's concerns have not been addressed.
10. Furthermore, existing Constitutional provisions and legislation both directly and indirectly discriminate against women in violation of CEDAW. Relevant Constitutional provisions include Article 352 (discussed in further detail in paragraphs 49-52), as well as Articles 109, 141 and 161, which mandate a specific quota of representatives directly appointed by the military.<sup>3</sup> Since women have only recently been allowed to serve actively in the military,<sup>4</sup> these quotas in effect have excluded women from these seats (currently women hold 0.01% of these military-appointed seats).<sup>5</sup> It should also be noted that these military quotas not only limit women's political participation,<sup>6</sup> they also make amending the Constitution to include protection for women's equality and prohibit discrimination against women harder, since amendments require more than 75% approval.<sup>7</sup>
11. More recently, Myanmar's Parliament has adopted a package of four so-called "Laws on the Protection of Race and Religion"<sup>8</sup> which further entrench widespread gender-based discrimination against women,<sup>9</sup> in particular based on ethnicity or religion, in clear violation of the Government's obligations under CEDAW. They are: (1) the Religious Conversion Bill; (2) the Buddhist Women's Special Marriage Bill; (3) the Population Control Healthcare Bill; and (4) The Monogamy Bill.<sup>10</sup> The Special Rapporteur on Minority Issues has stated that "these bills particularly discriminate against ethnic religious minorities and have the potential to fuel existing tensions in the country."<sup>11</sup>
12. The Buddhist Women's Special Marriage Bill<sup>12</sup> blatantly violates international norms protecting the rights of women to enter and fully participate in marriage on an equal basis

with men<sup>13</sup> 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.<sup>14</sup> The Population Control Health Care Bill,<sup>15</sup> which aims to control population growth, violates women's rights to decide, on an equal basis with men, the number and spacing of children.<sup>16</sup> 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, on an equal basis with men. It also raises serious concerns of potential disproportionate targeting of marginalized and minority groups, and as UN experts have cautioned "can have discriminatory, coercive and punitive effects that go against basic rights and freedoms, particularly those of women."<sup>17</sup> The Monogamy Bill, which criminalizes polygamy, as well as extramarital affairs, is also of serious concern as the "enforcement of laws criminalizing adultery often leads to discrimination and violence against women . . . experience shows that in practice, adultery legislation, imposes disproportional criminal liability on women."<sup>18</sup>

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information regarding efforts to adopt a legal definition of discrimination against women and equality that is in conformance with CEDAW, either in the form of an amended constitutional provision or as part of anti-discrimination legislation.
- Please provide information regarding measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- Please provide information regarding programs and policies to ensure that public authorities and institutions shall act in conformity with CEDAW's equality and non-discrimination mandate and to repeal all national penal provisions, which constitute discrimination against women.
- Please provide information regarding the implementation of the Race and Religion Laws, including detailed information regarding individuals who have already been detained or prosecuted under the laws, and how the Government intends to enforce the laws in the future and how the Government intends to ensure that they are not enforced in way that discriminates against women or any minority group.

Myanmar Has Failed to Ensure Access to Justice for Women

13. The ability of women to access justice is essential to a State party's implementation of CEDAW obligations to eliminate discrimination against women under Article 2<sup>19</sup> and accord women equality with men under Article 15.<sup>20</sup> Significantly, this Committee, in its recent General Recommendation on Access to Justice has asserted that access to justice is "essential to the realization of all the rights protected" under CEDAW.<sup>21</sup>
14. In Myanmar, myriad factors render justice elusive for women. This Committee recognized this in 2008, recommending that the Government: strengthen its legal complaints system to ensure that women have "effective access to justice";<sup>22</sup> establish a national human rights institution in line with the Paris Principles;<sup>23</sup> increase awareness of women's rights including the "concept of substantive gender equality" under CEDAW;<sup>24</sup> and ensure access to courts on "equal terms with men."<sup>25</sup> The Committee's calls have not been addressed, despite the transition to a quasi-civilian government. Few of the reforms instituted since 2011 address women's rights. The Government asserts in the Periodic Report that "8 laws related to women's rights have been amended or enacted"<sup>26</sup> yet only one of these laws specifically relates to women;<sup>27</sup> the rest of the laws are general

protections for certain categories of people in Myanmar, such as laborers.<sup>28</sup> Therefore, the claim in the Periodic Report that “with regard to adjudication of the court...there are equal rights without gender discrimination, and that these are being practiced in Myanmar” is untrue.<sup>29</sup>

15. This section discusses the following factors: (1) lack of an independent judiciary; (2) inadequate legal protections; (3) ineffective National Human Rights Institutions and bodies; and (4) informal justice and customary law. Please note that access to justice for violence against women is discussed in paragraphs 26-31 and sexual violence in conflict in paragraphs 74-81.

(1) *Independent Judiciary in Myanmar.*

16. Myanmar lacks an independent, impartial and effective judiciary to uphold the rule of law. The judiciary acts as an enforcer for military and political actors rather than an independent arbiter of disputes,<sup>30</sup> so it is viewed as “inactive and subordinate to the military,” with “allegations of judicial corruption, inefficiency, and susceptibility to executive influence [that are] so widespread that they cannot be sensibly discounted.”<sup>31</sup>
17. The subordinate position of the judiciary is formalized by the 2008 Constitution, which allows the executive branch control of the judiciary by granting the President a powerful and constitutionally protected role in the appointment and removal of judges.<sup>32</sup>
18. Finally, Myanmar’s judiciary has not been vetted since the transition to quasi-civilian government and the 2008 Constitution requires a minimum tenure of judicial experience for appointment to certain courts.<sup>33</sup> Accordingly, only judges that were on the bench during the junta’s authoritarian rule, many of whom were complicit in the sham arrests and baseless prosecutions of countless political prisoners,<sup>34</sup> are eligible for the highest positions in Myanmar’s judiciary.

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information on whether the Government is taking steps to reform constitutional provisions concerning presidential power of appointment and removal of judges, in order to ensure that members of the judiciary are not reliant on the military’s influence over the President for their appointments.
- Please provide information on whether the Government is taking steps to root out corruption and reduce the workload of the overburdened judiciary.
- Please describe measures to vet judges who were complicit in human rights violations of the previous regime.

(2) *Inadequate Legal Protections Within Myanmar*

19. 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 complaints about violations.<sup>35</sup> One key weakness is outdated and repressive statutes and laws, such as the State Secrets Act of 1923 and the Emergency Provisions Act of 1950,<sup>36</sup> which continue to be used to justify repression.<sup>37</sup> Amendments to restrictive laws, such as the Peaceful Procession and Assembly Law, have failed to address their shortcomings.
20. Furthermore, colonial-era laws, such as the Penal Code of 1860, remain in effect and reflect and perpetuate outdated gender assumptions such that women are not adequately protected by law.<sup>38</sup> Moreover, a gender perspective and sensitivity to gender issues are completely absent in the drafting of laws, law enforcement practices and the administration of justice.<sup>39</sup> To date, there is no anti-violence against women law or effective means to report sexual violence.<sup>40</sup> In an indication of deeply-rooted gender roles

and patriarchy, resistance to gender issues comes from both male and female legal practitioners.<sup>41</sup>

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information regarding specific legal measures to eliminate discrimination against women and establish legal protection of the rights of women on an equal basis with men, and to ensure that any laws prohibiting gender discrimination embody legal or other material consequence for those who violate them, including sanctions for perpetrators of gender discrimination.
- Please describe steps taken to ensure that legal practitioners, judges and law enforcement officers at all levels are adequately trained in women's rights and the provisions of CEDAW, including through training to ensure appropriate sensitization to gender inequality.

(3) *Ineffective National Human Rights Institutions and Bodies*

21. In the Periodic Report, the Government claims that certain domestic institutions protect and promote women's rights, including the Myanmar National Human Rights Commission ("MNHRC") and its Women and Child Sub-Committee ("WCRC") as well as government-organized non-governmental organizations (GONGOs) the Myanmar National Committee for Women's Affairs ("MNCWA") and the Myanmar Women's Affairs Federation ("MWAFF").<sup>42</sup> Disturbingly, these organizations neither have the ability to provide effective and adequate remedy for violations nor conform to international best practices, codified in the Paris Principles.
22. The Myanmar Parliament passed an enabling law for the MNHRC in March 2014 which does not provide it with sufficient independence, scope of duties or power to resolve complaints in accordance with the Paris Principles.<sup>43</sup> Of particular concern, the MNHRC still appears to be limiting its mandate to complaints regarding the infringement of rights only under the 2008 Constitution and only from citizens, rather than on the broader mandate outlined in the enabling legislation itself.<sup>44</sup> 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 grievances, especially from victims of sexual violence.<sup>45</sup> In fact, the prosecution of Shayam Brang Shawng demonstrates that complaints to the MNHRC of human rights abuses at the hands of the military will be punished swiftly and forcefully.<sup>46</sup>
23. Furthermore, the other institutions referred to by the Government, including the MNCWA and the MWAFF, are government-affiliated organizations which cannot be counted upon for independence or objectivity and have no actual ability to remedy or resolve allegations of violations of women's rights.<sup>47</sup>
24. In its Periodic Report, the Government provides inadequate information regarding complaints to the MNHRC and MWAFF. No qualitative data is provided regarding types of complaints, demographic information, what types of actions were recommended or whether recommendations were accepted.

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information with respect to complaints that have been examined and acted upon by the MNHRC or MWAFF, such as data on how many were instituted by women, what issues were alleged, the disposition of the case and what remedies were provided.

- Please provide information regarding further efforts to bring the MNHRC into compliance with the Paris Principles, including what confidentially measures, if any, the Government is considering implementing.

(4) *Informal Justice and Customary Law*

25. Another obstacle to access to justice, particularly for women in rural areas, 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.<sup>48</sup> Customary law is recognized by Myanmar's courts<sup>49</sup> yet it is not codified, leaving interpretation to the discretion of arbitrary or village elders, who almost exclusively are male.<sup>50</sup> Customary laws view women differently from men, largely confining them to roles defined under traditional social norms and values as primarily homemakers, wives, and child-bearers.<sup>51</sup>

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information regarding measures taken to ensure that informal justice mechanisms do not discriminate against women.
- Please detail steps to ensure that customary laws comply with CEDAW.

Myanmar Has Failed to Take Adequate Measures to Protect Women from Violence, to Investigate Incidents of Gender-Based Violence, and to Punish Perpetrators of Gender-Based Violence.

26. Violence against women in Myanmar takes many forms and is carried out by many different types of actors.<sup>52</sup> One recent study of violence against women found not only that all women interviewed 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.<sup>53</sup>
27. Three years ago, the Government announced that it had commenced a process of drafting comprehensive legislation to address violence against women. However, the Government has yet to release publicly the contents of any proposed legislation or provide an open public forum for consultation regarding the law. The lack of progress is notable since Myanmar has passed 143 new laws since 2011.<sup>54</sup> In fact, Myanmar remains one of only two ASEAN countries lacking a specific law criminalizing domestic violence and currently has no comprehensive laws to prevent violence against women or sexual harassment and no law allowing victims to obtain restraining orders against abusers.<sup>55</sup> Therefore, Myanmar's current legal framework is insufficient to ensure justice, protection and rehabilitation for victims.<sup>56</sup>
28. Further, existing laws provide limited, if any, protection against violence and promoted outmoded stereotypes in violation of CEDAW. For example, Section 375 of the Penal Code regarding rape includes the undefined requirement of "penetration" as a component of "sexual intercourse" leaving the overall definition of rape ambiguous, for instance in cases of forced non-penile penetration.<sup>57</sup> Moreover, it excludes non-consensual sex between married couples neither prohibiting nor punishing the rape of women by their husbands (unless they are under 14 years of age).<sup>58</sup> The Penal Code also lacks specific provisions concerning unwanted sexual touching, sexual harassment outside the context of sexual intercourse, and domestic violence against women, making it essentially impossible for women to obtain judicial protection from their attackers.<sup>59</sup> Similarly, neither Myanmar's Code of Criminal Procedure nor its Evidence Act contain any provisions protecting the integrity and dignity of women during investigation and prosecution of violence crimes.<sup>60</sup> Instead, under the Evidence Act, a woman's previous

sexual conduct and character is admissible, judges may compel victims of rape to testify against their attackers and draw adverse inference from a victim's refusal to answer questions about the rape.<sup>61</sup>

29. These legal barriers are reinforced and reflected by a cultural habit of victim blaming within Myanmar.<sup>62</sup> Lack of official support not only reinforces an environment of impunity for perpetrators, but also contributes to lower reporting of incidents of abuse, isolation of victims, and physical and mental health consequences.<sup>63</sup>
30. In 2008 this Committee urged Myanmar to “give priority attention to combating violence against women and girls and to adopt comprehensive measures to address all forms of violence against women and girls.”<sup>64</sup> Among other things, this Committee called upon the Government to address the types of legal deficiencies described above<sup>65</sup> and requested that the government remove impediments facing women in gaining access to justice.<sup>66</sup>
31. The Periodic Report lacks discussion of necessary reforms addressing violence against women and makes no reference to deficiencies embedded in Myanmar's Penal Code, Code of Criminal Procedure, and Evidence Act.<sup>67</sup> In fact, the Report suggests that existing laws are sufficient to provide justice for women who have experienced violence.<sup>68</sup>

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information on the status of the draft Anti-Violence against Women Law, its compliance with CEDAW, and plans for its passage and implementation.
- Please provide information on plans to amend existing legislation, including provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act, to ensure such laws adhere to CEDAW.
- Please provide information regarding strategies to address Myanmar's culture of victim blaming, plans to create and ensure support services for victims of violence, and proposals for implementing gender-sensitive training for public officials.

**B. Article 3**

The Government's National Strategic Plan for the Advancement of Women Fails its Obligations under CEDAW

32. On October 3, 2013, the Government unveiled the National Strategic Plan for the Advancement of Women (NSPAW), proclaiming it as a “comprehensive” ten-year plan embodying the “commitment to promoting and protecting the human rights of women” in Myanmar.<sup>69</sup> NSPAW's stated objectives are to ensure that “[a]ll women in Myanmar are empowered and able to fully enjoy their rights with the support of” the Government, and to enable the creation of “systems, structures and practices . . . for the advancement of women, gender equality, and the realization of women's rights.”<sup>70</sup> Three legal frameworks constitute NSPAW's foundation—the 2008 Constitution, CEDAW, and the Beijing Platform for Action.<sup>71</sup>
33. NSPAW is divided up into 12 Key Priority Areas, each of which has four broad categories of action: (1) “Research and Surveys”; (2) “Awareness Raising”; (3) “Implementation”; and (4) “Budget and Policy Making.” Importantly, general references to implementation of Myanmar's international obligations, particularly those under CEDAW, are mentioned throughout NSPAW.
34. While NSPAW constitutes a welcome step towards implementing Myanmar's obligations to eliminate discrimination against women and ensure equality, NSPAW suffers from critical shortcomings related to its conceptualization, substantive content, and implementation plan. Specifically:

- **Flawed conceptual foundation:** NSPAW's legal foundation incorporates intrinsic, systemic barriers and shortcomings preventing the realization of substantive gender equality in Myanmar, as required by international law. In particular, because it relies on the 2008 Constitution as one of its primary pillars, NSPAW legitimizes constitutional provisions that explicitly legalize gender discrimination and preserve constitutionally-mandated military power structures that preclude substantive equality. Additionally, NSPAW fails to adequately reflect the scope and nature of Myanmar's international commitments to eliminate gender discrimination and ensure equality, including those under CEDAW.
- **Lack of practical, action-oriented provisions:** NSPAW lacks articulation of precise and specific practical actions to be undertaken by the government to achieve both substantive gender equality and eliminate discrimination in law and in effect. Containing lofty, aspirational language describing women's rights and empowerment, NSPAW too often lacks description of actual, meaningful steps (through law or other appropriate avenues) to be taken by the government. Furthermore, two years after the issuance of NSPAW, no implementation plans have been developed or produced.
- **Absence of accountability through monitoring and evaluation:** NSPAW contains virtually no specificity with regard to measurable outputs and benchmarks for monitoring and evaluation of NSPAW implementation. Moreover, NSPAW does not clearly articulate the duties and obligations of any individuals or administrative bodies charged with NSPAW implementation, nor does it contain any specific commitments to provide and allocate adequate funding and resources, which are essential for proper monitoring and evaluation of NSPAW implementation.

35. As for implementation, NSPAW references the establishment of a NSPAW Management Committee under the guidance of the Myanmar National Committee for Women's Affairs (MNCWA). The NSPAW Management Committee is charged with developing a five-year "Operational Plan" to "coordinate and prioritize implementation of strategic policies, plans and legislative reforms" developed by the working groups for each of the respective Key Priority Areas, and to oversee governmental implementation at all levels, including national, state and regional, and township.<sup>72</sup> However, in the two years since NSPAW's promulgation such a plan has yet to be created, and in fact, the Periodic Report states that the five-year plan, as well as annual plans, "*will be drawn up and implemented.*"<sup>73</sup>

**In light of the above facts and given that NSPAW was unveiled two years ago, we recommend that the Committee request that Myanmar:**

- Please provide information regarding the status of the carrying out of the 58 surveys on key priority areas called for in NSPAW.
- Please provide information regarding resource allocation for NSPAW. Has the Resource Allocation Plan been drafted? What provisions have been made for budget allocations for NSPAW between now and 2022?
- Please indicate if the Management Committee or any Sub-Committee on Key Priority Areas has been established? If so, describe the membership and selection process. If not, what are the Government's plans to do so?
- Please describe what coordination efforts with relevant ministries have been taken as described in NSPAW.

- Please indicate if the 5-year operational plan been drafted, and if not, what the time frame for drafting it is.
- Please describe what actions have been taken to include non-governmental organization, excluding GONGOs, in NSPAW implementation.

### C. Article 7

#### The Government has Failed to Pursue Policies that Promote Women’s Full and Equal Participation in Political and Public Life

36. In Myanmar, women have historically been largely excluded from positions of political power, as well as from the formulation of laws, including the 2008 Constitution. Today, women occupy only 4.8% of the seats in the national legislature.<sup>74</sup> In the upper house, they occupy just 1.79% of the seats.<sup>75</sup> Currently only two out of the 33 cabinet ministers are women.<sup>76</sup> Women’s representation among the most important positions at the sub-national level is especially low: women make up only 2.83% of MPs at state and regional levels, 0% of administrators at township levels, and 0.11% of village heads.<sup>77</sup>
37. These low participation rates are the result of explicit and implicit barriers to women’s political engagement. These include traditional beliefs and stereotypes about gender roles, women’s low status and bargaining power within the household, women’s lack of experience and inability to develop necessary skills, and the perception among men and women that only men should become involved in politics.<sup>78</sup> There are also practical barriers to women’s ability to vote and participate at the government level, including transportation difficulties, safety concerns, and women’s responsibilities in the home.<sup>79</sup>
38. At the same time, the central role played by the military in government and society has historically limited “women’s ability to participate in political, economic and social life and therefore limited their access to power.”<sup>80</sup> Under the 2008 Constitution, a familiarity with military matters is required for important positions within the executive, legislative and judicial branches.<sup>81</sup> Moreover, the 2008 Constitution allocates 25% of parliamentary seats in both houses of the legislature to the male-dominated military.<sup>82</sup> In January 2014, the military appointed two women as part of its legislative quotas, but this gave women a mere 0.01% of the military appointed seats.<sup>83</sup> This military quota has thus further reduced women’s ability to participate in national-level decision-making.<sup>84</sup>
39. Recognizing the barriers to women’s political participation following its 2008 review, the Committee called upon the government of Myanmar to “use the formulation of its new electoral law as an opportunity to . . . increase women’s political participation” and encouraged the use of “targets and quotas, as appropriate.”<sup>85</sup> Despite this suggestion, the current electoral laws do not include targets or quotas to increase women’s participation. Moreover, although NSPAW calls for quota systems in legislative, judicial and executive bodies,<sup>86</sup> it does not outline the parameters, objectives or timeframe for establishing such systems. The absence of electoral quotas will impede women’s ability to make gains in the national elections scheduled for November 2015, as called for by this Committee.
40. In addition, the government has not delivered awareness-raising and capacity-building activities to promote women’s participation in political and public life, as recommended by the Committee.<sup>87</sup> Much work needs to be done to educate men and women about harmful stereotypes that impede women’s political participation and to develop training and mentoring programs for female candidates and public officials.
41. Despite promising to increase partnership between the government and civil society organizations in NSPAW,<sup>88</sup> the Government has failed to address the Committee’s recommendation to “simplify the registration process for local and national

organizations” and “minimize barriers to registering as an NGO in Myanmar”<sup>89</sup> so that more grassroots and women’s organizations can participate in political decision-making. At the same time, GONGO’s<sup>90</sup> focusing on women such as the MWAF and the MNCWA, have historically been led by men, or the wives of high-ranking members of the military, and have focused on programs that foster women’s protection (by men) rather than women’s empowerment.<sup>91</sup> These organizations have been the focal point for implementing the equality initiatives required by CEDAW.<sup>92</sup>

42. Unfortunately, the Periodic Report provides virtually no additional details concerning a strategic approach to equal participation of women in public and political life. For instance, concerning women’s participation in the national government, the Periodic Report simply lists static figures illustrating modest representation of women in senior positions within the ministry-level, legislative, judicial, and diplomatic sectors, along with statistics suggesting very small growth in representation of women in government ministries and organizations.<sup>93</sup> As is the case for NSPAW, apart from vague references to awareness raising, capacity building, and record keeping, the Periodic Report contains few specific details for increasing women’s participation in public and political life.

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please indicate what concrete measures have been carried out and what measures are envisaged to achieve women’s full and equal participation and representation at all levels of government? In particular, please describe awareness-raising and capacity programmes or policies in place or envisaged to encourage and facilitate Myanmar women’s further participation in public and political life.
- Please explain any temporary special measures, including quotas, to bolster the number of women holding political office at the local, regional, and national levels.
- Please describe concrete measures carried out to expand the participation of rural women in political and public life.
- Please provide information on government programs aimed at modifying traditional beliefs and stereotypes about women’s role in society, including customary practices that exclude women from land ownership and discourage them from taking leadership roles at the village, ward and township level.
- Please provide information on the policies or programs undertaken to address the practical barriers that impede women’s ability to vote and participate in government, including transportation difficulties, safety concerns, and women’s responsibilities at home.
- Please explain what concrete measures have been carried out and what measures are envisaged to create and ensure an enabling environment for women’s rights civil society organizations. Please also explain how the government has or will encourage women’s participation in civil society organizations.
- Please describe policies Myanmar has implemented to encourage active participation in civil society in the implementation of CEDAW, including the CEDAW reporting process and the implementation of the Committee’s Concluding Observations? Please also provide information on whether the Government will make publically available a Burmese translation of its 2015 Periodic Report to the CEDAW Committee and other related documents (such as the Committee’s General Recommendations, 2008 Concluding Observations, 2015 List of Issues, and 2016 Concluding Observations), in order to facilitate civil society participation in the CEDAW reporting process.

## D. Article 10

### Myanmar Has Failed to Provide Women Equal Access to Education

43. Myanmar's education system has been devastated by decades of armed conflict and underinvestment—affecting both boys and girls alike. Average spending on education between 2007 and 2012 was 1.3% of GDP, with only a slight increase to 1.5% of GDP in 2013.<sup>94</sup> In border areas controlled by ethnic groups that have been mired in conflict, many schools remain closed and those that are open are critically under-resourced.<sup>95</sup> These nationwide obstacles are amplified in the case of girls and women seeking to obtain an education.
44. Women's equal access to education is hindered by traditional gender stereotypes. When family resources are scarce and schools distant, families are more likely to educate their sons and have their daughters focus on homemaking activities.<sup>96</sup>
45. At the university level, differential admissions criteria are applied based on the applicant's gender and specialization.<sup>97</sup> That is, women applicants are required to earn significantly higher marks than men when seeking to study certain specializations.<sup>98</sup> These differential admission criteria discourage women from exploring non-traditional fields and leave women with little incentive to pursue interest-based and career-oriented paths.<sup>99</sup>
46. In 2008, this Committee noted several of these challenges and urged the Government to ensure equal access to all levels of education and to take steps to overcome traditional attitudes obstructing education for women.<sup>100</sup>
47. Myanmar's Ministry of Education is currently in the thirteenth year of its "Thirty-Year Long-Term Education Development Plan."<sup>101</sup> However, none of the Plan's "core areas," nor any of the development programs, specially address gender and women's access to education. Similarly, the Periodic Report does not indicate how the Government will achieve women's equal access to education.

### **In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information on what steps have been taken to increase investment educational opportunities for girls and women.
- Please provide information on what steps, measures, programs or initiatives have been taken to guarantee that women are provided education on equal grounds to men, including by ensuring that men and women attend school at the same rates, school curricula do not reinforce harmful gender stereotypes, and women have access to all levels and types of education.
- Please describe Government measures to guarantee a gendered perspective in the implementation and drafting of the Government's long term education development plan and any adjustments to be made to ensure equal access of girls and women to all levels of education and retain girls in school.
- Please indicate if Myanmar intends to abolish the discriminatory requirement that women receive higher test scores than men to be accepted to graduate programs that have traditionally been dominated by men, such as medicine, engineering, and biology. If so, what are the plans and timetable for doing so?

## E. Article 11: Myanmar Has Failed to Provide Women Equal Access to Employment Opportunities

48. Women's role in Myanmar's economy remains undervalued and underdeveloped, with low formal labor force participation.<sup>102</sup> Owing to gender stereotypes, women are

responsible for the bulk of housework and child-rearing.<sup>103</sup> Women's unremunerated work in caring for their families has not been included in the country's overall labor snapshot and often restricts formal employment options.<sup>104</sup>

49. Women in the workforce are often poorly remunerated compared to men and do not achieve high-ranking positions within the profession.<sup>105</sup> For example, women make up more than 50% of judges throughout the country, but men outnumber women by more than two to one in the High Courts and no women serve at the Supreme Court level.<sup>106</sup> Finally, few women work in conditions that respect occupational safety, motherhood or women's health generally.<sup>107</sup>
50. There are even specific areas where employment of women is prohibited outright or severely limited. Article 352 of the 2008 Constitution provides that certain positions are suitable for men only, as discussed in further detail in paragraph 53.<sup>108</sup> Elsewhere, the 2008 Constitution requires that the President and Vice President be familiar with the military and provides for a 25% military quota in Parliament. Since women have not traditionally been allowed to serve actively in the military, they are at a disadvantage to assume these roles.<sup>109</sup> In a broader sense, women have been denied the employment, business and relationship-building opportunities created by active military status.
51. Importantly, decades of ethnic conflict have negatively impacted women's economic position, livelihood options and employment stability. Even the implementation of recent ceasefires may not help improve women's position with the economy, as men returning from conflict will resume their priority status.
52. In 2008, this Committee acknowledged these issues and requested that Myanmar review its laws and ensure equal opportunities for women.<sup>110</sup>
53. Unfortunately, the Periodic Report offers little to improve on shortcomings in the area of equal access to employment and other economic benefits and points to the 2008 Constitution as a primary means of ensuring gender equality in employment. However, for example, the Periodic Report clarifies Article 352, 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."<sup>111</sup> This statement fully displays the deeply-rooted discrimination and patriarchy that influences and governs policy-making and law in Myanmar.

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information on studies, programs, and temporary special measures being designed to ensure women's full and equal participation in economic life.
- Please provide information on steps to include women's unremunerated tasks into Myanmar's gross domestic product, as well as on the development of programs specifically geared toward ending harmful stereotypes relating to women's economic life and programs to ease the reintegration of men back into the economy after the cessation of armed conflict without discriminating against women.
- Please provide information on plans to amend or repeal provisions of the 2008 Constitution that *de facto* and/or *de jure* discriminate against women's rights to full and equal employment, including articles 109, 141, 161 and 352.

## F. Article 12

### Myanmar has Failed to Provide Women Access to Adequate Health Care

54. Women in Myanmar do not have access to high-quality and affordable health care. While the Government's increase in funding in its 2012 and 2013 budgets toward health care is commendable, its investment in health is still lower than that of any other ASEAN country.<sup>112</sup>
55. One major issue is access. Poor infrastructure hinders women's, especially rural women's, access to clinics and hospitals.<sup>113</sup> When physical access is possible, clinics frequently do not have the necessary medicines, equipment, or staff to provide patients with adequate treatment.<sup>114</sup> Medical staff members are poorly trained and fail to treat women patients with dignity. Additionally, while the Government provides the buildings for clinics and hospitals, women must pay for supplies and services out-of-pocket.<sup>115</sup>
56. These constraints contribute to the high rate of maternal mortality in Myanmar, which was 200 deaths out of 100,000 live births in 2010, one of the highest in the region.<sup>116</sup> Notwithstanding the Government's statement that 70.9% of deliveries in 2012 were attended by skilled health personnel, the reality is that many women continue to have dangerous home births with the support only of inadequately trained traditional birth attendants.<sup>117</sup>
57. A lack of education regarding available methods of birth control planning, particularly in rural areas, impedes women from controlling the number and spacing of their children, often with negative repercussions for women's and children's health.<sup>118</sup> Many women are afraid to use contraceptive methods (including emergency contraception), where they are available at all, due to a lack of knowledge on how birth control works and stigma surrounding it.<sup>119</sup> The Government needs to adopt practical initiatives to educate women, particularly rural women, about birth control, as recommended by this Committee in 2008.<sup>120</sup>
58. Additionally, abortion is illegal in Myanmar, even in situations involving rape and incest, unless the woman's life is in danger from the pregnancy.<sup>121</sup> In fact, complications from unsafe abortions are a leading cause of maternal mortality in Myanmar.<sup>122</sup> The criminalization 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, which violates the Government's international obligations under CEDAW and, in the case of women who become pregnant as a result of conflict-related rape, the Geneva Conventions<sup>123</sup> and Security Council Resolutions 2106 and 2122.<sup>124</sup>
59. Finally, illegal drug use is a growing concern to the physical and financial health of women and their families. Increases in drug cultivation, production, and use has limited livelihoods, increased violence against women, increased migration, and human trafficking.<sup>125</sup> Drug control strategies that do exist are not gender sensitive.<sup>126</sup>

### **In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide information on measures taken to ensure that women in rural locations have access to healthcare facilities and to assistance by trained medical personnel who treat their patients with dignity.
- Please provide information on specific programs to meet its objective of increasing the rates of received prenatal care and of deliveries attended by skilled health professionals to 80% by 2015. Please also provide data on the current rates of received prenatal care and

of deliveries attended by skilled health professionals, disaggregated by urban and rural sectors and by State or Region.

- Please provide further data on the maternal mortality rate, disaggregated by the age of the women, urban and rural sector, and State or Region. Please also provide data on the infant mortality rate, disaggregated by sex, age, urban or rural sector, State or Region, and cause of death of the infant.
- Please provide information about the unmet need for contraception among married and unmarried women disaggregated by urban and rural sectors and by State or Region. Please describe the specific measures the State party has taken to increase knowledge of and access to free or affordable contraceptive methods, particularly in rural areas.
- Please provide information on the specific efforts undertaken to combat illegal drug use in Myanmar, especially in rural areas and among children.
- Please indicate if the State party will consider making abortion legal.

## **G. Article 14**

### Myanmar has Failed to take Adequate Measures to Protect and Provide for Rural Women

60. In 2008, the Committee “expresse[d] its concern at the disadvantaged position of women in rural and remote areas who form the majority of women in Myanmar, which is characterized by poverty, illiteracy, difficulties in access to health, education, and social services and a lack of participation in decision-making processes at the community level.”<sup>127</sup> Today, rural women in Myanmar continue to face enormous challenges in obtaining access to health care, education, and other social services.
61. Roughly 70% of Myanmar’s population lives in rural areas,<sup>128</sup> which have twice the poverty rate of urban areas<sup>129</sup> and limited infrastructure.<sup>130</sup> As a result, those living in rural areas have distinct challenges and needs that must be addressed. For example, UNICEF’s statistical set breaks out some of its data into rural and urban, including on access to water and sanitation facilities, health indicators such as the presence of skilled birth attendants and birth registration, and primary school attendance to name a few. In each of these categories, the rural population fares far worse than the urban population.<sup>131</sup>
62. Many rural women are members of ethnic and/or religious minorities and, as such, often face multiple, interrelated forms of discrimination.<sup>132</sup> Myanmar is composed of a majority (two-thirds) Burman population and the rest composed of over 100 different ethnicities, with several major groups: Shan, Karen, Kachin, Rakhine, Mon, Kayah and Chin.<sup>133</sup> With respect to religion, approximately 90% of the population is Buddhist, and the other 10% includes minority populations of Christians, Muslims and others.<sup>134</sup> Some of the minority religions are linked to minority ethnic populations.<sup>135</sup>
63. Myanmar’s prolonged armed conflict has had a disproportionate effect on rural, ethnic women, who have been targeted for sexual violence, excluded from ceasefire and peace negotiations, and disproportionately affected by displacement, see paragraphs 74-81 below. One rural, ethnic group that has suffered particular discrimination is the Rohingya, a Muslim minority group based in northern Rakhine state. According to the Special Rapporteur on Myanmar, the Rohingya face “systematic discrimination, which includes restrictions on the freedom of movement, on access to land, food, water, education and health care, and on marriages and birth registration.”<sup>136</sup>
64. The Government’s recently passed “Laws on the Protection of Race and Religion,” which discriminate against women in a number of respects (see discussion above at paragraphs

11 and 12), also have a disproportionate impact on rural women who are also members of ethnic and religious minorities.<sup>137</sup>

65. Seven years ago, the Committee expressed concern about the lower quality and availability of education in rural areas and issues creating obstacles to girls' education (see paragraphs 43-47 for a more detailed discussion of education), including traditional attitudes regarding education of girls and burden on girls to drop out of school to contribute to domestic work.<sup>138</sup> Research strongly suggests that these issues continue to present substantial impediments to education.<sup>139</sup> Additionally, armed conflict has hindered girls' education in ethnic areas, and school attendance rates for rural girls have traditionally been lower than their urban counterparts.<sup>140</sup> In conflict-ridden Eastern Shan state, for example, female literacy rates are as low as 38.4%.
66. Rural women are also disproportionately affected by development projects sponsored by the Government, often in conjunction with the private sector. In 2008, the Committee urged the Government to "increase and strengthen the participation of women in designing and implementing local development plans, and pay special attention to the needs of rural women . . . Furthermore, the [Government] should ensure that development projects are only implemented after gender impact assessments, involving rural women."<sup>141</sup> Although the Government has drafted a National Land Use Plan, "[w]omen were not visible in the [National Land Use Plan]-drafting committee," which was composed of senior-ranking male officials.<sup>142</sup> Moreover, the English version of the law, which was provided to INGOs and donors, contained gender-sensitive provisions that were *entirely absent* from the authoritative, Myanmar language version.<sup>143</sup>
67. Land rights are another issue of concern to rural women. In its Periodic Report, the Government claims that "according to the Myanmar Customary Law, a son and a daughter have equal rights of inheritance without discrimination."<sup>144</sup> This does not hold true throughout Myanmar. Recent research has found that "[a]s daughters, Myanmar women are often, though not always, passed over for inheritance in favor of brothers."<sup>145</sup> Rural women in various communities have reported that even after their husband's death, his land "went to his sons, his son-in-law, his widow's new husband, or his parents or brothers over his wife."<sup>146</sup> Women's land rights are impeded both by customary practices and administrative obstacles to land registration. In addition, the government, military, private corporations and individuals have engaged in land appropriation in rural areas, which has had disproportionately negative consequences for women and their families.
68. Drug use is widespread in many rural areas, particularly among men. In 2008, the Committee emphasized that the government "should ensure that opium eradication is carried out together with the development of sustainable alternative livelihoods with local communities, where rural women are most affected."<sup>147</sup>

**In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide data on school attendance rates at the primary and secondary levels for girls for each of Myanmar's States and Regions.
- Please provide information on measures to improve rural women's access to education.
- Please provide information on measures taken to incorporate women's participation and a gender-perspective in ongoing Government development projects.
- Please provide data on inheritance practices, particularly in rural areas, and provide information on measures to ensure women's equal access to land rights, in law and in fact.

- Please provide information on concrete measures taken to develop sustainable alternative livelihoods for women and their families in opium producing areas.

## H. Article 18

### Myanmar Has Failed to Provide Precise and Disaggregated Data

69. The Government has not routinely collected comprehensive demographic data, so it is unclear if it has ever had an accurate understanding of the current or historical domestic situation.<sup>148</sup> In fact, the basic census undertaken in 2014 was the first in over 30 years.<sup>149</sup> Unfortunately, in preparing the census, the government failed to consult with various ethnic and religious groups, leading to a census that many minority groups viewed with suspicion.<sup>150</sup>
70. Without consistent access to reliable data, planners cannot make informed decisions and cannot form an accurate picture of the actual in-country conditions. Moreover, evaluators do not have information to assess the efficacy of programs. This data deficit especially impacts CEDAW implementation, because trustworthy, accurate, and disaggregated data regarding the status of women in the country is crucial to developing and assessing effective policies and programs to ensure equality and combat discrimination.
71. Myanmar's failure to provide reliable and disaggregated data on the conditions facing women in the country has been highlighted by this Committee. The 2008 Concluding Observations noted that, "the information provided in the report in many aspects was too general and lacked the disaggregated data pertaining to, inter alia, the various ethnic groups, as requested in the previous concluding observations, necessary to permit the Committee to evaluate the specific situation of women."<sup>151</sup> The Committee also requested that Myanmar "strengthen its system of data collection"<sup>152</sup> and provide disaggregated data.<sup>153</sup>
72. In fact, as the majority of quantitative and qualitative data presented in the Periodic Report demonstrates, the Government has not taken steps to realize these recommendations. For example, Annex B to the Periodic Report sets forth the Government's "ten programmes of legislation" which are the framework for legal reform, including "endeavors against discrimination."<sup>154</sup> However, the Government does not, in either the Report or the Annex, provide information to state specifically how these measures eliminate gender-based discrimination. This information is essential as demonstrated by the fact that (as discussed above in paragraph 14) a closer examination of the examples provided by the Government show that only 1 of the 8 laws actually contain provisions specific to women. Similarly, Annex M to the Periodic Report purports to show infrastructure and socio-economic development efforts by the Department of Rural Development.<sup>155</sup> However, the data is neither disaggregated by gender nor ethnicity, rendering it impossible to ascertain whether these programs in fact assisted women, and if so, to what extent.
73. Myanmar's desire to be more fully integrated into the international community will require greater responsiveness in providing the type of data necessary to evaluate Myanmar's compliance with CEDAW.

### **In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please describe Government plans to address criticisms of the 2014 Census and ensure that all future Censuses are conducted in an inclusive and broad-based manner.
- Please disaggregate by gender and ethnicity, qualitative data provided in the Periodic Report and its Annexes. Where this is not possible, please provide information on why this data does not exist.

- For any quantitative and qualitative data provided in the Periodic Report, please specify how these measures eliminate discrimination against women or ensure substantive gender equality.

## **I. General Recommendations 28 and 30**

74. Myanmar has been in armed conflict with various ethnic groups for over 60 years. Continuing conflict impacts women in myriad ways, but we highlight two specific areas in which CEDAW provides strict responsibilities for State parties: (1) to end and ensure accountability for conflict-related sexual violence (“CRSV”); and (2) to include women in post-conflict processes.

### Myanmar has Failed to End and Ensure Accountability for Conflict-Related Sexual Violence

75. The Myanmar military has continued to perpetrate systematic sexual violence against ethnic populations, with near total impunity.<sup>156</sup> For example, more than 100 cases of rape, gang rape, and sexual assault were reported between 2010 and 2014.<sup>157</sup> UN experts similarly report an increase in sexual violence carried out by the Myanmar military since 2013.<sup>158</sup>
76. In Myanmar, where “impunity is the rule” and “punishment is the rare exception,”<sup>159</sup> victims often do not report sexual violence due to harassment, intimidation, stigma, fear and distance from administrative centers, meaning that reported cases are only a small fraction of the actual total.<sup>160</sup> Assertions in the Periodic Report that women can “candidly complain to nearby military or civil authorities” are not consistent with the reported experiences of women on the ground.<sup>161</sup>
77. Impunity for military perpetrators of CRSV is enshrined in the 2008 Constitution, which provides that no proceeding shall be instituted against any member of the Government “in respect to any act done in the execution of their respective duties.”<sup>162</sup> As the former Special Rapporteur on the situation of human rights in Myanmar has indicated, this provision can be construed as a guarantee of immunity for military actors from investigation, prosecution, or punishment for crimes, including CRSV.<sup>163</sup> The 2008 Constitution further entrenches impunity by establishing military autonomy over all its judicial processes and giving the Commander-in-Chief “final and conclusive” authority over all cases and complaints.<sup>164</sup> These structural problems within the military courts-martial system are compounded by a total lack of transparency.<sup>165</sup> While the Government has repeatedly asserted that action has been taken against military perpetrators of rape, including in the Periodic Report, no information is provided as to what charges were pursued, what law was applied or what punishment was assessed.<sup>166</sup> Moreover, it is unknown if any military commanders have been prosecuted for what has been described as their imprimatur on a pattern and practice of sexual violence.<sup>167</sup>
78. Finally, women human rights defenders focusing on CRSV face serious security concerns, and report being routinely subject to harassment and monitored when conducting awareness raising activities.<sup>168</sup>
79. The Government’s failure to take steps to adequately address, investigate, end and ensure accountability for CRSV by the Myanmar military violates its obligations under CEDAW.<sup>169</sup> In the Concluding Observations, this Committee expressed its concern over the prevalence of CRSV and the “apparent impunity” of military perpetrators of violence and urged the Government to take immediate steps to end CRSV.<sup>170</sup> However, since 2008, and despite the installation of a quasi-civilian government, CRSV continues to be a pattern and practice of the military and the impunity provisions in the Constitution remain in effect.

## The Responsibility to Include Women in Post-Conflict Processes

80. The Government has effectively excluded women from participating in negotiations for peace and transitional processes.<sup>171</sup> Initial ceasefire agreements with armed ethnic groups have been negotiated since 2011, but have been conducted almost exclusively by men.<sup>172</sup> In 2013, a 52-member delegation, or “working committee,” appointed to represent the Government in negotiations for peace and transitional processes included only two women (who are duly elected representatives of the lower house of parliament).<sup>173</sup> The 11-member Government “central committee” did not include any women.<sup>174</sup> The Special Rapporteur found in September 2014 that “women have been largely excluded and have not been a part of the negotiating teams thus far.”<sup>175</sup> Unfortunately, though not surprisingly, none of the preliminary ceasefire agreements made a single reference to women, including any reference to accountability for CRSV.<sup>176</sup>
81. By failing to include women in the peace process, the Government has failed to live up to its responsibilities under CEDAW. Specifically, CEDAW requires States parties to strengthen gender equality, ensure the humanitarian and socio-economic needs of ethnic groups, build a sustainable democratization and reconciliation process, and ensure equal representation at all decision-making levels in national institutions and mechanisms dealing with crimes committed during the conflict, including through participation of women’s civil society organizations.<sup>177</sup>

### **In light of the above facts, we recommend that the Committee request that Myanmar:**

- Please provide detailed information regarding the Government’s attempts to hold the military accountable for CRSV, including specific policies, measures and programs undertaken by the military to ensure the swift and strict prosecution of CRSV, including detailed information regarding the number of prosecutions, law applied, gender sensitivity of investigative procedures, punishments and rank of the accused.
- Please provide information regarding measures taken to ensure that women and girls are able to access justice for CRSV, including the availability of civil remedies, and reparations. Please detail measure to ensure the safety and security of women human rights defenders.
- Please provide clarification regarding the impunity clause in the Constitution, including whether this clause can be used to shield perpetrators of CRSV from justice.
- Please provide information regarding any attempts to allow independent international investigation of CRSV.
- Please indicate measures taken to increase the participation of women in every stage of the peace process, including the negotiation of ceasefire agreements. Please include information on plans to increase women’s representation on the Government’s negotiation teams.
- Please discuss how the Government will ensure that peace agreements comprehensively and sensitively incorporate issues of importance to women, such as ensuring that the agreements will not include amnesties for CRSV.

## **D. Conclusion**

82. We urge the Committee to incorporate our observations into the list of issues that will be presented to Myanmar in December 2015. Before the July 2016 session, we will present an alternative report, which will deal in greater depth with all the above-mentioned subjects.

## Endnotes

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- <sup>1</sup> Combined fourth and fifth periodic report of the Government of Myanmar to CEDAW Committee, ¶ 6, CEDAW/C/MMR/4-5, (Jan. 8, 2015) [hereinafter 2015 CEDAW State Report, Myanmar].
- <sup>2</sup> Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42<sup>nd</sup> Sess., Oct. 20-Nov. 7, ¶ 8, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter 2008 CEDAW Concluding Observations on Myanmar].
- <sup>3</sup> Constitution of the Republic of the Union of Myanmar (2008), arts. 109, 141 and 161 [hereinafter 2008 Constitution].
- <sup>4</sup> Global Justice Center, *The Gender Gap and Women's Political Power in Myanmar/Burma*, at 1, 3, May 2013, available at [http://globaljusticecenter.net/index.php?option=com\\_mtree&task=att\\_download&link\\_id=103&cf\\_id=34a](http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=103&cf_id=34a).
- <sup>5</sup> Kyaw Thu & Myo Thant Khine, *Myanmar Military's First Women Representatives Join Parliament*, RADIO FREE ASIA, Jan. 14, 2014, available at <http://www.rfa.org/english/news/myanmar/women-01142014143827.html/>; Paul Minoletti, *Women's Participation in the Subnational Governance of Myanmar*, 8 (June. 13, 2014).
- <sup>6</sup> Combined second and third periodic report of the Government of Myanmar to CEDAW Committee, ¶ 37, U.N. Doc. CEDAW/C/MMR/3, (Sept. 4, 2007) [hereinafter 2007 CEDAW State Report, Myanmar].
- <sup>7</sup> Under the Constitution, any amendments to it requires the vote of over 75% of parliament and because the military holds 25% of seats, they hold a veto power over any amendments. 2008 CONSTITUTION, *supra* note 3, art. 436(a).
- <sup>8</sup> Library of Congress, *Burma: Four "Race and Religion Protection Laws" Adopted*, Global Legal Monitor (Sept. 14, 2015), available at [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205404604\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205404604_text).
- <sup>9</sup> Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), ¶ 28, UN Doc. A/HRC/28/72 (Mar. 23, 2015) [hereinafter Special Rapporteur Report (March 2015)].
- <sup>10</sup> OHCHR, *Myanmar: UN rights experts alarm at adoption of first of four "protection of race and religion" bills* (May 27, 2015) available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16015&LangID=E>.
- <sup>11</sup> 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.
- <sup>12</sup> Joint Statement by Amnesty International and the International Commission of Jurists, *Myanmar: Parliament must reject discriminatory 'race and religion' laws*, at 3 (Mar. 3, 2015), available at <https://www.amnesty.org/en/documents/asa16/1107/2015/en/>; Human Rights Watch, *The Myanmar Marriage Plot* (Sept. 5, 2013), available at <http://www.hrw.org/news/2013/09/05/myanmar-marriage-plot>.
- <sup>13</sup> Special Rapporteur Report (March 2015), *supra* note 9, at ¶ 28.
- <sup>14</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW], available at <http://treaties.un.org/doc/Publication/UNTS/volume%201249/v1249.pdf>.
- <sup>15</sup> Shwe Aung, *Upper House approves population control bill*, DEMOCRATIC VOICE OF BURMA, Feb. 15, 2012; Zu Zu, *Upper House Passes Controversial 'Population Control' Bill*, THE IRRAWADDY, Feb. 10, 2015.
- <sup>16</sup> CEDAW, art. 16(f).
- <sup>17</sup> OHCHR, *UN rights experts alarm*, *supra* note 10.
- <sup>18</sup> *Id.*
- <sup>19</sup> CEDAW, art. 2.
- <sup>20</sup> CEDAW, art. 15.
- <sup>21</sup> Comm. on the Elimination of Discrimination against Women, *General recommendation No. 31 on women's access to justice*, ¶ 1, U.N. Doc. CEDAW/C/GC/33 (Jul. 23, 2015).
- <sup>22</sup> 2008 CEDAW Concluding Observations on Myanmar, *supra* note 2, at ¶¶ 14-15.
- <sup>23</sup> *Id.* at ¶¶ 14-15.
- <sup>24</sup> *Id.* at ¶ 12.
- <sup>25</sup> *Id.* at ¶ 13.
- <sup>26</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶ 8
- <sup>27</sup> Maternity Leave, Leave and Holiday Act, Pyidaungsu Hluttaw Law, No. 58, Jan. 1, 1952 (amended July 2014).
- <sup>28</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, at ¶¶ 9-18; Social Security Law, Pyidaungsu Hluttaw Law No. 15/2012, August 31, 2012; Minimum Wage Law, Pyidaungsu Hluttaw Law No. 21/2013, March 22, 2013; Labour Organization Law, The Pyidaungsu Hluttaw Law No. 7/2011, The 14<sup>th</sup> Waxing day of Thadinkyut 1373. M.E., Oct. 11, 2011; Settlement of Labour Dispute Law, The Pyidaungsu Hluttaw Law No. 5/2012, The 6<sup>th</sup> Waxing day of Tagu 1373, M.E., March 28, 2012; Employment and Skills Devt Law, Pyidaungsu Hluttaw Law No. 29/2013, 9<sup>th</sup> Wanning of Wargoung 1375 M.E., Aug. 30 2013; The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014, The 13<sup>th</sup> Waning of Tabaung 1375 M.E., Mar. 28, 2014 [hereinafter MNHRC Law]; Mass Media Law (March 14, 2014); Law on the Registration of Organizations, Pyidaungsu Hluttaw Law No. 31/2014, July 18, 2014.

- <sup>29</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, at ¶ 170.
- <sup>30</sup> United States Institute of Peace, *USIP Burma/Myanmar Role of Law Trip Report June 2013*, at 23, available at [http://www.lrcmyanmar.org/system/files/book/usip\\_burma\\_rol\\_report\\_working\\_document\\_-\\_11\\_june\\_2013.pdf](http://www.lrcmyanmar.org/system/files/book/usip_burma_rol_report_working_document_-_11_june_2013.pdf); N. Cheesman, K. Min San, *Not Just Defending: Advocating for Law in Myanmar*, 31 WIS. INT'L L. J. 702, 714.
- <sup>31</sup> International Bar Association Report, *The Rule of Law in Myanmar: Challenges and Prospects*, at 59 (Dec. 2012) [hereinafter IBA 2012 Report (2012)]. See also International Commission of Jurists, *Country Profile: Myanmar*, (June 2014) 11 available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/06/CIJL-Country-Profile-Myanmar-June-2014.pdf>; see also International Commission of Jurists, *Right to Counsel: the Independence of Lawyers in Myanmar*, (June 2014) at 40 available at <http://www.burmalibrary.org/docs16/ICJ-MYANMAR-Right-to-Counsel-en-red.pdf>.
- <sup>32</sup> WOMEN'S LEAGUE OF BURMA, SAME IMPUNITY, SAME PATTERNS (Jan. 2014) [hereinafter WLB Report (Jan. 2014)]; UK Home Office, *Operational Guidance Note Burma*, Burma OGN v 8.0, 5, (July 2013), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311395/Burma\\_operational\\_guidance\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311395/Burma_operational_guidance_2013.pdf); BTI-Project, *Myanmar Country Report*, 11 (2014); IBA Report (2012), *supra* note 30, at 57, 59; 2008 Constitution, *supra* note 3, at arts. 299, 302, 308, 311, 321, 327.
- <sup>33</sup> Oxford Pro Bono Publico, *Justice in Burma*, (Apr. 2008) at 64, available at [http://www.oxfordburmaalliance.org/uploads/9/1/8/4/9184764/justice\\_in\\_burma\\_opbpg\\_report\\_april\\_08.pdf](http://www.oxfordburmaalliance.org/uploads/9/1/8/4/9184764/justice_in_burma_opbpg_report_april_08.pdf); 2008 Constitution, *supra* note 3, at arts. 301(d)(i)-(ii).
- <sup>34</sup> USIP *Burma/Myanmar Role of Law Trip Report*, *supra* note 30, at 23; N. Cheesman, K. Min San, *Not Just Defending: Advocating for Law in Myanmar*, 31 WIS. INT'L L. J. 702, 714.
- <sup>35</sup> Gender Equality Network, *Behind the Silence: Violence Against Women and their Resilience: Myanmar Research Report*, 51, (Feb. 2015) [hereinafter Gender Equality Network, *Behind the Silence* (Feb.2015)]; WOMEN'S LEAGUE OF BURMA, IF THEY HAD HOPE, THEY WOULD SPEAK 9 (Nov. 2014) [hereinafter WLB Report (Nov. 2014)].
- <sup>36</sup> IBA Report (2012), *supra* note 30, at 30; Human Rights Watch, *Burma: World Report* (2015); US DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: BURMA 8 (2013) [hereinafter DEP'T ST., REPORT ON HUMAN RIGHTS PRACTICES (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).
- <sup>37</sup> Special Rapporteur Report (March 2015), *supra* note 9, at ¶¶ 4-20; Amnesty International, *Stop Using Repressive Laws Against Peaceful Protesters* ASA16/025/2014; Amnesty International, *The State of the World's Human Rights* (2015) at 261; Matthew Bugher, *Old Laws, Same Military*, THE IRRAWADDY, Mar. 26, 2015; Human Rights Watch, *Burma: "Peaceful Assembly Law" Fails to End Repression* (Jan. 25, 2015), available at <http://reliefweb.int/report/myanmar/burma-peaceful-assembly-law-fails-end-repression>; MORTEN B. PEDERSEN, PROMOTING HUMAN RIGHTS IN BURMA: A CRITIQUE OF WESTERN SANCTIONS POLICY (2008); DAVID I. STEINBERG, BURMA: THE STATE OF MYANMAR (2001); UNDP, *Fast Facts Rule of Law and Access to Justice in Myanmar* (Aug. 16, 2013) [hereinafter UNDP, *Fast Facts* (2013)].
- <sup>38</sup> Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws*, 7, Jan. 2013 [hereinafter Gender Equality Network Report (Jan. 2013)].
- <sup>39</sup> See Hanna Hindstrom, *Monks and Misogyny*, DEMOCRATIC VOICE OF BURMA, July 1, 2013, available at <http://english.dvb.no/analysis/monks-and-misogyny/29108>; See also Gender Equality Network Report (Jan. 2013), *supra* note 38, at 10.
- <sup>40</sup> Gender Equality Network Report (Jan. 2013), *supra* note 38, at 10; Yen Snaing, *MPs Demand Parliament Considers Violence Against Women Measures*, THE IRRAWADDY, Feb. 3, 2015.
- <sup>41</sup> Gender Equality Network, *Behind the Silence* (Feb.2015), *supra* note 35, at 51.
- <sup>42</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, at ¶ 19.
- <sup>43</sup> See The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21, ¶ 22, 1375 M.E. (2014) (Myan.) [hereinafter "MNHRC Law"]; U.N. Secretary General, *Results of the Fortieth Session of the Committee on the Elimination of Discrimination against Women, Annex II: Statement by the Committee on the Elimination of Discrimination against Women on its Relationship with National Human Rights Institutions*, ¶ 2, 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 (Mar. 4, 1994) (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.)
- <sup>44</sup> 2015 CEDAW State Report, Myanmar, ¶¶ 20, 21; For "human rights" as defined by the enabling legislation, see MNHRC Law, ¶ 22.
- <sup>45</sup> See MNHRC Law.

- <sup>46</sup> Special Rapporteur Report (March 2015), *supra* note 9, at ¶ 58. *See also* Human Rights Watch, Amnesty International, Fortify Rights, Harvard Law School International Human Rights Clinic, International Commission of Jurists, Physicians for Human Rights, Joint Letter to President Thein Sein Regarding Prosecution of Shayam Brang Shawng (Dec. 18, 2014), <http://www.hrw.org/news/2014/12/18/burma-joint-letter-president-thein-sein-regarding-prosecution-shayam-brang-shawng>.
- <sup>47</sup> 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*, ¶¶ 7-8, U.N. Doc. CEDAW/C/GC/28 (Oct. 19, 2010).
- <sup>48</sup> Buddhist customary law draws on Dhammathats, prevailing customs, judicial precedent and legislation. Yee Yee Cho, *Women's Rights under Myanmar Customary Law*, 57 DAGON UNIV. RESEARCH JOURNAL VOL. 4 (2012) 57. Ethnic groups often follow their own customary law. Gender Equality Network Report (Jan. 2013), *supra* note 38, at 4-5; *see generally*, BRENDA BELAK, *Women & the Law*, in GATHERING STRENGTH: WOMEN FROM BURMA ON THEIR RIGHTS (2002).
- <sup>49</sup> Nang Yin Kham, *An Introduction to the Law and the Judicial System of Myanmar* 3 (National Univ. of Singapore, Working Paper No. 001, Mar. 2014), *available at* [http://law.nus.edu.sg/pdfs/cals/working\\_papers/Myanmar/MWPS001.pdf](http://law.nus.edu.sg/pdfs/cals/working_papers/Myanmar/MWPS001.pdf); Gender Equality Network Report (Jan. 2013), *supra* note 38, at 15.
- <sup>50</sup> BELAK, *supra* note 48, at 230.
- <sup>51</sup> 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. Cho, *supra* note 48, at 59-60, 62; *see also* BELAK, *supra* note 48, at 247.
- <sup>52</sup> Gender Equality Network, *Behind the Silence* (Feb.2015), *supra* note 35, at 1. *See also*, UNFPA, *Responding to Gender Based Violence in Myanmar*.
- <sup>53</sup> Gender Equality Network, *Behind the Silence* (Feb.2015), *supra* note 35, at 25.
- <sup>54</sup> OFFICIAL WEBSITE OF MYANMAR PARLIAMENT, [www.myanmarparliament.gov.mm/?page\\_id13429](http://www.myanmarparliament.gov.mm/?page_id13429) (last visited Sept. 29, 2015).
- <sup>55</sup> Palaung Women's Organisation, *Voices for Change: Domestic Violence and Gender Discrimination in the Palaung area*, Nov. 25, 2011, at 5. The other ASEAN country which has not drafted any legislation addressing domestic violence is Brunei Darussalam. *See also*, Gender Equality Network Report (Jan. 2013), *supra* note 38, at 10.
- <sup>56</sup> Action Aid, *Violence Against Women and Girls and Access to Justice in Myanmar: Gender Analysis Brief*, (Nov. 2014). *See also*, Gender Equality Network Report (Jan. 2013), *supra* note 38, at 1.
- <sup>57</sup> *Id.* at 7-8; MYANMAR PENAL CODE, ¶¶ 375.
- <sup>58</sup> *See* MYANMAR PENAL CODE, ¶¶ 375-376; Gender Equality Network Report (Jan. 2013), *supra* note 38, at 16. Under the *Contract Act*, a girl is able to marry without her parents' consent once she attains the age of 18. *Id.* Under Buddhist traditional law, a woman must obtain consent to marry if she is older than 15, but younger than 20. *Id.* Males are able to marry once they attain physical maturity. *Id.*
- <sup>59</sup> Gender Equality Network Report (Jan. 2013), *supra* note 38, at 9-10.
- <sup>60</sup> *Id.* at 8.
- <sup>61</sup> *Id.* at 9.
- <sup>62</sup> Gender Equality Network Report (Feb. 2015), *supra* note 35, at 3, 6; J. Freccerreo & K. Seelinger, *Safe Haven: Sheltering Displaced Persons from Sexual and Gender-Based Violence, Case Study: Thailand*, May 2013, at 31.
- <sup>63</sup> Gender Equality Network Report (Feb. 2015), *supra* note 35, at 6.
- <sup>64</sup> 2008 CEDAW Concluding Observations on Myanmar, *supra* note 2, ¶ 23.
- <sup>65</sup> *Id.*
- <sup>66</sup> *Id.*
- <sup>67</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶ 51 ("The Criminal Procedure Code and Penal Code strongly prescribe severe penalties and punishments for those who commit rape or sexual violence against women and girls.)
- <sup>68</sup> *Id.*
- <sup>69</sup> Press Release, U.S. Embassy Rangoon, U.S. Embassy Applauds the National Strategic Plan for the Advancement of Women in Myanmar (Oct. 4, 2013), *available at* [http://photos.state.gov/libraries/burma/895/pdf/10-03-2013%20NSPAW%20women\\_s%20dvlptmt%20plan%20rollout%20event%20NPT.pdf](http://photos.state.gov/libraries/burma/895/pdf/10-03-2013%20NSPAW%20women_s%20dvlptmt%20plan%20rollout%20event%20NPT.pdf); for specific quotations, see Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women* ("NSPAW"), Preface (2013-2022), Myanmar 2013 [hereinafter 2013-2022 NSPAW].
- <sup>70</sup> 2013-2022 NSPAW, *supra* note 69, at Objectives § 5.
- <sup>71</sup> *Id.* at Background History § 3.
- <sup>72</sup> *Id.* at Implementation §§ 24(a)-(c).
- <sup>73</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶ 35.
- <sup>74</sup> Official Website of Myanmar Parliament, <http://www.myanmarparliament.gov.mm/> (last visited Sept. 29, 2015) (total ratio of women representatives in both houses of parliament: 635:31, or 4.8%) (Pyithu Hlattaw (lower house): of 420 parliamentarians in total, 25 women hold elected seats and 2 women hold armed forces appointed seats (ratio

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of women in lower house: 420:27 (6.4%); Amyotha Hluttaw (upper house): of 224 parliamentarians in total, 4 women hold elected seats (ratio of women in upper house: 215:4 (1.8%)).

<sup>75</sup> *Id.*

<sup>76</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, at ¶ 77. *See also* Minoletti, *supra* note 5, at 8; Yen Snaing, *Burma's Government to Appoint Second Woman Minister*, THE IRRAWADDY (Feb. 11, 2014).

<sup>77</sup> Minoletti, *supra* note 5, at 1.

<sup>78</sup> *Id.*; *see generally* JENNIFER HARRIDEN, NIAS, THE AUTHORITY OF INFLUENCE: WOMEN AND POWER IN BURMESE HISTORY (2012) [hereinafter Authority of Influence (2012)].

<sup>79</sup> Minoletti, *supra* note 5, at 1, 26-28.

<sup>80</sup> Authority of Influence, *supra* note 78, at 174; Janell Mills, *Militarism, civil war, and women's status: a Burma case study*, in WOMEN IN ASIA: TRADITION, MODERNITY, AND GLOBALIZATION (Louise Edwards & Mina Roces, eds., 2000).

<sup>81</sup> *See* 2008 Constitution, *supra* note 3, arts. 59, 232 and 301. *See also* Global Justice Center, *The Gender Gap and Women's Political Power in Myanmar/Burma*, at 1, 3, May 2013, available at

[http://globaljusticecenter.net/index.php?option=com\\_mtreet&task=att\\_download&link\\_id=103&cf\\_id=34a](http://globaljusticecenter.net/index.php?option=com_mtreet&task=att_download&link_id=103&cf_id=34a).

<sup>82</sup> 2008 Constitution, *supra* note 3, arts. 109(b) and 141(b), respectively.

<sup>83</sup> Kyaw Thu & Myo Thant Khine, *Myanmar Military's First Women Representatives Join Parliament*, RADIO FREE ASIA, Jan. 14, 2014, available at <http://www.rfa.org/english/news/myanmar/women-01142014143827.html>; Minoletti, *supra* note 5, at 8.

<sup>84</sup> The quota for representatives of the military also makes amending the Constitution to include issues affecting women harder, since amendments require more than 75% approval. 2008 Constitution, *supra* note 3, art. 436(a).

<sup>85</sup> 2008 CEDAW Concluding Observations on Myanmar, *supra* note 2, ¶ 29.

<sup>86</sup> 2013-2022 NSPAW, *supra* note 69, at Women and Decision Making § 13(c)(4).

<sup>87</sup> 2008 CEDAW Concluding Observations on Myanmar, *supra* note 2, ¶ 29. Myanmar recognized the need for such activities and programs in its 2015 CEDAW Report. 2015 CEDAW State Report, Myanmar, *supra* note 1, at ¶ 81.

<sup>88</sup> 2013-2022 NSPAW, *supra* note 69, at § 24 (f).

<sup>89</sup> 2008 CEDAW Concluding Observations on Myanmar, *supra* note 2, ¶ 19.

<sup>90</sup> Moises Naim, *What Is a GONGO? How government-sponsored groups masquerade as civil society*, FOREIGN POLICY MAGAZINE, Oct. 13, 2009.

<sup>91</sup> Authority of Influence, *supra* note 78, at 257; Mills, *supra* note 80, at 277, 285.

<sup>92</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1; 2007 CEDAW State Report, Myanmar, *supra* note 6.

<sup>93</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶¶ 76-85.

<sup>94</sup> UNICEF, *Snapshots of Social Sector Public Budget Allocations and Spending in Myanmar* (2013), available at

[http://www.unicef.org/eapro/Social\\_Sector\\_Public\\_Budget\\_Allocations\\_and\\_Spending\\_in\\_Myanmar\\_.pdf](http://www.unicef.org/eapro/Social_Sector_Public_Budget_Allocations_and_Spending_in_Myanmar_.pdf). It's worth special note that government expenditures on education in 2011 were a meager 0.8% of GDP. The World Bank Group, *Government Expenditure on Education, total (% of GDP)*, <http://data.worldbank.org/indicator/SE.XPD.TOTL.GD.ZS>.

<sup>95</sup> *See generally* Martin Hayden & Richard Martin, *Recovery of the Education System in Myanmar*, 2(2) J. of Int'l & Comparative Education 47, 53 (2013).

<sup>96</sup> THARAPHI THAN, WOMEN IN MODERN BURMA 49, 52 (2014).

<sup>97</sup> Samantha Michaels, *Suu Kyi Criticizes Gender Bias at Burma Universities*, THE IRRAWADDY, Dec. 6, 2013 <http://www.irrawaddy.org/burma/suu-kyi-criticizes-gender-bias-burma-universities.html>.

<sup>98</sup> *Id.*

<sup>99</sup> Khin Hnin Soe, *Burma's Sexist School Requirements Harms Women – and Hurts Society*, THE IRRAWADDY, Sept. 7, 2014, <http://www.irrawaddy.org/contributor/burmas-sexist-school-requirements-hurt-women-society.html>.

<sup>100</sup> 2008 CEDAW Concluding Observations, *supra* note 2, ¶ 35.

<sup>101</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶¶ 88-96.

<sup>102</sup> *See generally* Asia Development Bank, *Interim Country Partnership Strategy: Myanmar 2012-2014*, at 2 (Oct. 2012).

<sup>103</sup> Minoletti, *supra* note 5, at 17; Than, *Women in Modern Burma*, *supra* note 96, 60.

<sup>104</sup> Authority of Influence (2012), *supra* note 78, at 250; Minoletti, *Women's Participation*, *supra* note 5, at 17.

<sup>105</sup> Than, *Women in Modern Burma*, *supra* note 96, at 60; UNFPA, *Report on Situation Analysis of Population and Development, Reproductive Health and Gender in Myanmar*, p. 155 (Jul. 10, 2010).

<sup>106</sup> IBA Report (2012) *supra* note 31, at 56.

<sup>107</sup> UNFPA Report, *supra* note 105, at 155. For example, on the issue of maternity leave, the 2008 Constitution only guarantees maternity leave to Civil Services personnel who are “married” guarantee of maternity leave for for married women only (2008 Constitution, art. 26(b)). However, there are marginal signs of improvement. For example, the Social Security Act of 2012 provides maternity and paternity benefits to “insured workers” covered by the Act. (Social Security Law, 2012, Pyidaungsu Hluttaw Law No. --/2012, The Waxing/Waning Day of 1373 M.E., arts. 25-28 (Apr. 1, 2014).)

<sup>108</sup> 2008 Constitution, *supra* note 3, art. 352.

<sup>109</sup> Samantha Michaels, *Suu Kyi Criticizes Gender Bias at Burma Universities*, THE IRRAWADDY, (Dec. 6, 2013), available at <http://www.irrawaddy.org/burma/suu-kyi-criticizes-gender-bias-burma-universities.html>. (In 2013, the Ministry of

Defense invited women to join the armed forces in commissioned posts, saying successful candidates could start as second lieutenants. However, boys who finish 10<sup>th</sup> standard [in high school] can join the training program, but women can only enter after graduating university. Plus, while boys can leave the program to become captains, women only become second lieutenants.) *See also* 2015 CEDAW State Report, Myanmar, *supra* note 1, at ¶ 37.

<sup>110</sup> 2008 Concluding Observations, *supra* note 2, at ¶ 37.

<sup>111</sup> 2007 CEDAW State Report, Myanmar, *supra* note 6, ¶ 97.

<sup>112</sup> UNICEF, *Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar* (2013), p. 26 available at [http://www.unicef.org/eapro/Social\\_Sector\\_Public\\_Budget\\_Allocations\\_and\\_Spending\\_in\\_Myanmar.pdf](http://www.unicef.org/eapro/Social_Sector_Public_Budget_Allocations_and_Spending_in_Myanmar.pdf).

<sup>113</sup> *See* Risso Gill, I. et al., *Health System Strengthening in Myanmar During Political Reforms: Perspectives from International Agencies*, 1(9) *Health Policy and Planning* 1, 2, 5 (2013) available at <http://heapol.oxfordjournals.org/content/early/2013/06/06/heapol.czt037.full.pdf+html>.

<sup>114</sup> UNFPA Report, *supra* note 105, at 22; World Health Organization, *Country Cooperation Strategy 2014-2018, Myanmar* (2014) available at [http://www.who.int/countryfocus/cooperation\\_strategy/ccs\\_mmr\\_en.pdf](http://www.who.int/countryfocus/cooperation_strategy/ccs_mmr_en.pdf).

<sup>115</sup> Information received from interviews with more than 200 women in several states of Myanmar in preparation for this report, September 2015.

<sup>116</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶ 116; World Health Organization – Global Health Observatory, *Maternal mortality country profiles*, [http://www.who.int/gho/maternal\\_health/countries/en/](http://www.who.int/gho/maternal_health/countries/en/) (comparing Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand, and Vietnam).

<sup>117</sup> Kyaw Oo, et al. *Challenges Faced by Skilled Birth Attendants in Providing Antenatal and Intrapartum Care in Selected Rural Areas of Myanmar*, WHO South-East Asia Journal of Public Health, (2012), pp. 467, 475 available at <http://www.searo.who.int/publications/journals/seajph/whoseajphv1n4p467.pdf>. Midwives are an alternative to traditional birth attendants, albeit still an expensive one. However, there is usually only one midwife for every five villages. As a result, women often depend on auxiliary midwives who, while given basic training by the government, are not meant to be relied upon exclusively. Only when traditional birth goes wrong, and often when it is too late, do families seek out hospitals and clinics. There is only one doctor per 3,315 people and one midwife per 1,195 people. UNFPA Report, *supra* note 105, at p. 22. Although infant mortality rates have declined to 37.5 per 1000 live births (*id.* at 77), they are higher in rural areas and in border areas where conflict impedes access to health care. (United Nations Development Program, Millennium Development Goals: Reduce Child Mortality, n.d., <http://www.mm.undp.org/content/myanmar/en/home/mdgoverview/overview/mdg4.html> (last visited September 27, 2015)).

<sup>118</sup> *See* CEDAW art. 16(f). This problem is emphasized by the new birth spacing laws that require women to place three years between each child's birth. Shwe Aung, *Upper House approves population control bill*, Democratic Voice of Burma, Feb. 15, 2012; Zu Zu, *Upper House Passes Controversial 'Population Control' Bill*, THE IRRAWADDY, Feb. 10, 2015.

<sup>119</sup> *See* UNFPA Report, *supra* note 105, at 145. UNFPA has found that 49% of married urban women used modern contraceptives, while only 34% of married rural women did the same. *Id.* at 104; UNICEF, *Situation Analysis of Children in Myanmar* (July 2012), p. 44.

<sup>120</sup> *See* 2008 Concluding Observations, *supra* note 2, ¶ 29.

<sup>121</sup> Myanmar Penal Code, ¶¶ 312, 315; UNFPA Report, *supra* note 105, at 22.

<sup>122</sup> Ibis Reproductive Health, *Separated by borders, united in need: An assessment of reproductive health on the Thailand-Burma border*, (2012) at 5, 6, 8, 11; RAISE, *Safe Abortion in Emergencies: Myanmar* (June 2014); CEDAW State Report, Myanmar, *supra* note 1, ¶ 120.

<sup>123</sup> *See* Global Justice Center, *The Right to an Abortion for Girls and Women Raped in Armed Conflict: States positive obligations to provide non-discriminatory medical care under the Geneva Conventions*, (2011) available at <http://globaljusticecenter.net/index.php/publications/briefs-and-white-papers/2-the-right-to-an-abortion-for-girls-and-women-raped-in-armed-conflict-february-2011>.

<sup>124</sup> S.C. Res. 2106, ¶19, U.N. Doc S/RES/2106 (June 24, 2013); S.C Res 2122, preamble, U.N. Doc S/RES/2122 (Oct. 18, 2013); UN Secretary-General, *Report of the Secretary-General on women peace and security*, ¶ 72(a), delivered to the Security Council, U.N. Doc. S/2013/525 (4 Sept. 2013).

<sup>125</sup> Women's League of Burma, UPR Report (2015), pp 9–10; Women's League of Burma, *Women's Rights, Myanmar UPR 2015 Fact Sheet* (2015), Item 6.

<sup>126</sup> Information conveyed orally in a meeting of the Women's Organization Network of Myanmar (WON), Yangon, Myanmar, September 2015.

<sup>127</sup> 2008 Concluding Observations, *supra* note 2, ¶ 44.

<sup>128</sup> THE WORLD BANK, RURAL POPULATION (% OF TOTAL POPULATION), <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS> (last visited June 29, 2015).

<sup>129</sup> UNDP IN MYANMAR, ABOUT MYANMAR, <http://www.mm.undp.org/content/myanmar/en/home/countryinfo/> (last visited June 29, 2015).

<sup>130</sup> TERESA O'SHANNASSY, BURMA'S EXCLUDED MAJORITY: WOMEN, DICTATORSHIP AND THE DEMOCRACY MOVEMENT 15 (2006).

<sup>131</sup> UNICEF, Republic of the Union of Myanmar: Statistics, [http://www.unicef.org/infobycountry/myanmar\\_statistics.html](http://www.unicef.org/infobycountry/myanmar_statistics.html) (last visited June 29, 2015).

- <sup>132</sup> See US DEPARTMENT STATE, INT'L RELIGIOUS FREEDOM REPORT 2013: BURMA-RELIGIOUS DEMOGRAPHY, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2013&dclid=222119#wrapper> (last visited June 29, 2015).
- <sup>133</sup> David Steinberg, *Myanmar's Perpetual Dilemma: Ethnicity in a "discipline-flourishing democracy"*, at 1, East-West Center Working Papers – Politics, Governances and Security Series, No. 22 (Apr. 2011).
- <sup>134</sup> US Commission on International Religious Freedom, *2015 Annual Report*, at 27 (2015).
- <sup>135</sup> *Id.*
- <sup>136</sup> Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), ¶ 46, U.N. Doc. A/69/398 (Sept. 23, 2014) [hereinafter Special Rapporteur Report (Sept. 2014)].
- <sup>137</sup> 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.
- <sup>138</sup> 2008 Concluding Observations, *supra* note 2, ¶¶ 20, 34.
- <sup>139</sup> See Tharaphi Than, Women in Modern Burma, *supra* note 96, at 49, 52.
- <sup>140</sup> UNFPA Report, *supra* note 105, at 129.
- <sup>141</sup> 2008 Concluding Observations, *supra* note 2, ¶ 45.
- <sup>142</sup> Hilary Faxon, *The Praxis of Access: Gender in Myanmar's National Land Use Policy 8* (May 2015).
- <sup>143</sup> *Id.* at 8-9.
- <sup>144</sup> 2015 Periodic Report, Myanmar, *supra* note 2, ¶180.
- <sup>145</sup> Faxon, *supra* note 142, at 5.
- <sup>146</sup> *Id.*
- <sup>147</sup> 2008 Concluding Observations, *supra* note 2, ¶ 45.
- <sup>148</sup> Mills, *supra* note 80, at 277; UNICEF, *Possibilities for a United Nations Peace and Development Initiative for Myanmar (Draft for Consultation)*, at 1 (Mar. 16, 1992); Andres Selth, *Burma's Armed Forces: Does Size Matter?*, EAST ASIA FORUM, Sept. 17, 2010, <http://www.eastasiaforum.org/2010/09/17/burmas-armed-forces-does-size-matter/>.
- <sup>149</sup> Internal Crisis Group, *Counting the Costs: Myanmar's Problematic Census*, Asia Briefing No. 144 (May 15, 2014); Yangon, *A Census in Myanmar: Too Much Information?*, THE ECONOMIST, Mar. 22, 2014; Angus Watson, *Burma's badly needed census may have come too soon*, DEMOCRATIC VOICE OF BURMA, Mar. 26, 2004, available at <http://www.dvb.no/analysis/burmas-badly-needed-census-may-have-come-too-soon-burma-myanmar/38975>.
- <sup>150</sup> Asia Briefing (2014), *supra* note 149; Paul Mooney, *Ethnic strife blurs Myanmar's first census in 30 years*, REUTERS, Aug. 30, 2014.
- <sup>151</sup> 2008 Concluding Observations, *supra* note 2, ¶ 2. See also Convention for the Elimination of All Forms of Discrimination Against Women, 42nd Session, Nov. 7, 2008, List of issues and questions with regard to the consideration of periodic reports – Myanmar, CEDAW/C/MMR/Q/3: "The [Myanmar Government's] report contains limited statistical data disaggregated by sex on the situation of women in several areas covered by the Convention, including different groups of women."
- <sup>152</sup> 2008 Concluding Observations, *supra* note 2, at ¶ 49.
- <sup>153</sup> *Id.*
- <sup>154</sup> 2015 CEDAW State Report, Myanmar, *supra* note 1, ¶ 8, Annex B.
- <sup>155</sup> *Id.* at ¶ 136.
- <sup>156</sup> U.N. Secretary-General, *Rep. of the Secretary General on Conflict-related Sexual Violence*, ¶¶ 37-39, U.N. Doc. S/2014/181 (Mar. 13, 2014) [hereinafter Secretary-General Report (March 2014)]; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), ¶ 38, U.N. Doc. A/69/398 (Sept. 23, 2014) [hereinafter Special Rapporteur Report (Sept 2014)]; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the U.N. Human Rights Council (Tomas Ojea Quintana), ¶¶ 36-37, U.N. Doc. A/HRC/22/58 (Apr. 17, 2013) [hereinafter Special Rapporteur Report (Apr. 2013)]; Concluding Observations of the Committee of the Rights of the Child, Myanmar, 59<sup>th</sup> sess., ¶¶ 89-90, U.N. Doc. CRC/C/MMR/CO/3-4 (Mar. 14, 2012) [hereinafter CEDAW Concluding Observation on Myanmar (2008)]; see WLB Report (Jan. 2014), *supra* note 32, at 8; see also Human Rights Watch, *Untold Miseries: Wartime Abuses and Forced Displacement in Kachin State*, (2012) at 36 [hereinafter 2012 HRW Report], available at [http://www.hrw.org/sites/default/files/reports/burma0312ForUpload\\_1.pdf](http://www.hrw.org/sites/default/files/reports/burma0312ForUpload_1.pdf).
- <sup>157</sup> WLB Report (Nov. 2014), *supra* note 35, at 1. Follow up reporting indicates continuing incidents into 2014.
- <sup>158</sup> Secretary-General Report (March 2014), ¶ 38; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Tomas Ojea Quintana), ¶ 48, U.N. Doc. A/68/397 (Sept. 23, 2013) [hereinafter Special Rapporteur Report (Sept 2013)].
- <sup>159</sup> WLB Report (Jan. 2014), *supra* note 32, at 16.
- <sup>160</sup> Secretary-General Report (March 2014), ¶ 37; see also Burma Campaign UK, *Burma Briefing: Rape and Sexual Violence by the Burmese Army*, (July 2014) at 3, available at <http://burmacampaign.org.uk/media/Rape-and-Sexual-Violence-by-the-Burmese-Army1.pdf>; WLB Report (Jan. 2014), *supra* note 32, at 34, ("On the contrary, victims experience harassment and retaliation when they try to seek justice or speak up. As mentioned earlier in this report, silencing of complainants, through threats, torture or illegal detention, is common practice. Sometimes, meager financial compensation is offered to the victims' family as a way to discourage them to go to courts.").

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<sup>161</sup> 2015 Periodic Report, Myanmar, *supra* note 1, ¶ 52.

<sup>162</sup> 2008 Constitution, *supra* note 3, art. 445.

<sup>163</sup> See Special Rapporteur Report (Sept 2014), ¶ 65. See also Special Rapporteur Report (Sept 2013), ¶ 70; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Tomas Ojea Quintana), ¶ 55, U.N. Doc. A/64/318, (24 Aug. 2009) [hereinafter Special Rapporteur Report (Aug. 2009)]; see also WLB Report (Jan. 2014), *supra* note 32, at 29.

<sup>164</sup> 2008 Constitution, *supra* note 3, art. 20(b) (“The Defence Services has the right to independently administer and adjudicate all affairs of the armed forces”), art. 294 (“In the Union, there shall be a Supreme Court of the Union. Without affecting the powers of the Constitutional Tribunal and the Courts-Martial, the Supreme Court of the Union is the highest Court of the Union”), art. 319 (“According to Sub-Section (b) of Section 293, the Courts-Martial shall be constituted in accord with the Constitution and the other law and shall adjudicate Defence Services personnel”), art. 343 (“In the adjudication of Military justice: (a) the Defence Services personnel may be administered in accord with law collectively or singly; (b) the decision of the Commander-in-Chief of the Defence Services is final and conclusive.”).

<sup>165</sup> WLB Report (Nov. 2014) at 9, (“Given the majority of cases are concluded or dismissed within the court martial system – which entirely lacks transparency – survivors are routinely denied justice for crimes committed against them. Conscious of the de facto impunity from prosecution afforded to military, and the slim chance of obtaining any kind of meaningful justice, many survivors choose to remain silent – further entrenching a lack of accountability and transparency at every level.”).

<sup>166</sup> 2015 Periodic Report, Myanmar, *supra* note 1, ¶ 52; Statement from Tin Kyaw, Permanent Representative of Myanmar to the U.N.S.C, at the Open Debate on Women, Peace and Security, ¶ 58, U.N. Doc. S/PV.7160 (April 25, 2014); Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the U.N. General Assembly (Tomas Ojea Quintana), Annex: Responses of the Government of Myanmar to the report of the Special Rapporteur on the situation of human rights in Myanmar, ¶ 9, U.N. Doc. A/65/368 15 (Sept. 2010)[hereinafter Government Responses to Special Rapporteur Report (Sept. 2010)].

<sup>167</sup> WLB Report (Jan. 2014), *supra* note 32, at 1; see generally A Conversation with Wunna Maung Lwin, Council on Foreign Relations, Sept. 24 available at <http://www.cfr.org/burmamyanmar/conversation-wunna-maung-lwin/p37038>.

<sup>168</sup> Women’s League of Burma workshop with WHRD, January 2015.

<sup>169</sup> Comm. on the Elimination of Discrimination against Women, *General recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, ¶¶ 74, 77, U.N. Doc. CEDAW/C/GC/30 (Oct. 18, 2013) [hereinafter CEDAW, *General Recommendation No. 30*], available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/GComments/CEDAW.C.CG.30.pdf>.

<sup>170</sup> 2008 Concluding Observations, *supra* note 2, ¶ 24.

<sup>171</sup> Swedish Burma Committee, *Where are the Women? Negotiations for Peace in Burma*, (May 1, 2013) at 4, <http://www.burmapartnership.org/2013/05/where-are-the-women/>.

<sup>172</sup> *Id.* at 8.

<sup>173</sup> *Id.* at 9. See also Union Peace-Making Central Committee Reformed, Presidential Order No.14/2013, (July 5, 2013) at 6.

<sup>174</sup> Myanmar Peace Monitor, *Government Peace Plan*, <http://www.mmpeacemonitor.org/peace-process/government-peace-plan>.

<sup>175</sup> Special Rapporteur Report (Sept 2013) ¶ 33; see also Rep. of the Special Rapporteur on the situation of human rights in Myanmar (Yanghee Lee), ¶ 34, U.N. Doc. A/HRC/28/72 (Mar. 9, 2015).

<sup>176</sup> Where are the Women (2013), *supra* note 171, at 11; Min Zaw Oo, *Understanding Myanmar’s Peace Process: Ceasefire Agreements*, at 26 (Dec. 2014), available at <http://scar.gmu.edu/publication/understanding-myanmar%E2%80%99s-peace-process-ceasefire-agreements>.

<sup>177</sup> CEDAW arts. 6, 7; CEDAW *General Recommendation No. 30*, ¶ 46.