

PROMISES NOT PROGRESS:

*Burma's National Plan for Women Falls Short of
Gender Equality and CEDAW*



THE GLOBAL JUSTICE CENTER

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Created in 2005, the **Global Justice Center (“GJC”)** 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. Adhering to principles over politics, GJC fills a critical niche in the human rights field by serving as an unwavering voice calling for the enforcement of international legal obligations to uphold fundamental human rights. GJC works by combining advocacy with service, forging legal precedents in venues which have the greatest potential for global impact, such as the United Nations Security Council, while empowering strategic partners – including governments, women leaders, and civil society – with international law expertise and tools to embed human rights and gender equality. Based in New York City, GJC focuses on situations that present the greatest opportunity for systemic change, such as conflict and post-conflict situations and transitional democracies. Specifically, GJC’s legal projects challenge systemic discrimination in the enforcement of international law, while shaping international law to ensure gender equality. In doing so, GJC seeks to advance the integrity of our global legal system, forge new rights for women and girls, and have a direct positive impact on the rights and lives of persons who suffer from egregious human rights violations.

One of the oldest and largest law school-based human rights programs, the **Leitner Center for International Law and Justice (“Leitner Center”)**, named in recognition of the Leitner Family, provides education and training to law students, facilitates capacity building and advocacy with activists and grassroots groups around the world, and contributes to critical research among scholars in international human rights. From its base at Fordham Law School in New York City, the Leitner Center develops long-term partnerships with local social justice organizations and other stakeholders across the globe. Through its pioneering programs, clinics, and education initiatives, the Leitner Center trains students to become international legal experts and impassioned human rights advocates. In addition, the Leitner Center works in solidarity with grassroots activists worldwide to help strengthen the rule of law and access to justice, promote the rights of vulnerable populations around the world, foster sustainable development, and examine the role of traditional legal systems and their relationship to international law and human rights.

For more information, please visit our websites: <http://www.globaljusticecenter.net> and <http://www.leitnercenter.org>



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This report is the product of collaboration between the Global Justice Center (“GJC”) and the Leitner Center for International Law & Justice (“Leitner Center”) at Fordham Law School. In 2013 GJC and the Leitner Center embarked on a partnership to combat the deeply-rooted and systemic human rights abuses against women in Burma.

This report was written by Joey Lee, Michelle Onello, Akila Radhakrishnan, Phyu Phyu Sann and Grant Shubin. Hailey Flynn, Allison Knight, Jennifer Li, Lauren Paulson and Dana Swanson also contributed to the research and drafting of the report. We would like to thank Jocelyn Brooks, Kat Thomas, Alexandra Insinga, Sarah Abraham, Mathilde Holmer and Martha Strautman for their help editing and cite checking the report.

List of Abbreviations

ASEAN	Association of Southeast Asian Nations
Burma	Burma was renamed Myanmar by the military junta in 1989. Because this decision was made without consulting public will or opinion, this Report refers to the country as “Burma.”
CEDAW or Convention	Convention to End All Forms of Discrimination against Women
CEDAW Committee or Committee	Committee on the Elimination of Discrimination against Women
CSO	Central Statistical Organization
GONGOs	Government Organized Non-Governmental Organizations
Government	Government of Myanmar/Burma
IDP	Internally Displaced Person/s
MNCWA	Myanmar National Committee for Women’s Affairs
MNHRC	Myanmar National Human Rights Commission
MSF	Médecins Sans Frontières
MWAF	Myanmar Women’s Affairs Federation
NLD	National League for Democracy
NDSC	National Defense and Security Council
NHRI	National Human Rights Institution
NSPAW	National Strategic Plan for the Advancement of Women
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
USDP	Union Solidarity and Development Party
WCRC	Women and Child Sub-Committee (of MNHRC)
2008 Constitution	Constitution of the Republic of the Union of Myanmar
2008 Concluding Observations	CEDAW Committee 2008 Concluding Observations in Review of Myanmar

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Executive Summary

In late 2013, the Government of Burma/Myanmar (“the Government”) issued a National Strategic Action Plan for the Advancement of Women 2013-2022 (NSPAW) based in part on its obligations under the Convention to End All Forms of Discrimination against Women (CEDAW). Heralded as a “historic and essential step towards substantive equality between women and men,” NSPAW was released amidst a flurry of other governmental plans, strategies, promises, and actions ostensibly aimed at transforming the country into a democracy. However, conspicuously missing from these reforms, including NSPAW, were deeper systemic overhauls of the many legal, political, cultural and socio-economic barriers to the full enjoyment of human rights in Burma which must underpin any true democracy.

The issuance of NSPAW invites assessment of the state of gender equality in Burma, the prospects for NSPAW’s success in meeting its goals, and a comparison between NSPAW and Burma’s international legal obligations under CEDAW. Taking note of the need for such an assessment, as well as the opportunities presented by the forthcoming review of Burma by the CEDAW Committee in July 2016, this report by the Global Justice Center (GJC) and Leitner Center for International Law and Justice (Leitner Center) evaluates NSPAW against the reality for women on the ground in Burma and the Government’s legal obligations under CEDAW.

In short, the critical analysis in this report reveals that NSPAW’s provisions are aspirational and ambiguous, without clear guidance on implementation or benchmarks for meaningful evaluation. This report further demonstrates how NSPAW fails to meaningfully grapple with the structural barriers precluding gender equality—including the 2008 Constitution of the Republic of the Union of Myanmar, decades of armed conflict and the continuing power of the military, antiquated laws and legal frameworks, and the difference between discrimination “in law” and discrimination “in effect”—all of which must be addressed in order to achieve substantive gender equality in Burma.

As this report shows, at its best NSPAW is an inadequate and amorphous effort to improve women’s experience in Burma without disruption to long-embedded power structures that insulate the country’s male-dominated elite. At its worst, NSPAW is a deceptive document that pays lip service to Burma’s CEDAW and other human rights obligations while actually entrenching gender inequality. Either way, NSPAW suffers from critical shortcomings related to its conceptualization, substantive content, and implementation. Specifically, this report identifies three ways that NSPAW falls short: (1) flawed conceptual foundation, in particular due to its incorporation of and reliance on existing systematic barriers to equality including the 2008 Constitution; (2) lack of practical, action-oriented provisions, as evidenced by the fact that two years after the issuance of NSPAW, no implementation plans have been developed or produced; and (3) absence of accountability through monitoring and evaluation.

Ultimately, NSPAW poses the threat of complacency—both on the part of the Government regarding the treatment of women and girls, as well as on the part of the international community in failing to critically evaluate the Government’s claims of progress. NSPAW is one plan of many in a pattern of cursory improvements to a deeply flawed system. It is GJC and the Leitner Center’s hope that this report, and in particular its recommendations, is a useful tool for all actors working in Burma, including the Government and civil society, to meaningfully address and challenge gender inequality in the country, including through the forthcoming CEDAW review.

Importantly, this report is not intended to be a comprehensive appraisal of women’s rights in Burma and instead examines certain salient substantive areas raised by the interaction of NSPAW, CEDAW and the current state of affairs. Similarly, the report only generally touches on the intense interconnectedness of the issues (e.g. decades on conflict implicate instability in women’s education and professional opportunities, which affect women’s opportunities to participate in political processes, which complicates the ability to earnestly address health, violence, and cultural issues only affecting women). However, we hope the report’s analytical framework can serve as a template for the meaningful consideration of the status of women in Burma through the lens of CEDAW.

The report is organized by substantive issue area, with reference to the articles of CEDAW addressing that issue (e.g. Adoption of a Legal Definition of Discrimination (Articles 1, 2); Women and Education (Article 10); Eliminating Negative Practices, Stereotypes, and Media Portrayals (Articles 5, 15 and General Recommendation 21). Each substantive section of the report is broken up into four smaller sections covering: (1) Burma's legal obligations under CEDAW; (2) the current situation on the ground in Burma; (3) analysis of NSPAW in light of CEDAW and the current situation; and (4) recommendations for the Government to bring itself into full compliance with CEDAW and to meet its commitment to gender equality.

ADOPTION OF A LEGAL DEFINITION OF DISCRIMINATION

clearly and affirmatively embody in law the principle of equality between men and women, and pursue, by all appropriate means and without delay, the practical realization of that principle

ACCESS TO JUSTICE

enforce prohibitions against gender-based discrimination, provide redress, reparation, and compensation for victims and hold perpetrators accountable for their actions

PARTICIPATION OF WOMEN IN DECISION-MAKING

ensure that women can access public and political decision-making opportunities without discrimination in law or in effect

END VIOLENCE AGAINST WOMEN

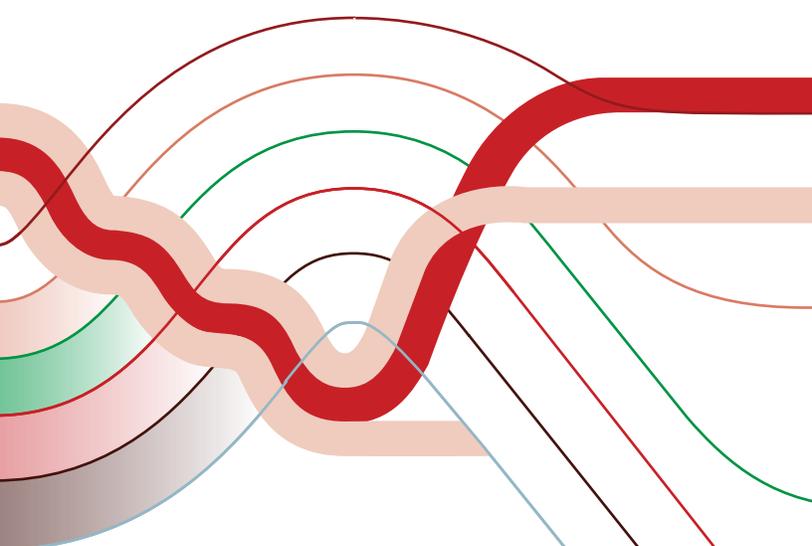
take all appropriate measures to eliminate violence against women by any person, organization, or enterprise, including violence that occurs within the family

CONFLICT & POST-CONFLICT SETTINGS

- (1) protection against sexual violence during and after armed conflicts;*
- (2) ensuring perpetrators of sexual violence are brought to justice;*
- (3) promoting the full participation of women in formal peacemaking and post-conflict reconstruction*



**Burma's
CEDAW
obligations**



HEALTH

take a deliberate and comprehensive approach to ensuring women's equal and non-discriminatory access to health care

EDUCATION

the elimination of discrimination that prevents women and girls from accessing education of all levels and types—including formal, non-formal, and vocational training

EMPLOYMENT

ensure that women have equal opportunities with men regarding their choice of profession and employment, guaranteeing women's rights to equal remuneration for work of equal value, social security, and protection of health and safety in the workplace

ELIMINATE MULTIPLE FORMS OF DISCRIMINATION

eliminate discriminatory laws and policies and accelerate the achievement of substantive equality through the use of temporary special measures

COMBAT NEGATIVE STEREOTYPES & PORTRAYALS

combat negative stereotypes against women to ensure their equal status within society as a general matter and to make advances in each of CEDAW's other substantive areas

PRECISE AND DISAGGREGATED DATA

precise and disaggregated data is crucial for assessing the extent to which women enjoy the equality guarantees at the heart of CEDAW

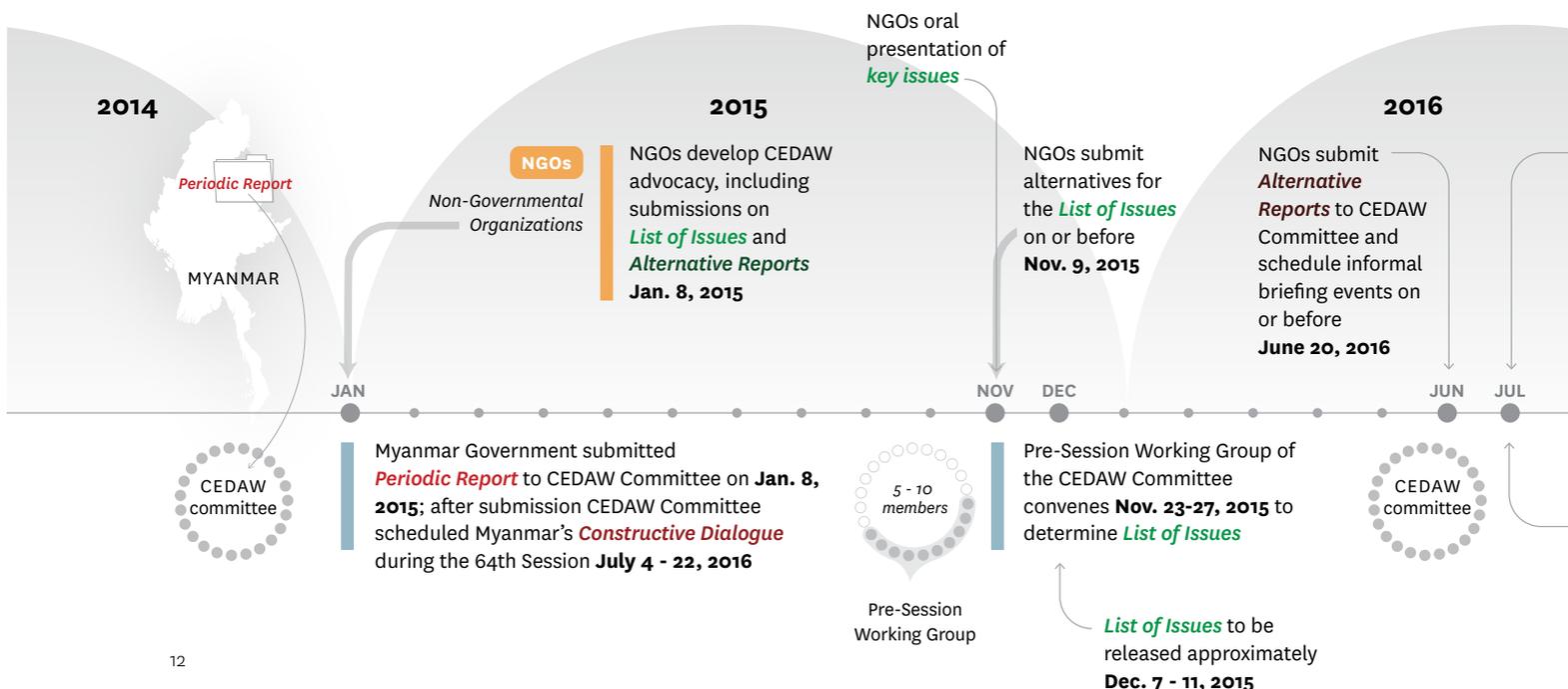
1. INTRODUCTION TO CEDAW

Women throughout the world are subject to fundamental inequalities and discrimination both in law and in practice, due in part to the survival of patriarchal stereotypes and beliefs. In the fight to achieve gender equality and combat discrimination, women can face a broad array of obstacles: the lack of a gender-inclusive definition of discrimination in law, informal and formal barriers to justice mechanisms, unequal treatment in the workplace, or even simply the absence of comprehensive and disaggregated data on the experience of women. The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) was designed to address these issues and to remove obstacles that discriminate against women and prevent women’s equal enjoyment of rights in society.¹

CEDAW is the only international human rights treaty to exclusively address women; as such, it is an essential instrument for advocates working to ensure gender equality around the world. It was adopted by the United Nations General Assembly in 1979 and to date, 188 countries (“States parties”) have ratified CEDAW, including Burma in 1997.² CEDAW brings together, in a legally binding form, internationally accepted principles on the rights of women in all societies.³

CEDAW’s provisions reflect two complementary, but distinct purposes: (1) to eliminate discrimination against women;⁴ and (2) to guarantee women the “exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”⁵ In order to achieve those purposes, CEDAW requires that States parties take steps to ensure both *de jure* (in law or formal) and *de facto* (in effect or substantive) equality as well as eliminate both direct discrimination and indirect (unintended) discrimination, also known as discrimination in effect.⁶ Its requirements apply to States parties’ public actions, laws, and policies, and require sanctions on acts of private actors, including within the family, community, and commercial arenas.⁷ Notably, CEDAW does not allow for derogation in times of public emergency and States parties’ obligations are not to be subjugated to concerns of national security or public order and health.⁸

In order to comply with CEDAW, States parties must not only change laws and policies but also change the social and cultural norms within their borders to eliminate prejudices and practices based on ideas of inferiority or superiority of either sex.⁹ This broad mandate affords States parties the flexibility to determine how best to give effect to CEDAW within their own legal systems.¹⁰ Still, the Convention is explicit in its recognition of the goal of actual, as well as legal,

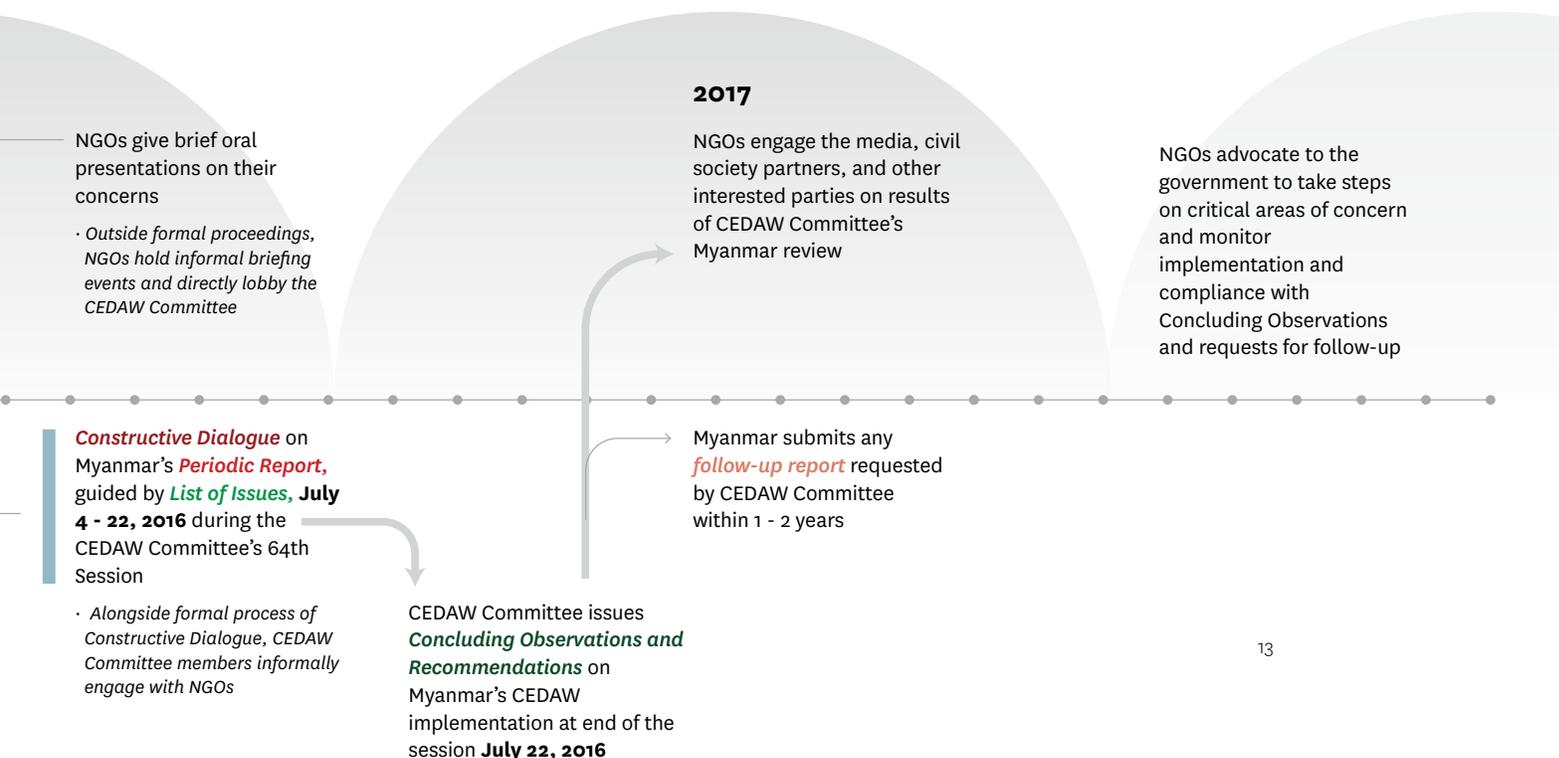


equality—and of the need for temporary special measures to achieve that goal.¹¹ Simply put, CEDAW requires States parties to transform their governments, economies, communities, and families to achieve full gender equality.¹²

Periodically, the Committee on the Elimination of Discrimination against Women (the “Committee”) issues General Recommendations providing analysis and understanding of CEDAW’s various mandates and offering broad-based guidance to States parties (and other interested entities) on how to implement these mandates. Typically, General Recommendations reflect the Committee’s concerns about States parties’ implementation of CEDAW and ensure consistency in the application of CEDAW requirements. To date, the Committee has adopted 30 General Recommendations. Their subject matter varies from the working methods of the Committee to interpretations of the substantive articles of CEDAW. The General Recommendations that address substantive articles are considered the guiding authority for clarifying State parties’ obligations to uphold specific rights.¹³

States parties’ progress in implementing their obligations under CEDAW is monitored by the Committee.¹⁴ This is done principally through periodic examination of States parties based on reports by national and international non-governmental organizations. This process results in a report, called Concluding Observations, which details concerns and makes recommendations to the State party under review. The Concluding Observations are narrow, applying only to the specific issues relevant to the conditions within a particular State. Importantly, they allow the Committee to identify priorities, practices, and obstacles to progress that it considers contrary to CEDAW mandates.¹⁵

In January 2015, the Government submitted its combined fourth and fifth periodic report to the Committee on its progress in implementation of state obligations under CEDAW.¹⁶ This periodic report, which will be a critical foundation of the Government’s next review by the Committee, repeatedly references its “National Strategic Plan for the Advancement of Women” (NSPAW)¹⁷ as a mechanism for implementing its CEDAW obligations to eliminate discrimination against women and guarantee the exercise and enjoyment of human rights and fundamental freedoms by women on an equal basis with men. Notably, however, several key areas the periodic report echo NSPAW’s lack of specificity and practical detail concerning implementation of CEDAW-related obligations, as further described in later sections of this report.



Endnotes

- 1 Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].
- 2 Signatures, Ratifications, Accessions, Successions to the Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Treaty Collection, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-8&chapter=4&lang=en.
- 3 The United Nations and the Advancement of Women 1945-1992 in UN Blue Book Series VI, at 41, U.N. Sales No. E.96.I.9 (rev. ed., 1996).
- 4 CEDAW, *supra* note 1, arts. 1, 2.
- 5 *Id.* art. 3.
- 6 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*, ¶ 24, U.N. Doc. CEDAW/C/GC/28 (Dec. 16, 2010) [hereinafter CEDAW, *General Recommendation No. 28*]; see also *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* 53 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., 2012) [hereinafter CEDAW: A Commentary].
- 7 CEDAW, *General Recommendation No. 28, supra* note 6, at ¶¶ 13, 17; see Simone Cusack & Lisa Pusey, *CEDAW and the Rights to Non-discrimination and Equality*, 14 Melbourne J. Intl. L. 1, 9 (2013) [hereinafter Cusack & Pusey].
- 8 CEDAW, *General Recommendation No. 28, supra* note 6; Diane A. Desierto, *Necessity and National Emergency Clauses: Sovereignty in Modern Treaty 252* (2012).
- 9 Comm. On the Elimination of Discrimination against Women, *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, ¶¶ 10-11, U.N. Doc. HRI/GEN/1/Rev.7 (2004) [hereinafter CEDAW, *General Recommendation No. 25*]; Cusack & Pusey, *supra* note 7, at 11; CEDAW: A Commentary, *supra* note 6, at 55.
- 10 CEDAW: A Commentary, *supra* note 6, at 16.
- 11 CEDAW, *General Recommendation No. 28, supra* note 6, at ¶ 33; see also *General recommendation No. 25, supra* note 9, at ¶¶ 4, 24; see also Ineke Boerefijn et al., eds., *Temporary Special Measures: Accelerating De Facto Equality of Women Under Article 4(1) UN Convention on the Elimination of All Forms of Discrimination Against Women 47-48* (2003).
- 12 CEDAW: A Commentary, *supra* note 6, at Foreword.
- 13 *Id.* at 21.
- 14 The Committee was established according to article 17 of the Convention on the Elimination of All Forms of Discrimination against Women and is currently comprised of 23 experts on women's rights from around the globe. See The Office of the U.N. High Commissioner for Human Rights, Comm. on the Elimination of Discrimination against Women – Membership (January 1, 2013), <http://www2.ohchr.org/english/bodies/cedaw/membership.htm>.
- 15 CEDAW: A Commentary, *supra* note 6, at 16.
- 16 Combined fourth and fifth periodic report of the Government of Myanmar to CEDAW Committee, U.N. Doc. CEDAW/C/MMR/4-5, (Jan. 8, 2015).
- 17 Myanmar's National Strategic Plan for the Advancement of Women 2013-2022 ("NSPAW").

2. BACKGROUND ON BURMA

From 1962 to 2011, Burma¹ was ruled by a military junta that brutally repressed citizens' rights and crushed dissent, especially in ethnic areas. The "rule of law" was dictated entirely by the military, which closed Burma off from the rest of the world, economically and politically. Burma experienced intense economic polarity, with crushing poverty for the vast majority of citizens and economic prosperity for the military and its cronies. The military junta committed rampant human rights abuses and denied basic human rights and political freedoms, while relying on indiscriminate and open-ended detention to punish dissent. While these abuses were widespread, women suffered disproportionately. The combination of male-dominated repressive military rule and traditional cultural patriarchy had insidious and pervasive long-term negative effects on women's health, well-being and welfare, ability to participate in politics and political decision-making, educational, economic and employment opportunities, and overall equality. Ethnic conflict, which continues to this day, further militarized society and limited women's economic, political and social choices. In 2011, the military installed a "civilian" government and instituted a process of reform as part of a carefully-orchestrated plan to continue military rule under the guise of democracy. Certain reforms have improved, marginally, the lives of people in Burma but no reforms have addressed or dismantled the legal and structural barriers that prevent true democracy and gender equality from taking hold in Burma.

2.1 EARLY HISTORY

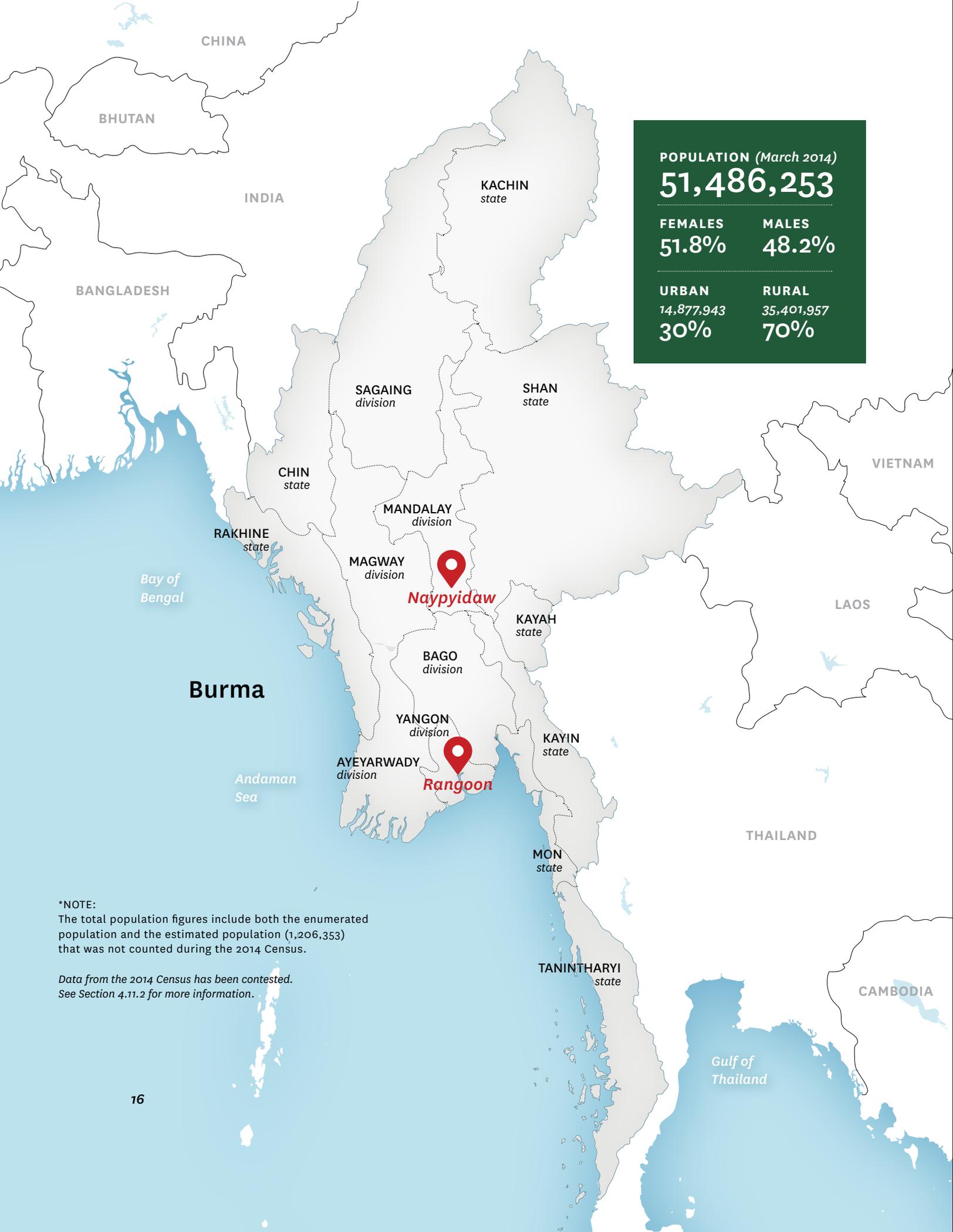
Burma contains well over one hundred ethnic groups.² The British used this ethnic division to their advantage during colonial rule, which began in the lower part of Burma in 1824 and extended to the entire country in 1886.³ This divided mind-set still prevails and contributes to many of Burma's ethnic conflicts today.⁴ Burma gained independence from the British in 1947, due in part to the leadership of General Aung San, who earned the trust of ethnic nationalities.⁵ However, six months before the country's scheduled independence, Aung San was assassinated, throwing Burma into political turmoil that eventually spiraled into armed ethnic conflict and civil war.⁶ From 1948 to 1962, Burma was governed by an increasingly unstable parliamentary democracy.⁷ In 1962, General Ne Win, claiming fear of national disintegration and communist insurgency, executed a military takeover—the first of several staged in the name of national unity.⁸

2.2 MILITARY RULE

From 1962 to 1988, General Ne Win led a one-party Socialist political system that governed Burma by suppressing dissent, holding citizens it deemed a threat in harsh and life-threatening conditions, and routinely using (incommunicado) detention, often for years.⁹ The Government also monitored the movements and communications of people, searched homes arbitrarily and without warrants, and imprisoned its critics.¹⁰ Laws were passed limiting privacy and restricting the freedoms of speech, press, assembly, association, religion, and movement.¹¹ Judges were political appointees and the integrity of the legal profession deteriorated.¹²

On August 8, 1988, Burma erupted in a series of public demonstrations protesting extreme political oppression and economic hardships.¹³ These peaceful demonstrations were violently crushed by army troops who fired on the unarmed crowds, killing an estimated 3,000 protesters throughout the country.¹⁴ Thousands more were arrested and jailed.¹⁵

In response to the international condemnation following this massacre and to quell the unrest, the military imposed martial law on September 18, 1988.¹⁶ Calling itself the State Law and Order Restoration Council ("SLORC"),¹⁷ the new junta changed the country's name from Burma to Myanmar, allowed new political parties to be formed, and called for a multi-party election.¹⁸ The election held in May 1990 was seemingly free and fair, as the main opposition party, the National League for Democracy ("NLD"), won a landslide victory, securing 392 out of 485 seats in parliament.¹⁹ The



POPULATION (March 2014)	
51,486,253	
FEMALES	MALES
51.8%	48.2%
URBAN	RURAL
14,877,943	35,401,957
30%	70%

***NOTE:**
 The total population figures include both the enumerated population and the estimated population (1,206,353) that was not counted during the 2014 Census.

Data from the 2014 Census has been contested. See Section 4.11.2 for more information.

leader of the NLD was, and is, General Aung San's daughter, Aung San Suu Kyi. However, the election results were never honored; instead, opposition leaders were arrested and Aung San Suu Kyi was placed under house arrest.²⁰ The junta claimed that transfer of power to a civilian government could not occur until a new constitution was brought into effect.²¹

It took until 1993 to convene a constitutional convention ("National Convention"), with the majority of delegates hand-picked by the junta.²² The junta instructed the delegates to be guided by six basic principles, one of which was to ensure that the military would occupy a prominent "national political leadership role" in the future.²³ The National Convention convened only periodically from 1993 to 2007 and was unexpectedly suspended several times between 1993-1995 due to dissent from ethnic parties and the NLD.²⁴ While the NLD initially sent delegates to the National Convention, it withdrew them in November 1995 to protest the undemocratic nature of the drafting process.²⁵ In 1996, the regime issued a sweeping law making public criticism of the National Convention illegal and punishable by prison sentences of up to 20 years.²⁶

The National Convention was not reconvened again until May 2004, as a result of then-Prime Minister General Khin Nyunt's announcement of a "Seven Steps Policy Program of the State," commonly referred to as the "Roadmap to Democracy."²⁷ This "Roadmap" was an "obvious (but doomed) attempt to neutralize international opprobrium" that existed because of the government's assumed responsibility for an attack on Aung San Suu Kyi.²⁸

The document ultimately put forth by the National Convention, the Constitution of the Republic of the Union of Myanmar (the "2008 Constitution"),²⁹ grants the military complete legal autonomy, placing it outside of any civilian oversight by the executive or legislative branches.³⁰ Furthermore, the 2008 Constitution gives power over Burma's executive and legislative branches to the National Defense and Security Council, a military council under the control of the Commander-in-Chief of Burma's military (also known as the Defense Services).³¹ It also grants former and current Government officials immunity for any misdeeds in office, allows the military complete control over its own affairs, and gives the Commander-in-Chief final and conclusive authority over all matters of military justice.³²

The 2008 Constitution further grants the military the right to appoint 25% of national parliamentarians and certain key ministers.³³ Because constitutional amendments require more than a 75% vote, this guarantees the military a veto over any constitutional amendments thereby limiting the parliament's ability to enact amendments contrary to the military's interests.³⁴ The 2008 Constitution, therefore, does not reflect democratic ideals so much as present a new "constitutional" template for military involvement in all aspects of the body politic. It legitimizes the presence of the military at all levels of government, rather than ushering in a system of democratic representation or establishing the rule of law. ³⁵ The resulting polity is therefore "long on discipline, and short on democracy."³⁶

After international outrage over the brutal repression of peaceful protests led by Buddhist monks in September 2007, which came to be known as the "Saffron Revolution," the junta announced that a national referendum on the 2008 Constitution would be held in May 2008.³⁷ The lead-up to the referendum vote was rife with reports of intimidation, threats, and misinformation.³⁸ Just one week before the scheduled vote, Cyclone Nargis hit Burma, killing an estimated 140,000 people and leaving an additional 2.4 million impacted by the loss of their homes or economic livelihood.³⁹ The junta declined to postpone the referendum, despite the devastation and massive humanitarian needs.⁴⁰ The reported results of the election—92.48% approval of the referendum with over 99% voter turnout—were considered impossible under the circumstances.⁴¹

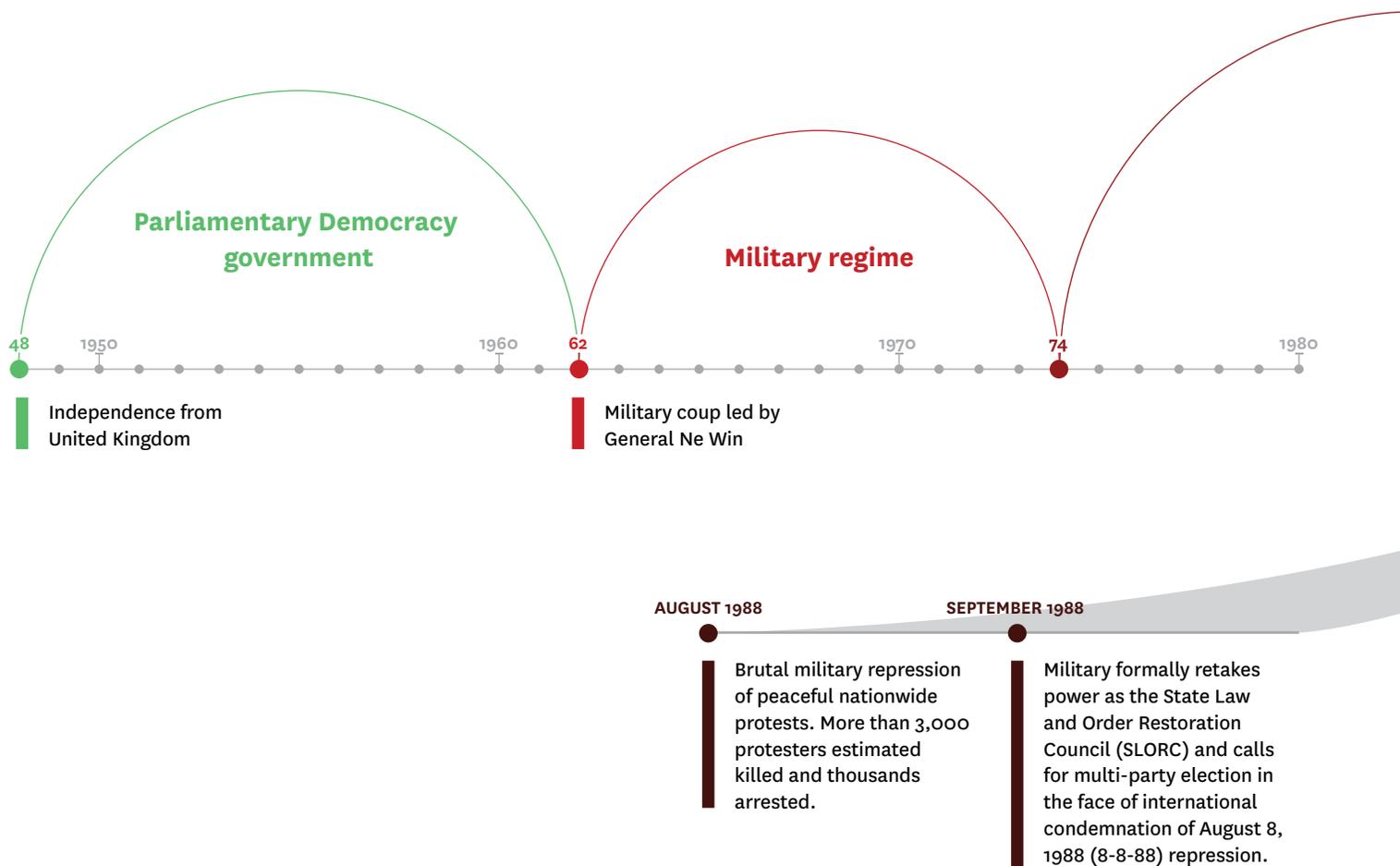
2.3 TRANSITION TO QUASI-CIVILIAN GOVERNMENT

After the "adoption" of the 2008 Constitution, elections were held in November 2010.⁴² The military-backed Union Solidarity and Development Party ("USDP") won about 85% of elected parliamentary seats, perhaps not surprising given the allegations of voting irregularities, corruption and coercion, and the passing of regulations favoring mili-

tary-backed candidates.⁴³ These seats, together with the non-elected 25% of seats reserved for military appointees, gave the military a strong foothold in Parliament. The President of this new “civilian” government is an ex-general, ex-Prime Minister of the former military junta, and the chair of the National Convention that carefully drafted the 2008 Constitution to ensure permanent military rule in Burma.⁴⁴ Numerous ex-military officers populated the most powerful positions in the civilian government, demonstrating that reform in Burma today is part of a carefully-orchestrated plan by the military to legitimize itself under the guise of “democratization.”⁴⁵

Since the civilian Government took power in 2011, Burma has experienced certain limited improvements with respect to fundamental human rights and freedoms.⁴⁶ The new Government has taken steps towards opening up the economy, unshackling the press, promoting access to the internet, and consolidating peace agreements with armed ethnic groups.⁴⁷ The limited reforms focus on readying Burma’s economy for foreign investment rather than securing civil liberties and the rule of law. In a telling example of the Government’s priorities, old laws used to repress civil liberties remain on the books and the Government, somewhat capriciously, continues to use them to assert its authority.⁴⁸

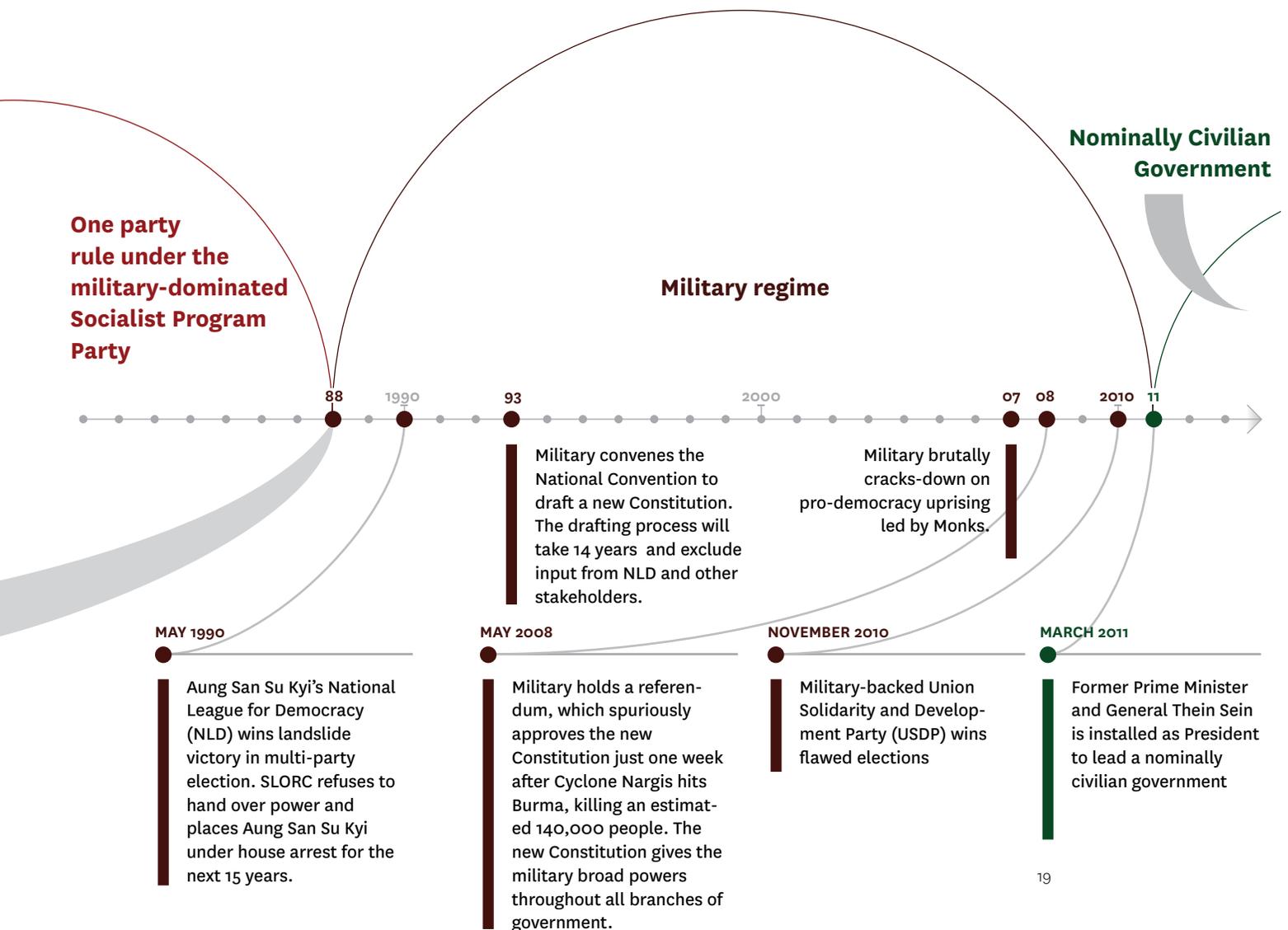
Recently, these Government crackdowns have led some observers to lament the “backtracking” on reforms.⁴⁹ Even though the Government’s sincerity about transforming society and truly transitioning to democracy is open to debate, one thing is irrefutable: after years of reforms, significant economic, political, and social problems remain. Burma continues to experience widespread poverty and underdevelopment; a lack of administrative and institutional capacity; a governing system without true accountability and transparency; ongoing ethnic conflict; continued human rights abuses, including sexual violence, by military forces; and pervasive gender inequality.



2.4 ETHNIC CONFLICT WITH THE MILITARY

For decades, the Government has engaged in armed conflict with numerous ethnic and political rebel groups.⁵⁰ During the reign of the military junta, the military cracked down on ethnic insurgency forces and targeted ethnic people and their political and military organizations. Allegations of mass human rights abuses against the ethnic communities at the hands of the military abounded (and persist even today).⁵¹ The imposition of killings, rapes, forced labor, forced relocation, extortion, land and food requisitions, and restrictions on access to fields and markets had a devastating and destabilizing impact on ethnic populations.⁵² Women and girls in ethnic areas were subjected to sexual violence by the military and rape was (and is) used as a tactic of war and oppression.⁵³ It is estimated that decades of ethnic strife has caused tens of thousands of deaths, mass displacement and devastating social and economic costs for ethnic groups.⁵⁴

The new government has professed its desire to secure peace agreements with ethnic groups.⁵⁵ Towards this end, the international community has committed its assistance and resources, by helping to establish the Myanmar Peace Centre in 2012.⁵⁶ In March 2015, the Government signed a draft nationwide ceasefire with ethnic groups and to date, it has signed individual ceasefires with 14 of 16 ethnic armed groups.⁵⁷ However, the draft ceasefire is simply a general outline, and therefore only a preliminary step towards comprehensive national reconciliation. The peace process is proceeding slowly and “conflict persists alongside developments in peace talks.”⁵⁸



2.5 WOMEN IN BURMA

Society in Burma considers men to be “natural” heads of the family and, as a result, “leaders” of society.⁵⁹ Women, on the other hand, are seen as the standard bearers of traditions and culture, and as nurturers who are subordinate to men.⁶⁰ Religious beliefs, cultural superstitions, age-old customs and a backlash against colonialism have resulted in a nationalist movement geared toward upholding traditional values in Burma, including patriarchy. Male leaders hold protectionist attitudes toward women that in turn reinforce the belief that women should defer to men.⁶¹ Successive military and military-backed governments have also employed protectionist attitudes to reinforce their own authority over women.⁶² For example, government organized non-governmental organizations (“GONGO”s)⁶³ focusing on women, such as the Myanmar Women’s Affairs Federation (MWAF) and the Myanmar National Committee for Women’s Affairs (MNCWA), are led by men, or the wives of high-ranking members of the military, and focus on programs that foster women’s protection (by men) rather than women’s empowerment.⁶⁴ These organizations have been the focal point for implementing the equality initiatives required by CEDAW.⁶⁵

Women have historically been excluded from political decision-making in Burma, since politics is “not conducive to their nature.”⁶⁶ As a result, promulgated laws and government policies recognize the basic principle of equality for citizens, but not the need to create measures to ensure the political, social, cultural and economic changes necessary to bring about substantive equality for, and eliminate discrimination against, women.⁶⁷ Due to the successive government’s failure to promote equality and the status of women, many indicators demonstrate the male predominance and female subordination throughout Burma. In fact, the 2014 gender-related indices (Gender Development Index “GDI” and Gender Inequality Index “GII”) used by the United Nations to capture inequalities in achievement between men and women ranks Burma at 150 of 187 countries.⁶⁸

Moreover, the increasing militarization of Burma since 1962 has undermined women’s ability to participate in political, economic and social life and therefore limited their access to positions of power.⁶⁹ The number of women involved in politics has always been extremely small, about 2% during the socialist regime from 1962 to 1988 and none in government high level positions during military rule from 1988 to 2011.⁷⁰ Even in the democratic elections held in 1990, women won only 3% of the 485 available seats.⁷¹

Currently, the situation for women is not much improved. As of February 2015, women accounted for only 4.8% of combined seats in the upper and lower houses of the national legislature (the Amyotha Hluttaw and the Pyithu Hluttaw, respectively).⁷² Furthermore, as of June 2014, women only made up 2.8% of seats at state and regional government levels, 0% of administrators at township levels, and only 0.1% of village heads.⁷³ Moreover, only two out of 33 federal ministers are women.⁷⁴ In another troubling indication, few women are involved in current peace talks and are primarily present only as observers.⁷⁵ As a result, the peace process avoids issues of concern to women who are particularly affected by the conflicts.⁷⁶

The law in Burma does not sufficiently promote and protect women’s rights to substantive equality. Sources of law in the current system are: the 2008 Constitution, customary law, statutory law, and English common law.⁷⁷ Most of the laws that relate specifically to women are outdated, such as the Penal Code of 1860, and many are disadvantageous and discriminatory towards women.⁷⁸ Frequently, laws treat women as incapable of independent action and judgment on issues that concern them.⁷⁹ One particularly troubling example of this attitude is the current slate of “Laws on the Protection of Race and Religion” that will deeply entrench gender discrimination and will clearly violate CEDAW.⁸⁰ Finally, another obstacle is that women often lack knowledge about legal rights and lack confidence in the integrity of the legal system.⁸¹

Over the past six decades, the military junta’s economic and social policies have had a particularly detrimental impact on women.⁸² The Government’s failure to provide adequate educational, health and social services placed heavy bur-

dens on women, particularly those living in rural and ethnic minority areas where women bear the burden of providing for themselves and families.⁸³ Traditionally, the budgetary allocation for health and education ranged from 1.3% to 3% of GDP compared with the 20% to 30% of GDP devoted to the male-dominated military.⁸⁴ This underinvestment directly impacted women resulting in, amongst other things, high maternal and infant mortality rates.⁸⁵ Overall poverty, coupled with cultural, institutional and legal discrimination against women, has precluded women from active and equal participation in society.

Since 2011, the Government has undertaken certain limited democratic reforms and professes a dedication to improving the status of women. However, the Government's characterization of these reforms and laws needs to be carefully considered. For example, in its 2015 report to the Committee, the Government asserted that "8 laws related to women's rights have been amended or enacted."⁸⁶ An examination of these laws reveals that only one specifically relates to women;⁸⁷ the rest of the laws are general protections for certain categories of people in Burma, such as laborers.⁸⁸ Therefore, these laws cannot rightly be described as fulfilling a CEDAW obligation to eliminate discrimination and ensure equality for women in Burma. Furthermore, despite shows of progress, women continue to be marginalized in society and largely excluded from politics and the peace process. It is clear, then, that women's status will not improve unless the Government fully and comprehensively addresses the structural, societal, cultural and legal causes of deeply-rooted gender inequality in Burma.

One showcase Government effort to improve women's status has been the development of a NSPAW, which has been touted as a comprehensive plan to eliminate endemic inequality in Burma.⁸⁹ NSPAW, however, will not succeed unless its implementation comprehensively addresses the fundamental legal, social, political and economic barriers to substantive equality, sets forth specific implementation mechanisms, and establishes adequate monitoring systems. NSPAW as it currently stands fails to meet any of these standards of success. NSPAW's shortcomings are discussed further in the following section.

Endnotes

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- 7 Charney, *supra* note 3, at 72; Topich & Leitich, *supra* note 3, at 71.
- 8 Robert H. Taylor, *The State of Myanmar* 293 (2009); Mary P. Callahan, *Making Enemies: War and State Building in Burma* 202 (2003); Charney, *supra* note 3, at 108; Topich & Leitich, *supra* note 3, at 85.
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- 11 Amnesty Int'l, *Myanmar: Thousands of People Victims of Human Rights Violations*, AI Index ASA 16/12/92 (28 Oct. 1992).
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- 28 Trevor Wilson, *Myanmar's Long Road to National Reconciliation* xx (2006).
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- 32 *Id.* arts. 343(b), 445.
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- 36 Holliday, *supra* note 1, at 87.
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- 45 Holliday, *supra* note 1, at 86, 87; Seth Mydans, *Myanmar Junta Members Go Civilian*, N.Y. Times, May 1, 2010, available at <http://www.nytimes.com/2010/05/02/world/asia/02myanmar.html>; U.S. Department of State, Bureau of Democracy,

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- 68 UN Development Programme, Human Development Reports, Table 1: Human Development Index and its Components, <http://hdr.undp.org/en/content/table-4-gender-inequality-index>; UN Development Programme, Human Development Reports, Table 5: Gender-related Development Index, <http://hdr.undp.org/en/content/table-4-gender-inequality-index> <http://hdr.undp.org/en/content/table-5-gender-related-development-index-gdi>.
- 69 Mills, *supra* note 59, at 266, 272.
- 70 Mills, *supra* note 59, at 272, 285; Dieter Nohlen, Florian Grotz, & Christof Hartmann, *Elections in Asia: A data handbook*, Vol. I: Middle East, Central Asia, and South Asia 603 (2001).
- 71 Democratic Voice of Burma, *1990 Multi-party Democracy General Elections*, Compiled by Khin Kyaw Han et al., at 17 (May 2000), available at http://www.ibiblio.org/obl/docs4/1990_multi-party_elections.pdf.
- 72 Official Website of Myanmar Parliament, http://www.myanmar-parliament.gov.mm/?page_id=144 (last visited Mar. 23, 2015) (total ratio of women representatives in both houses of parliament: 635:31, or 4.8%) (Pyithu Hluttaw (lower house): of 420 parliamentarians in total, 25 women hold elected seats and 2 women hold armed forces appointed seats (ratio 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%)).
- 73 P. Minoletti, The Asia Foundation, *Women's Participation in the Subnational Governance of Myanmar*, at 8 (June 2014).
- 74 Combined second and third periodic report of the Government of Myanmar to CEDAW Committee, ¶ 77, CEDAW/C/MMR/3, (Sept. 2007) [hereinafter 2007 CEDAW State Report, Myanmar]; Minoletti *supra* note 73, at 8; Yen Snaing, *Burma's Government to Appoint Second Woman Minister*, The Irrawaddy (Feb. 11, 2014).
- 75 Swedish Burma Committee, *Where are the Women?: Negotiations for Peace in Burma*, at 11 (May 2013), available at <https://dl.dropboxusercontent.com/u/53174387/Where%20are%20the%20Women.pdf>; see also Special Rapporteur Report (Sept. 2014), *supra* note 46, at 33.
- 76 Ja Nan Lahtaw & Nang Raw, *Opinion, Myanmar's Current Peace Processes : A New Role for Women?*, Center for Humanitarian Dialogue, Dec 17, 2012, at 12, available at http://www.hcdcentre.org/uploads/tx_news/41MyanmarFINAL.pdf.
- 77 Alec Christie, *The Rule of Law and Commercial Litigation in Myanmar*, 10:7 Pacific Rim Law and Policy Journal 47, 50 (2000); Maung Maung, *Law and Custom in Burma and the Burmese family VI*, Ch. 3 (1963); Kyaw Hla Win, *The Legal System of the Republic of the Union of Myanmar in a Nutshell*, Globalex, Sept. 2013, available at <http://www.nyulawglobal.org/globalex/Myanmar.htm>.⁷⁸ Gender Equality Network Report (Jan. 2013), *supra* note 61, at 20.
- 79 See generally 2007 CEDAW State Report, Myanmar, *supra* note 64; (The recent proposed bundle of laws restricting women's ability to freely choose a husband provides another example.). See, e.g., The Buddhist Women's Special Marriage and Succession Act (1954), ¶¶ 5, 6, 7, 8; Public Health Act (1972) and Social Security Law, The Pyidaungsi Hluttaw Law No. --/2012, The x Waxing/Waning Day of 1373 M.E. (August 31, 2012); The Nursing and Midwifery Law, SLORC Law No. 19/90, 14th Waxing Day of Thadinkyut, 1352 M.E., Oct. 17, 1990, chps. II, VI, VII, VIII, X, XII; Labour Union Law, The Pyidaungsu Hluttaw Law No. 7/2011, The 14th Waxing day of Thadinkyut 1373 M.E. Oct 11, 2011.
- 80 They are the Religious Conversion Bill, Buddhist Women's Interfaith Marriage Bill, Population Control Healthcare Bill and the Monogamy Bill. See Press Release, U.N. High Commissioner of Human Rights, Myanmar Needs Urgently to Get Back on Track, U.N. Press Release (Feb. 25, 2015); Shwe Aung, *Speaker urges laws to protect Burma's national race, religion*, Democratic Voice of Burma News, Feb. 27, 2014, available at <https://www.dvb.no/news/speaker-urges-laws-to-protect-burmas-national-race-religion-burma-myanmar/37855>. See also Joint Statement by Amnesty Int'l and the Int'l Commission of Jurists, *Myanmar: Parliament must reject discriminatory 'race and religion' laws*, (March 3, 2015) [hereinafter "AI/ICJ Statement"] <https://www.amnesty.org/en/documents/asa16/1107/2015/en/>.
- 81 Brenda Belak, *Images Asia, Gathering Strength: Women from Burma and their Rights* 227 (2002).
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- 83 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct. 20–Nov. 7, ¶44, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter 2008 CEDAW Concluding Observations on Myanmar]; Mills, *supra* note 59, at 281.
- 84 Authority of Influence, *supra* note 60, at 226; Mills, *supra* note 59, at 273-4. The military continues to be one of the top 20 countries in terms of military spending as a percentage of Gross Domestic Product. Stockholm International Peace Research Institute, *Military Expenditure Database 2014* available at http://www.sipri.org/research/armaments/milex/milex_database/milex_database.
- 85 Mills, *supra* note 59, at 274, 279; see generally Tim Cammack et al., United Nations Children's Fund (UNICEF), *Myanmar, Snapshot of Social Sector Public Budget Allocations and Spending in Myanmar* (2013), available at: http://www.unicef.org/eaop/Social_Sector_Public_Budget_Allocations_and_Spending_in_Myanmar_.pdf
- 86 2015 CEDAW State Report, Myanmar, *supra* note 64, at ¶ 8.
- 87 The Leave and Holiday Act (Amended July, 2014)
- 88 The laws are: the Social Security Law (Aug. 31, 2012); Minimum Wage Law (Jul. 12, 2013); Labour Organization Law (Oct. 11, 2011); Settlement of Labour Dispute Law (Mar. 28, 2012); Employment and Skills Development Law (Aug 30, 2013); Myanmar National Human Rights Commission Law (Mar. 28, 2014); Mass Media Law (Mar. 14, 2014); and the Organization Registration Law (Jul. 18, 2014).
- 89 Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women ("NSPAW")* (2013-2022), Myanmar 2013.

3. Introduction to Myanmar's National Strategic Plan for the Advancement of Women

On October 3, 2013, the Government unveiled NSPAW, proclaiming it a “comprehensive” ten-year plan embodying its “commitment to promoting and protecting the human rights of women” in Burma.¹ NSPAW was officially issued through the Department of Social Welfare, a division of Burma’s Ministry of Social Welfare, Relief and Resettlement.² Framed as “an ambitious yet achievable”³ plan for progress towards women’s equality from 2013 to 2022 in 12 “Key Priority Areas,” NSPAW’s stated objectives are to ensure that “[a]ll women in [Burma] are empowered and able to fully enjoy their rights with the support of” the Government of Burma, and to enable the creation of “systems, structures and practices . . . for the advancement of women, gender equality, and the realization of women’s rights.”⁴

In structuring NSPAW as a framework for achieving these objectives, the Government cites both domestic and international law as NSPAW’s primary foundations.⁵ With respect to domestic law, NSPAW is intended to ensure that women are able to “fully enjoy their rights in accordance with the features of the Constitution.”⁶ In regards to international law, NSPAW is based on the principles of CEDAW (which the Government ratified in 1997) and the 12 priority areas outlined under the Beijing Platform for Action (adopted at the Fourth World Conference on Women in Beijing in 1995).⁷ In fact, NSPAW’s 12 Key Priority Areas closely track the 12 priority concerns of the Beijing Platform for Action, namely:

- “The persistent and increasing burden of poverty on women”⁸ (referred to in NSPAW as “Women and Livelihoods”⁹);
- “Inequalities and inadequacies in and unequal access to education and training”¹⁰ (referred to in NSPAW as “Women, Education, and Training”¹¹);
- “Inequalities and inadequacies in and unequal access to health care and related services”¹² (referred to in NSPAW as “Women and Health”¹³);
- “Violence against women”¹⁴ (referred to in NSPAW as “Violence Against Women”¹⁵);
- “The effects of armed or other kinds of conflict on women”¹⁶ (referred to in NSPAW as “Women and Emergencies”¹⁷);
- “Inequality in economic structures and policies, in all forms of productive activities and in access to resources”¹⁸ (referred to in NSPAW as “Women and the Economy”¹⁹);
- “Inequality between men and women in the sharing of power and decision making at all levels”²⁰ (referred to in NSPAW as “Women and Decision-Making”²¹);
- “Insufficient mechanisms at all levels to promote the advancement of women”²² (referred to in NSPAW as “Institutional Mechanisms for the Advancement of Women”²³);
- “Lack of respect for and inadequate promotion and protection of the human rights of women”²⁴ (referred to in NSPAW as “Women and Human Rights”²⁵);
- “Stereotyping of women and inequality in women’s access to and participation in all communication systems, especially in the media”²⁶ (referred to in NSPAW as “Women and the Media”²⁷);
- “Gender inequalities in the management of natural resources and in the safeguarding of the environment”²⁸ (referred to in NSPAW as “Women and the Environment”²⁹); and
- “Persistent discrimination against and violation of the rights of the girl child”³⁰ (referred to in NSPAW as “The Girl Child”³¹).

These three legal frameworks—the 2008 Constitution, CEDAW, and the Beijing Platform for Action—constitute NSPAW’s foundation.³²

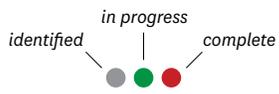
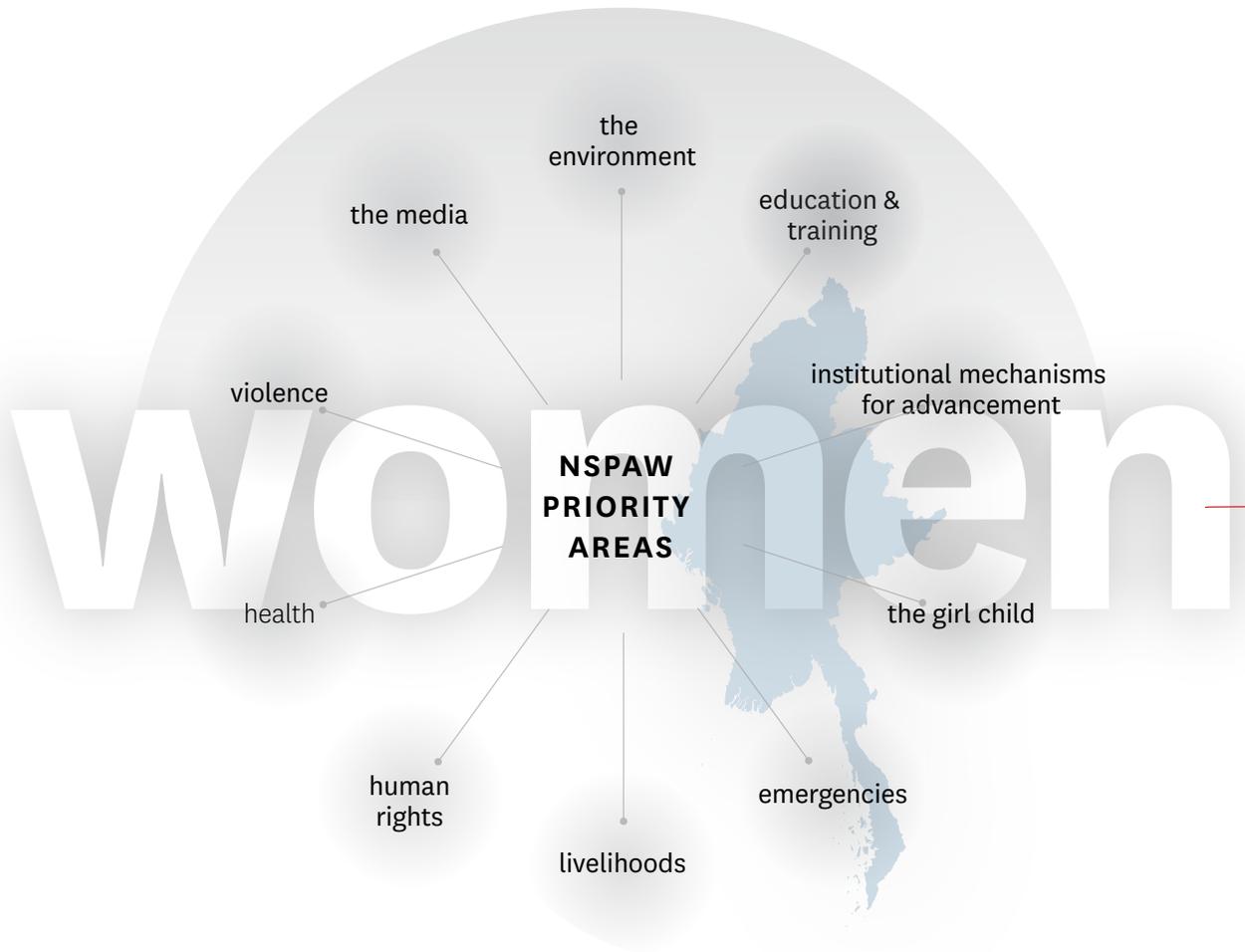
For each of NSPAW’s Key Priority Areas, four broad categories of action are outlined – “Research and Surveys,” including thematic areas requiring fact-gathering and analysis; “Awareness Raising,” including issues and situations requiring greater public awareness and sensitivity; “Implementation,” outlining actions and aims for implementation by government agencies; and “Budget and Policy Making,” outlining resource allocation goals and objectives. Importantly, general references to implementation of Burma’s international obligations, particularly those under CEDAW, are mentioned throughout NSPAW.

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). NSPAW also calls for the establishment of sub-committees for each of the 12 Key Priority Areas comprised of relevant ministry representatives and related stakeholders.³³ 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.³⁴ Importantly, in its own words, NSPAW’s implementation involves, “development of partnerships and coordinating mechanisms that are inclusive of a broad range of stakeholders” including, among others, national and international NGOs and UN monitoring bodies.³⁵

While NSPAW constitutes a welcome step towards implementing Burma’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 Burma, 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 preserves constitutionally-mandated military power structures that preclude substantive equality. Additionally, NSPAW fails to adequately reflect the scope and nature of Burma’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.

Ultimately, the issuance of NSPAW invites assessments of the state of gender equality in Burma, the prospects for NSPAW’s success in meeting its goals, and a comparison between NSPAW and Burma’s international legal obligations under CEDAW.



Progress Tracker for Key Priority Areas as of September 2015

RESEARCH AND SURVEYS

BUDGET & POLICY MAKING

● ○ ○
58 surveys focusing on the key priority areas

● ○ ○
Resource Allocation Plan to be developed

● ○ ○
Respective ministries to submit required budget to Union government

Called-for Implementation, Monitoring, Evaluation & Reporting

NSPAW Management Committee

develop a 5 year *Operational Plan* to coordinate and prioritise the implementation of strategic policies, plans and legislative reforms developed by Task Forces for each of the 12 NSPAW Priority Areas

use and refine core indicators to review progress towards the objective of NSPAW

responsible for implementation, monitoring and annual reporting to the Cabinet of the President's Office under the guidance of the Myanmar National Committee on Women's Affairs

develop partnerships and coordinating mechanisms that are inclusive of a broad range of stakeholders

Operational Plan

- identify the structures and mechanisms for management and implementation at all government levels
- define the role of Parliament and the Judiciary in implementation
- linked to other government national plans, such as National Health Plan, National Strategic Plan for Reproductive Health and National Action Plan for Children
- accompanied by a Resource Allocation Plan that states the amount earmarked by the government and the amount sought from donors and other stakeholders

IMPLEMENTATION

● ○ ○
Establish NSPAW Management Committee

● ● ○
Establish a 5 year Operation Plan to be reviewed periodically

● ○ ○
Identify structures and mechanisms for management and implementation

● ○ ○
Identify the role of parliament and judiciary in implementation

● ○ ○
Develop partnerships with stakeholders

● ○ ○
Establish sub-committees for each Key Priority Area

Endnotes

- 1 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%20dvlpmt%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].
- 2 2013-2022 NSPAW, *supra* note 1, at Introduction § 1.
- 3 *Id.* at Preface.
- 4 *Id.* at Objectives § 5.
- 5 *Id.* at Background History § 3 (The Burmese government "has drafted [NSPAW] based on the Constitution 2008 [sic], CEDAW and the 12 Priority Areas of the Beijing Platform for Action.>").
- 6 *Id.* at Preface and at Background History § 4.
- 7 *Id.*, at § 3. In addition to CEDAW and the Beijing Platform for Action, other international mechanisms are cited in NSPAW to a lesser extent, including the UN Millennium Declaration and the International Conference on Population and Development. Regional mechanisms cited in NSPAW include the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Commission on Women.
- 8 Fourth World Conference on Women, Beijing, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, Platform for Action, ¶ 44 [hereinafter Beijing Declaration and Platform for Action].
- 9 2013-2022 NSPAW, *supra* note 1, at Women and Livelihoods § 7.
- 10 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 11 2013-2022 NSPAW, *supra* note 1, at Women, Education and Training § 8.
- 12 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 13 2013-2022 NSPAW, *supra* note 1, at Women and Health § 9.
- 14 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 15 2013-2022 NSPAW, *supra* note 1, at Violence Against Women § 10.
- 16 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 17 2013-2022 NSPAW, *supra* note 1, at Women and Emergencies § 11.
- 18 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 19 2013-2022 NSPAW, *supra* note 1, at Women and the Economy § 12.
- 20 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 21 2013-2022 NSPAW, *supra* note 1, at Women and Decision-Making § 13.
- 22 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 23 2013-2022 NSPAW, *supra* note 1, at Institutional Mechanisms for the Advancement of Women § 14.
- 24 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 25 2013-2022 NSPAW, *supra* note 1, at Women and Human Rights § 15.
- 26 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 27 2013-2022 NSPAW, *supra* note 1, at Women and the Media § 16.
- 28 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 29 2013-2022 NSPAW, *supra* note 1, at Women and the Media § 17.
- 30 Beijing Declaration and Platform for Action, *supra* note 8, at ¶ 44.
- 31 2013-2022 NSPAW, *supra* note 1, at The Girl Child § 18.
- 32 *Id.* at Background History § 3.
- 33 *Id.* at Management Committee §§ 22-23.
- 34 *Id.* at Implementation §§ 24(a)-(c).
- 35 *Id.* at Implementation § 24(f).

4. ANALYSIS AND RECOMMENDATIONS

4.1 ADOPTION OF A LEGAL DEFINITION OF DISCRIMINATION (ARTICLES 1, 2)

4.1.1 RELEVANT CEDAW GUIDANCE

A fundamental obligation of every State party under CEDAW is to ensure that the principle of equality between men and women is clearly and affirmatively embodied in law, and to pursue, by all appropriate means and without delay, the practical realization of that principle.¹ Under CEDAW, State parties must enact, at a minimum, formal legal frameworks to ensure equality as a matter of law (*de jure* equality).² In addition, CEDAW requires State parties to ensure *de facto* or *substantive* equality, by improving the actual position of women through concrete and effective laws, policies and programs.³ To achieve substantive equality, therefore, women must be “empowered by an enabling environment to achieve equality of results.”⁴ In other words, women must actually experience equality and enjoy the same opportunities as men in all spheres, even if that requires non-identical treatment of men and women.⁵

To ensure substantive equality for women, CEDAW obligates State parties to eliminate all forms of discrimination against women, which are “two different but equally important goals.”⁶ CEDAW recognizes the need to eliminate direct discrimination as well as indirect discrimination. Legal tribunals, sanctions, and remedies must protect women from both types of discrimination, whether arising from law, policies, procedures, or practice and whether resulting from public or private actors.⁷

A critical first step towards achieving these goals is the adoption of a legal definition of discrimination against women, in conformity with CEDAW, within a State party’s national constitution or other appropriate legislation.⁸ CEDAW explicitly incorporates the notion of substantive equality by defining discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”⁹ States parties are under an obligation to eliminate discrimination as defined by CEDAW.

The lack of a legal definition of discrimination against women in domestic law, including one that incorporates substantive equality, hinders the formulation, interpretation, and dissemination of laws and policies impacting the rights of women. This leaves the government, civil society actors, and international monitors without a critical benchmark for assessing progress on the elimination of discrimination against women. Moreover, without such a definition, victims of discrimination are left without fundamental guidance on how to engage the legal system, restricting their ability to access justice and leaving perpetrators of discrimination against women unaccountable for their actions.

4.1.2 BURMA SPECIFIC CONTEXT

Burma has not adopted a legal definition of discrimination against women in conformity with CEDAW within the 2008 Constitution, legislation, or other domestic legal framework. Certain articles of the 2008 Constitution mention the notion of equal rights for women and non-discrimination.¹⁰ However, even when considered together, these disparate provisions do not constitute a comprehensive definition of discrimination against women. The provisions do not encompass substantive equality or articulate a prohibition of discrimination against women in law and in effect, as required of all States parties under CEDAW.

The absence of a comprehensive CEDAW-conforming definition of discrimination against women is not the only critical shortcoming of the 2008 Constitution. In fact, the 2008 Constitution contains affirmative provisions that clearly constitute direct and indirect discrimination against women. For instance, Article 352 of the Constitution states that notwithstanding a prohibition against sex-based discrimination “in appointing or assigning duties to civil service per-

sonnel,” “nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.”¹¹ This explicitly and formally legalizes discrimination against women and perpetuates negative and limiting stereotypes about women. The Government attempted to legitimize this discrimination in the Combined Fourth and Fifth Periodic Reports to the CEDAW Committee, 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.”¹² This statement fully displays the deeply-rooted discrimination and patriarchy that influences and governs policy-making and law in Burma.

Meanwhile, other constitutional provisions indirectly discriminate against women, thereby reinforcing gender inequality. Articles 109, 141 and 161 each mandate a specific quota of representatives directly appointed by Burma’s Defense Services.¹³ As described above in the “Background on Burma” section, women have only recently been allowed to serve actively in the military.¹⁴ After intense criticism, the military finally appointed two women as part of its constitutionally-mandated legislative quotas in January 2014, giving women a mere .01% of the overall military appointed seats.¹⁵ The mandated quota for members of the military clearly violates the prohibition on indirect discrimination, or discrimination in effect. It should also be noted that these military quotas not only limit women’s political participation,¹⁶ they also make amending the 2008 Constitution to include issues affecting women harder, since amendments require more than 75% approval.¹⁷

The absence of adequate definitional language was raised in the Concluding Observations of the Committee following its review of Burma in 2008. 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.¹⁸ Accordingly, the Committee called on Burma to consider including a strong substantive equality guarantee in the 2008 Constitution and amending existing definitions of discrimination to encompass both direct and indirect discrimination against women, as well as discrimination in the public and private spheres.¹⁹ The 2008 Constitution has not been amended since that review and thus, the Committee’s concerns have not been addressed.

4.1.3 ANALYSIS OF NSPAW

While NSPAW describes in several places the Government’s intent to “review, development, and application of laws, policies, and procedures...in accordance with CEDAW,” the document contains no discussion of adopting a legal definition of discrimination against women in conformance with CEDAW, through either constitutional or legislative reform.²⁰ Indeed, NSPAW contains no direct discussion of constitutional or legislative provisions regarding definitions of gender discrimination, nor does it call for the removal of clearly discriminatory language in the 2008 Constitution. Without a definition of discrimination against women that specifically addresses both discrimination in law and discrimination in effect, Burma’s obligations to ensure both legal and substantive equality between men and women, as required under CEDAW, remain unmet. Most importantly, as explicitly requested by the Committee, the Government must ensure that any legal definition of discrimination against women includes the notion of *substantive* equality, in furtherance of its CEDAW obligation to improve the actual position of women.²¹

The Government’s 2015 periodic report to the CEDAW Committee also fails in this regard. Specifically, in the periodic report, the Government states that the 2008 Constitution is “the foundation of all existing laws, and includes a description of the principles of the constitution of a sovereign nation, civil rights and responsibilities,” specifically referring to gender-related language in Articles 348, 350, 351, 352, and 368.²² However, for the reasons described above, these disparate provisions do not constitute a comprehensive definition of discrimination against women in accordance with Burma’s CEDAW obligations. Moreover, while the periodic report references a commitment towards “enacting a separate law and rules related to the law in order to ensure women’s rights, equal opportunities for wom-

en, and non-discrimination,” there is no indication that such laws will include a definition of discrimination against women in accordance with Burma’s obligations under CEDAW.²³

To conform to CEDAW, the Government needs to adopt a legal definition of discrimination as required by CEDAW. Moreover, as evidenced by the clear examples of discrimination in law under Article 352 and discrimination in effect through Articles 109, 141 and 161, the Government will also need to repeal or revise discriminatory constitutional provisions to ensure that the 2008 Constitution adheres to CEDAW in both letter and spirit.

4.1.4 RECOMMENDATIONS

- The Government must immediately adopt a legal definition of discrimination against women that is in conformance with CEDAW, either in the form of an amended constitutional provision or enacted through anti-discrimination legislation.
- The Government must repeal or amend specific provisions of the 2008 Constitution that affirmatively embody legalized discrimination against women as a matter of law, including Article 352, and revise constitutional provisions constituting discrimination in effect, including Articles 109 and 141.
- The Government must ensure that any definition of discrimination in existing laws, including the 2008 Constitution and any existing legislation, reflects the notion of substantive equality by encompassing both discrimination as a matter of law and discrimination in effect, as well as discrimination in the public and private spheres.

Endnotes

- 1 Convention on the Elimination of All Forms of Discrimination Against Women, art. 2(a), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].
- 2 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004) [hereinafter CEDAW, *General Recommendation No. 25*].
- 3 CEDAW, *General Recommendation No. 25*, *supra* note 2, at ¶¶ 7-8.
- 4 *Id.* at ¶ 8; U.N. Dep't of Econ. & Soc. Affairs, Div. for the Advancement of Women, "Enhancing Participation of Women in Development through an Enabling Environment for Achieving Gender Equality and the Advancement of Women", U.N. Doc. EGM/WPD-EE/2005/BP.1 (2005), available at <http://www.un.org/womenwatch/daw/egm/enabling-environment2005/>.
- 5 CEDAW, *General Recommendation No. 25*, *supra* note 2, at ¶ 8.
- 6 Rep. of the Comm. on the Elimination of Discrimination against Women, 26th Sess., Jan. 14 – Feb. 1, 2002, 27th Sess., June 3 – 21, 2002, Exceptional Sess., Aug. 5 – 23, 2002, ¶ 146, U.N. Doc. A/57/38; GAOR, 57th Sess., Supp. No. 38 (2002).
- 7 CEDAW, *supra* note 1, arts. 1, 2.
- 8 *Id.* art. 2(a).
- 9 *Id.* art. 1.
- 10 Constitution of the republic of the union of myanmar (2008) arts. 347, 348, 350, and 352, [hereinafter 2008 Constitution].
- 11 *Id.* art. 352.
- 12 Combined second and third periodic report of the Government of Myanmar to CEDAW Committee, ¶ 97, CEDAW/C/MMR/3, (Sept. 4, 2007) [hereinafter 2007 CEDAW State Report, Myanmar].
- 13 2008 Constitution, *supra* note 10, arts. 109, 141, and 161.
- 14 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.
- 15 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).
- 16 2007 CEDAW State Report, Myanmar, *supra* note 12, at ¶ 37.
- 17 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 10, art. 436(a).
- 18 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42nd Sess., Oct. 20-Nov. 7, ¶ 8, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter 2008 CEDAW Concluding Observations on Myanmar].
- 19 *Id.* at ¶ 9.
- 20 Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women* ("NSPAW") (2013-2022), Myanmar 2013, ¶ 7(d)(2), ¶ 8(d)(6), ¶ 9(d)(3) [hereinafter 2013-2022 NSPAW].
- 21 CEDAW, *General Recommendation No. 25*, *supra* note 2, at ¶¶ 7-8.
- 22 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].
- 23 *Id.* at ¶ 6.

4.2 ACCESS TO JUSTICE (ARTICLES 2, 15, GENERAL RECOMMENDATIONS 28, 33)

4.2.1 RELEVANT CEDAW GUIDANCE

The ability of women to access justice is essential to a States party's implementation of CEDAW obligations, including the fundamental obligation to "pursue by all appropriate means and without delay a policy of eliminating discrimination against women."¹ Indeed, CEDAW's guarantees of women's fundamental rights are meaningless unless those rights can be asserted through independent, impartial, and effective systems of justice. Critically, such systems must enforce prohibitions against gender-based discrimination, provide redress, reparation, and compensation for women who experience gender-based discrimination, and hold perpetrators of gender-based discrimination accountable for their actions.² Access to justice is therefore fundamental to the rule of law and a critical means for women to assert their rights under CEDAW.³

While the concept of access to justice encompasses a wide range of important issues,⁴ this report highlights certain issues below that are of particular importance to NSPAW and Burma's CEDAW obligations. Specifically, this section addresses: (1) access to justice generally; (2) national human rights institutions and bodies; (3) informal justice mechanisms; (4) CEDAW's Optional Protocol; and (5) impact on women.

Access to justice issues are particularly important for women who have experienced gender-based violence, including sexual violence during or after armed conflict. Under CEDAW, issues of violence against women, including in conflict and post-conflict, require specialized analysis and governmental measures in conformance with CEDAW, and are addressed separately under the sections of this report addressing conflict and violence against women.

Access to Justice Generally

Specific obligations of States parties concerning access to justice are mentioned throughout the text of CEDAW, particularly Articles 2 and 15. Article 2 requires States parties "to adopt appropriate legislative and other measures... prohibiting all discrimination against women," "to establish legal protection of the rights of women on an equal basis with men," and "to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination."⁵ Critically, Article 2 is interpreted to mean that States parties must ensure the effective legal enforcement of women's entitlement to enjoy rights on an equal basis with men and the availability of legal remedies for women who experience gender-based discrimination.⁶ Meanwhile, under Article 15, States parties "shall accord to women equality with men before the law and "in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity."⁷ This means, at a minimum, non-biased and non-discriminatory administration of justice and the actual, practical capacity of women to access courts and tribunals on an equal basis with men.⁸ Thus, Article 15 acknowledges not only obstacles faced by women in accessing justice imposed by law, but also the impact of gender discrimination on access to justice by women in effect. As a matter of substantive equality, the obligations of States parties under CEDAW therefore require implementation of access to justice in a manner that improves the actual ability of women to access justice in a manner that demonstrates equality of results.⁹

In July 2015, the Committee issued General Recommendation 33 on Women's Access to Justice, which provides authoritative and detailed guidance to States parties on their obligations to ensure that women have access to justice.¹⁰ The Committee identifies six "interrelated and essential components" necessary to ensure access to justice: (1) justiciability; (2) availability; (3) accessibility; (4) good-quality; (5) accountability of justice systems; and (6) the provision of remedies for victims.¹¹ Taken together, these six components highlight the need for State parties to ensure its justice systems adhere to international standards of competence, efficiency, independence and impartiality.¹²

A key element of women's access to justice is having a non-discriminatory framework of legal protection. In this light, the Committee has found that "constitutional provisions, law, regulations, procedures, customs and practices that are

based on traditional gender-stereotypes and norms and are...discriminatory and deny women full enjoyment of their rights under the Convention.”¹³ Accordingly, the Committee recommends that States parties take steps to “abolish any existing laws, procedures, regulations, jurisprudence, customs and practices that directly or indirectly discriminate against women especially in their access to justice, and to abolish discriminatory barriers to access to justice”¹⁴ and “ensure that rights and correlative legal projections are recognized and incorporated in the law.”¹⁵ In General Recommendation 33, the Committee makes recommendations for State party action in five areas of law: (1) constitutional; (2) civil; (3) family; (4) criminal; and (5) administrative, social and labour, and provides detailed guidance on commonly discriminatory elements of these areas of law.¹⁶

Additionally, the Committee identifies the importance of women’s legal awareness and education: “women who are unaware of their human rights are unable to make claims for their fulfillment.”¹⁷ Accordingly, States parties must provide women access to education and information about their rights and remedies through targeted outreach activities and other information and awareness-raising campaigns.¹⁸

Women also face discrimination in the administration of justice. States parties therefore must guarantee an independent, impartial, effective judiciary that is free from political influence, interference, and corruption, as well as from prejudices or stereotypical notions of women.¹⁹ States must also take steps to address the capacity (or lack thereof) of judicial or quasi-judicial institutions to address violations of women’s rights²⁰ and to “incorporate a gender perspective into all aspects of the justice systems.”²¹ In doing so, States parties must “take steps, including temporary special measures, to ensure that women are equally represented in the judiciary” as well as in other justice-based professions such as lawyers, law enforcement officers and justice system administrators.²²

In order for women to access justice, they must have effective legal counsel and aid, including “free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law.”²³ The Committee has noted that the time and money needed to access judicial bodies, the complexity of proceedings and the lack of access to quality, gender-neutral legal advice all prohibit women’s equal access to justice.²⁴ To address this, the Committee has recommended that States parties set up sustainable and responsive legal aid institutions in addition to requiring gender-sensitive legal services providers.²⁵

National Human Rights Institutions and Bodies

In addition to competent legal tribunals and other public institutions, States parties implementing their obligations to ensure access to justice under CEDAW may also create independent national human rights institutions (“NHRIs”) with a mandate to promote and protect the rights guaranteed under CEDAW.²⁶ To fulfill a common objective of protecting, promoting and fulfilling the human rights of women and girls, “close cooperation” between NHRIs and the Committee is “critical.”²⁷ Importantly, the Committee has emphasized that NHRIs must be established in compliance with the “Paris Principles”²⁸ on the status of national institutions for the promotion and protection of human rights, which seek to guarantee the political and operational independence of NHRIs from domestic governments.²⁹ In particular, the Paris Principles require that NHRIs have adequate funding to provide for their own staff and premises, such that they can maintain independence from the domestic government and not be subject to financial control that might affect that independence.³⁰ Moreover, the Paris Principles require mandates of NHRI members to be established through an official government act specifying their tenure, providing a foundational stability for NHRI mandates “without which there can be no real independence.”³¹

Moreover, the Committee also expects NHRIs to ensure that their work is fundamentally based on the principles of formal and substantive equality between women and men, with attention to addressing gender discrimination both in law and in effect.³² This includes consideration of individual complaints, preparation of recommendations on laws and policies, and human rights education programs. At a minimum, this means that women must enjoy easy access to all NHRI services for the protection of their rights and that the composition of NHRI members and staff is gender balanced at all levels.³³

Informal Justice and Customary Law

With regard to legal enforcement and protection of gender equality rights under CEDAW, the Committee has expressed concern over the impact of “traditional, customary, tribal or religious” laws and practices, which can often in and of themselves constitute gender discrimination, including for rural women.³⁴ In particular, the Committee has highlighted that customary systems of law regulating marriage and family relations issues can result in “deep and persistent discrimination against women on issues such as child custody, division of property acquired during the marriage and succession”³⁵—all of which are inconsistent with States parties’ obligations under CEDAW.³⁶ In addition, with regard to accessing legal remedies, the Committee expressed concern over legal systems in which women married under customary rules do not have access to civil courts to defend their rights.³⁷ Further, the Committee has expressed concern in circumstances where customary laws lead to non-conformity with CEDAW obligations on issues of polygamy, legal effects of marriage, minimum age for marriage, and consequences of dissolution of marriage, including child custody and inheritance rights.³⁸

Under Article 2(c) of CEDAW, States parties are obligated to eliminate gender discrimination through, among other things, “competent national tribunals and other public institutions.”³⁹ This means that States parties “must ensure that courts are bound to apply the principle of equality as embodied in [CEDAW] and to interpret the law, to the maximum extent possible, in line with the obligations of States parties under [CEDAW].”⁴⁰ However, where customary laws and policies are inconsistent with CEDAW obligations, making it impossible for courts to interpret domestic laws in line with CEDAW, States parties have an obligation to ensure that such laws and policies are revised or reformed in compliance with CEDAW guarantees.⁴¹ In the words of the Committee, domestic laws—including traditional, customary, tribal or religious laws—“may never be used as justification for failures by States parties to carry out their international obligations,” including obligations under CEDAW.⁴²

CEDAW’s Optional Protocol

In addition to CEDAW itself, States parties should also ratify the Optional Protocol to CEDAW, which recognizes the competence of the Committee to receive and consider complaints from individuals or groups, thereby creating an additional channel of access to justice for women who are victims of discrimination.⁴³ Specifically, the Optional Protocol includes a communications procedure allowing women, as individuals or in groups, to submit claims of violations of rights protected under CEDAW if domestic remedies have been exhausted, among other criteria.⁴⁴ By providing an international mechanism for women to bring claims of rights violations, the Optional Protocol operates as a channel to address grievances of women where, due to domestic circumstances, such a channel might not exist. At the same time, the Optional Protocol creates “an incentive for governments to take a fresh look at the means currently available to women at the domestic level to enforce their rights.”⁴⁵

Impact on Women

Importantly, underlying all of these requirements is the need to address deep-seeded stereotypes about women, their roles, credibility, arguments, testimonies, and overall place seeking justice. Judges “adopt rigid standards about what they consider to be appropriate behavior for women and penalize those who do not conform to these stereotypes.”⁴⁶ Such stereotyping can “cause judges to misinterpret or misapply laws.”⁴⁷ Elsewhere, these stereotypes directly discriminate against women’s access to justice “by criminalizing behaviors that can only be performed by women such as abortion.”⁴⁸ “Women should be able to rely on a justice system free from myths and stereotypes, and on a judiciary whose impartiality is not compromised by these biased assumptions. Eliminating judicial stereotypes in the justice system is a crucial step in ensuring equality and justice for victims and survivors.”⁴⁹ Accordingly, the Committee has called on States parties to guarantee a gender-sensitive approach to women’s stigmatization in the judicial process, including by reviewing rules of procedure and evidence, abolishing discriminatory criminalization, provide redress for crimes that disproportionately affect women, reject amnesties for human rights violations and create women-specific funds to ensure women receive adequate reparation.⁵⁰

4.2.2 BURMA SPECIFIC CONTEXT

Access to Justice Generally

Since 1962, successive military juntas in Burma have used the rule of law as a tool of subjugation and social control. Laws were used to repress, rather than protect the people of Burma.⁵¹ In Burma, there was an “un-rule of law.”⁵² In addition, the mechanisms for protecting and enforcing the law—judges, courts, law schools, and professional associations—were co-opted and manipulated by the military to serve its purposes.⁵³ As a result, “the legal system suffers from high levels of corruption, cronyism and public distrust.”⁵⁴ In fact, the World Justice Project’s 2014 Rule of Law Index, ranks Burma 89th out of 99 countries.⁵⁵

Significant obstacles to the fair administration of justice continue despite the transition in 2011 to a nominally civilian government.⁵⁶ Continued fundamental deficiencies in substantive law, the legal profession, and the judiciary hinder the growth of rule of law indicators.⁵⁷ One major hindrance is the 2008 Constitution which formally entrenches the military’s influence over the rule of law in Burma and establishes the military’s complete independence over its own affairs.⁵⁸ As a result, access to justice remains elusive for the people of Burma.⁵⁹

*“When civil activists were asked where they themselves would go if rights were being infringed, they typically identified institutions such as churches, industrial tribunals and local government offices. **None thought the Myanmar National Human Rights Commission offered satisfactory protection, while courts were almost universally discounted.** Judges were considered corrupt and too close to the executive, and the judicial process in general was seen as expensive and daunting.”*

*- Int'l Bar Association's Human Rights Institute,
The Rule of Law in Myanmar, p. 29.*

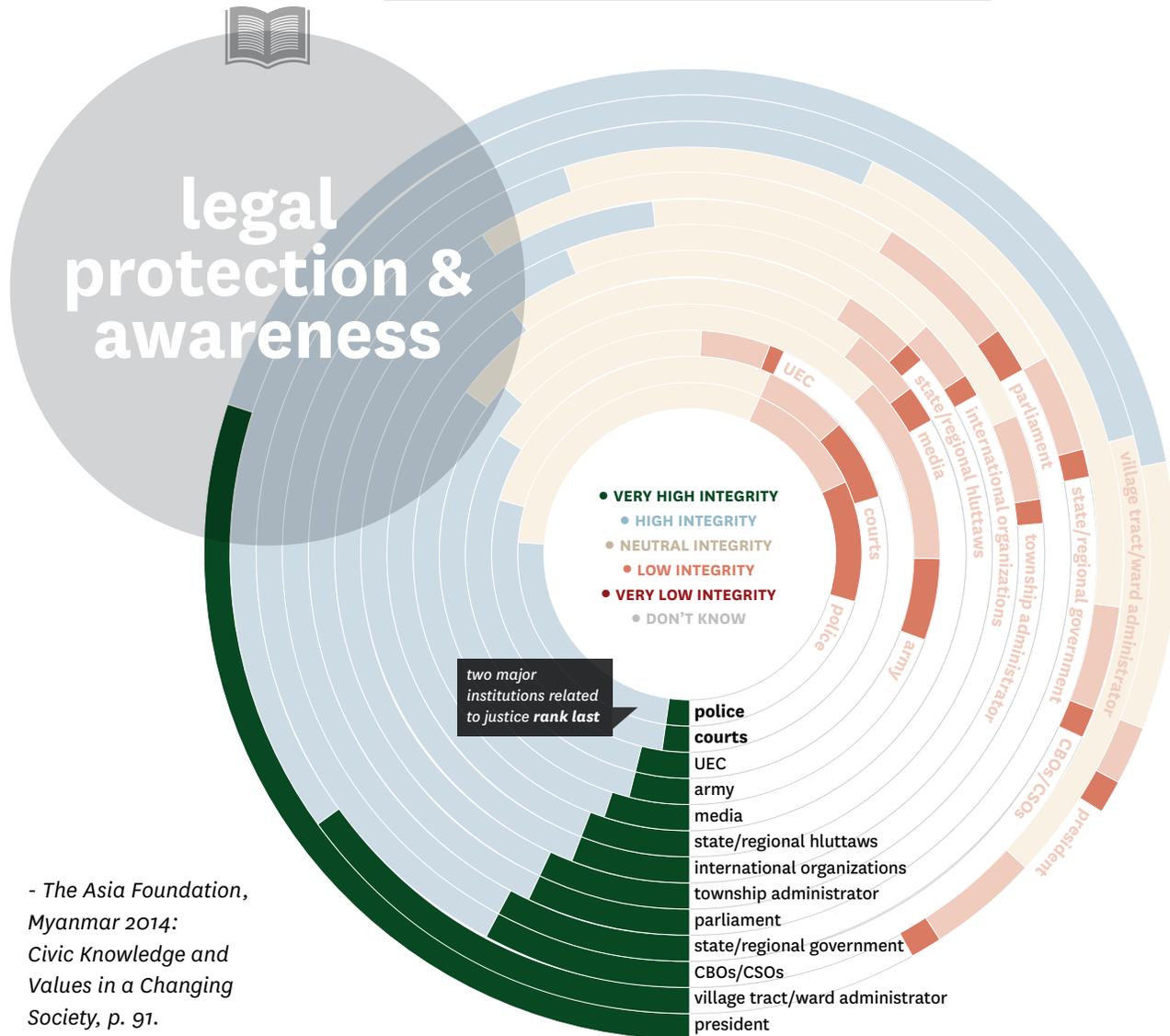


Legal Protection and Legal Awareness

A key weakness in the legal system is its outdated and repressive laws which successive military juntas have used as a tool to deny civil and political rights.⁶⁰ In fact, over 400 of the existing 800 laws were passed prior to 1948.⁶¹ Repressive legal edicts and statutes still exist, such as the State Secrets Act of 1923 and the Emergency Provisions Act of 1950.⁶² Amendments to certain restrictive laws, such as the Peaceful Procession and Assembly Law, have failed to address their shortcomings and the laws continue to be used to justify repression.⁶³ Therefore, the legal justifications for repression still exist and any increase in political and civil freedoms have been solely at the discretion of the Government.

Legal awareness and knowledge of rights amongst the populace is low, which impedes utilization of the formal justice system.⁶⁴ A comprehensive 2014 survey demonstrated that people in Burma have very little knowledge of the current structure and functions of the executive, legislature, and especially the judiciary.⁶⁵ The situation is exacerbated by the Government's practice of drafting laws in secret, with limited public involvement.⁶⁶

perception of institutions in Burma



- The Asia Foundation, Myanmar 2014: Civic Knowledge and Values in a Changing Society, p. 91.

Administration of Justice

One major stumbling block to establishing the rule of law in Burma is the significant shortcomings of Burma's judiciary.⁶⁷ In the words of one UN expert, Burma "lacks an independent, impartial and effective judiciary," which is "necessary to uphold the rule of law, ensure checks and balances on the executive and the legislative, and safeguard human rights and fundamental freedoms."⁶⁸ Decades of authoritarian rule and executive interference in the judicial sector have led to the judiciary acting as an enforcer for military and political actors rather than an independent arbiter of disputes.⁶⁹ As one scholar asserts, "successive military rules have made the courts into a reliable instrument for authoritarian control."⁷⁰ In order for courts to effectively uphold the rule of law, they must have the capacity to scrutinize intrusive action by the State and oppressive behavior by private groups and individuals. This requires a judiciary "that feels confident about asserting its independence from governmental pressure and popular prejudice"—which simply does not exist in Burma.⁷¹

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 role in the appointment and removal of judges. This structure "ensures that the members of the judiciary are reliant on the military for their appointments, given that the President himself is chosen by a military dominated parliament."⁷²

Not surprisingly, the people of Burma have little to no faith in the independence of the judiciary. As international monitors have observed, Burma's judiciary is seen 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."⁷³ In fact, it has been found that "depending on the nature of the case, judges render decisions based on orders coming from government and military officials, in particular local and regional authorities."⁷⁴

In addition, the judicial process in general is seen as expensive and daunting, making the cost of utilizing the formal justice system prohibitive.⁷⁵ Most lawyers believe that they cannot win a case without a bribe.⁷⁶ All these factors are exacerbated by the fact that judges in Burma are over-worked and under paid⁷⁷ (around 1000 judges handle 300,000 cases annually).⁷⁸ This in turn makes them more susceptible to corruption.⁷⁹

Another major issue largely overlooked in much of the discourse regarding access to justice is judicial vetting.⁸⁰ The 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.⁸¹ Accordingly, the judges in these seats must have been on the bench since prior to the start of democratic transition.⁸² Many of these judges were complicit or actively involved in the sham arrests and baseless warrants and prosecutions of countless political prisoners. Thus, only judges that were on the bench during the junta's authoritarian rule are eligible for the highest positions in the judiciary and major reforms to the judiciary are necessary in order to be able to instill the rule of law in Burma.

Legal Aid and Counsel

The legal profession has been repressed and weakened by successive military regimes in retaliation for the active role lawyers played during times of protest.⁸³ In addition, legal education, the foundation of the legal profession, has been systematically demolished over the past three decades by the military junta.⁸⁴ Between 1962 and 1999, the Government periodically closed down universities, including law schools,⁸⁵ as a way to control the populace and silence dissent.⁸⁶ This deficiency in legal education, combined with the "denial of training, work experience and exposure to international legal practice" has resulted in a situation where lawyers are "not well equipped to carry out their roles."⁸⁷ Politically active lawyers have been targeted for prosecution under repressive state laws and subject to disciplinary proceedings.⁸⁸ This harassment, as well as restrictions on freedom of association and expression, continues despite a transition to civilian rule.⁸⁹ Without an active, free and vibrant legal profession, access to justice will remain unavailable to the people of Burma.



legal aid & legal counsel

there is no state sponsored legal aid apart from legal representation made available to criminal defendants in cases punishable with the death penalty

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National Human Rights Institutions and Bodies

The Government claims that certain domestic institutions protect and promote women’s rights, including the right to access justice as guaranteed by international law. Specifically, the Government has cited the Myanmar National Human Rights Commission (“MNHRC”) and its Women and Child Sub-Committee (“WCRC”) as well as the Myanmar National Committee for Women’s Affairs (“MNCWA”) and the Myanmar Women’s Affairs Federation (“MWAF”) as available channels to “receive and address complaints related to the violation of women’s rights.”⁹⁰ 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, on the structure and operation of human rights institutions as a means of access to justice.

The MNHRC was established in 2011 by a Presidential Decree to safeguard rights in accordance with the 2008 Constitution.⁹¹ The establishment of the MNHRC was met with skepticism due to its executive (as opposed to legislative) mandate, lack of independence, unwillingness to investigate all abuses and limited powers of resolution.⁹² Another major concern was that limiting the MNHRC’s mandate to rights under the 2008 Constitution was problematic due to the Constitution’s intrinsic deficiencies, such as explicitly enshrined gender-based discrimination and amnesty for military actors from prosecution and punishment for violations of human rights. In fact, complaints to the MNHRC

actually dropped from 2866 in 2012⁹³ to 1990 in 2013,⁹⁴ an indication of decreasing confidence in its effectiveness.

To respond to these criticisms, a new enabling law for the MNHRC was passed by Parliament in March of 2014.⁹⁵ Civil society organizations were given limited opportunity to comment on the draft legislation.⁹⁶ Unfortunately, the new enabling law, while an improvement, fails to provide an adequate legal mandate for the MNHRC in accordance with international principles.⁹⁷ Moreover, President Thein Sein reconstituted a new MNHRC in September 2014 without input from civil society organizations.⁹⁸

The new enabling legislation does not resolve serious concerns regarding the MNHRC's independence from government interference. The MNHRC consists of former Government officials, military regime ambassadors, and retired civil servants with reportedly little to no prior knowledge of human rights.⁹⁹ Specifically, Chairman U Win Min and Vice-Chairman Kyaw Tint Swe held prominent positions in the former military regime which required them to consistently and routinely deny the existence of any human rights violations in Burma, including violations of women's rights under CEDAW.¹⁰⁰ These types of appointees can hardly be counted upon to objectively investigate human rights abuses at the hands of the Government or the military.

Perhaps the unbalanced composition of MNHRC membership is inevitable since the selection board is overwhelmingly populated by Government appointees. The two civil society representatives on the selection board must be from "of-



ficially registered” organizations, which poses undue limitations and prevents meaningful input from a broad range of civil society actors.¹⁰¹ The procedures for selection are not transparent, since they are set entirely at the discretion of the selection board.¹⁰² Furthermore, while the law provides, in vague terms, for pluralism regarding membership of the MNHRC itself the law is silent with respect to pluralism of staff members.¹⁰³

Effectiveness is also an issue since the new law does not allow the MNHRC to provide adequate remedy for violations. The MNHRC can only report, refer and recommend responses for each violation.¹⁰⁴ The MNHRC’s power to request materials is also limited to items that do not interfere with national security which is a vague and exceptionally broad exclusion.¹⁰⁵ Finally, the MNHRC still appears to be limiting its mandate only to complaints from citizens and complaints regarding the infringement of rights under the 2008 Constitution, rather than on the broader mandate outlined in the enabling legislation itself.¹⁰⁶

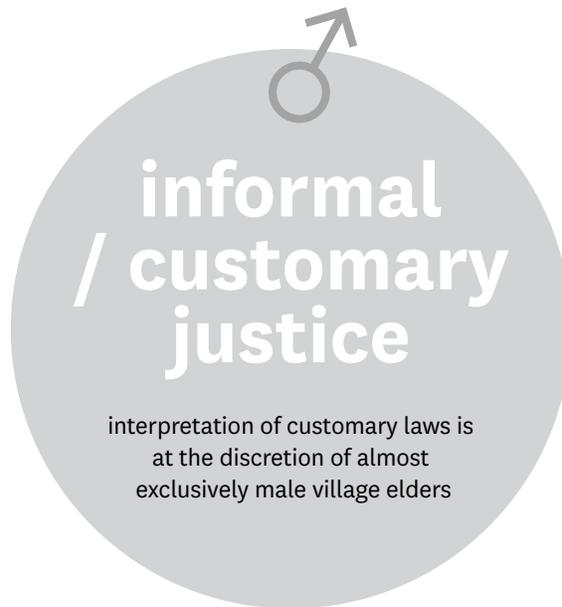
Another major concern is that the MNHRC does not ensure confidentiality of complaints and has complete discretion regarding disclosure of information which could have a chilling effect on the filing of grievances.¹⁰⁷ This is a very real concern since the Government has been known to retaliate against those who file grievances with the MNHRC. In particular, the case of Shayam Brang Shawng demonstrates that complaints to the MNHRC of human rights abuses at the hands of the military will be punished with swift and forceful prosecution.¹⁰⁸

These shortcomings are particularly detrimental to women. There are only two female members of the MNHRC and only one member of the selection board is intended to represent the interests of women (and this is the MAAF, a GONGO not an impartial civil society organization).¹⁰⁹ The failure to ensure confidentiality is also troubling since, for example, women who are victims of sexual violence are unlikely to come forward without guarantees of confidentiality. Women are also negatively affected by limiting the scope of complaints to only those rights under the 2008 Constitution rather than the broader human rights mandate required by the enabling law, which would include infringement of rights under CEDAW.

In addition to the MNHRC, the Government has also made reference to the MNCWA, formed in 1996 “to carry out measures for the development of Myanmar women,” and the MAAF, formed in 2003 “for the development and protection of women,” as venues to remedy violations of women’s rights.¹¹⁰ These organizations are affiliated with the Government so cannot be counted upon for independence or objectivity. Further, they have no actual ability to remedy or resolve allegations of violations of women’s rights. Therefore, they are inadequate to provide effective legal enforcement of women’s entitlement to enjoy rights on an equal basis with men and access to legal remedies for women who experience gender-based discrimination.¹¹¹

In the 2008 Concluding Observations, the Committee urged the Government “to strengthen its legal complaints system to ensure that women, especially women of ethnic groups, have effective access to justice.”¹¹² With regard to the MNHRC, the Committee “encouraged [the Government] to accelerate the process of establishing a national human rights institution in accordance with the Paris Principles,” specifically calling on Burma to “ensure that this institution will be provided with a broad mandate in respect of human rights, as well as sufficient human, financial and technical resources for its effective functioning, and that its composition and activities will be gender-sensitive and fully address the issue of women’s human rights.”¹¹³ Meanwhile, in reference to other bodies, the Committee indicated that it was “concerned that [the Government] does not have a more comprehensive and effective legal system for receiving complaints, especially from women of ethnic groups” and urged Burma “to strengthen its legal complaints system to ensure that women, especially women of ethnic groups, have effective access to justice.”¹¹⁴

As the above analysis demonstrates, the Committee’s recommendations have not been realized, despite the transition to a quasi-civilian government. Women still face serious obstacles to accessing justice in Burma. For example, despite the Government’s changes to the MNHRC, it is not a viable option for redress and has not improved substantially women’s access to justice.



Informal Justice and Customary Law

Another obstacle to access to justice for women in Burma 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.¹¹⁵ This is particularly problematic for women living in rural areas and/or within ethnic minority communities. Customary law is recognized by Burma's courts and is typically applied in family disputes impacting the rights of women, including cases of divorce, property succession, and adoption.¹¹⁶ However, these customary laws are not codified, leaving interpretation to the discretion of village elders, who almost exclusively are male.¹¹⁷ Unfortunately, Burma's relevant 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.¹¹⁸ Moreover, under Burma's customary laws, the right of women to seek divorce is limited compared to men. Specifically, women are typically required to prove that their physical safety is in immediate danger or that the marriage has already terminated in order to substantiate a claim for child support or alimony.¹¹⁹ Additionally, due to the social stigma surrounding divorce, women are encouraged to stay married to their husbands, even in the face of abuse.¹²⁰

In the 2008 Concluding Observations, the CEDAW Committee urged Burma to "harmonize its civil, religious and customary law" in conformance with CEDAW and to complete "law reform in the area of marriage and family relations in order to bring its legislative framework into compliance" with CEDAW.¹²¹

CEDAW's Optional Protocol

The Government has neither signed nor ratified the Optional Protocol to CEDAW. In the Concluding Observations following its review of Burma's CEDAW implementation in 2008, the Committee called upon Burma to sign and ratify the Optional Protocol to CEDAW.

Impact on Women

Women are disproportionately affected by the access to justice challenges outlined above. For example, prohibitive legal costs and processes are especially harmful to women who often are unable to take the time necessary to pursue legal action since they are the primary caretakers of children and must contribute economically to the household.¹²² Colonial-era laws, such as the Penal Code of 1860, remain in effect and they reflect and perpetuate outdated gender assumptions such that women are not adequately protected by law.¹²³ Moreover, a gender perspective and sensitivity

to gender issues is completely absent in the drafting of laws, law enforcement practices and the administration of justice.¹²⁴ To date there is neither a violence against women law nor an effective means to report sexual violence.¹²⁵ In an indication of deeply-rooted gender roles and patriarchy, resistance to gender issues comes from both male and female legal practitioners.¹²⁶ 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.¹²⁷

The Committee highlighted some of the challenges that impact women's access to justice in its 2008 Concluding Observations. The Committee expressed concern over "inadequate knowledge of the rights of women under [CEDAW], its concept of substantive gender equality and the [Committee's] general recommendations . . . among the judiciary at all levels, as indicated by the absence of information on any court decisions that refer to [CEDAW]." ¹²⁸ Accordingly, it requested that the Government "ensure that judges at all levels be adequately trained in human rights and the provisions of [CEDAW], and that women have access to the courts on equal terms with men."¹²⁹ The Committee also called on the Government to "remove any impediments faced by women in gaining access to justice" and for implementation of training for the judiciary, among others, to ensure appropriate sensitization to gender inequality.¹³⁰

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 issues or women's difficulty in accessing justice in Burma. For example, in its 2015 report to the Committee, the Government asserted that "(8) laws related to women's rights have been amended or enacted."¹³¹ An examination reveals that only one of these laws specifically relates to women;¹³² the rest of the laws are general protections for certain categories of people in Burma, such as laborers.¹³³

4.2.3 ANALYSIS OF NSPAW

Access to Justice Generally

NSPAW addresses themes of access to justice in the section "Women and Human Rights," which includes an overall objective "to ensure the protection, promotion and fulfillment of women's and girls' economic, social, cultural, civil and political rights."¹³⁴ Despite aspirational indications concerning implementation, including pledges to "[e]ffectively implement CEDAW and related international conventions,"¹³⁵ and "[i]mplement efficient mechanisms to ensure rights of women are fulfilled"¹³⁶ at all levels of government, NSPAW lacks definitive or sufficiently detailed strategic features, including specific strategic objectives, planning and implementation frameworks, or benchmarks for monitoring or evaluation. Moreover, NSPAW contains no direct indication of whether or how the Government will address the significant access to justice challenges outlined above. This is of concern because in order to fulfill Burma's CEDAW obligations to ensure access to justice, the Government will need to make significant improvements to laws, the judiciary, and the legal profession far beyond anything that have been attempted or achieved to date.

Furthermore, the Government's 2015 periodic report to the CEDAW Committee also includes welcome aspirational commitments to improvement of access to justice by women, including certain proposals concerning law, policy, and public awareness in areas such as violence against women, including domestic violence, as well as trafficking in women and girls.¹³⁷ Nonetheless, the deficiencies in NSPAW concerning access to justice described above also apply to the Government's 2015 periodic report to the CEDAW Committee. Specifically, there contains no explicit mention of problems related to the lack of an independent, impartial and effective judiciary that is free of undue executive and military influence, nor does it discuss constitutional reforms to either limit executive judicial appointment powers or lessen military influence on the judiciary.

National Human Rights Institutions and Bodies

While NSPAW commits to conducting research and surveys in connection with “Representation of women in Human Rights Bodies/Committees”¹³⁸ and ensuring that “Human Rights Bodies/Committees systematically acknowledge and address rights-related needs and aspirations of women,”¹³⁹ it contains no direct reference to the MNHRC. While the suggestion of addressing underrepresentation of women in human rights mechanisms such as the MNHRC are welcome, NSPAW does not appear to address any of the inherent flaws of the MNHRC impacting justice for women who suffer violations of rights guaranteed under CEDAW, including the lack of civil society engagement and public consultation surrounding its mandate and operations, the lack of adequate safeguards to protect individual women who might be reasonably deterred from engaging the complaints process, and most importantly, the lack of any authority within the MNHRC to provide any kind of remedy or compensation.

Moreover, while NSPAW identifies the MNCWA and describes its work in broad terms, there is no indication that any type of legal complaint mechanism exists, under MNCWA or under the MAAF or the WCRC, to ensure the effective legal enforcement of women’s entitlement to enjoy rights on an equal basis with men and access to legal remedies for women who experience gender-based discrimination.

Regrettably, the Government’s 2015 periodic report to the CEDAW Committee contains similar treatment of the MNHRC. Specifically, the establishment of the MNHRC and other national institutions are apparently presented as evidence, in and of themselves, of compliance with CEDAW’s obligations to ensure access to justice to women on an equal basis with men.¹⁴⁰ Sadly, there is no mention—let alone analysis or evaluation—of the obvious shortcomings of these institutions, including the lack of civil society engagement and consultation surrounding the MNHRC’s work, the lack of adequate measures to protect women who might be deterred from engaging the MNHRC, and the MNHRC’s lack of authority to provide any remedy or compensation.

Informal Justice and Customary Laws

NSPAW contains welcome language pledging “[r]evision, development and application of existing civil, religious and customary laws so as to protect, promote and fulfill the human rights of women and girls.”¹⁴¹ However, that pledge contains no additional explicit commitment to ensure conformance of customary laws with CEDAW obligations in the context of domestic implementation of national laws. Nor does NSPAW contain more specific information on reducing and eliminating violations of women’s rights arising from application of customary laws in the context of family and marriage practices.

Similarly, while the Government’s 2015 periodic report to the CEDAW Committee contains reference to the need for further research and data collection concerning the gender-based impacts of Burma’s “national races practicing different customs and traditions,” there are no direct or explicit references to the need for CEDAW-conformance with regard to the types of gender discrimination in connection with customary law described above.¹⁴²

CEDAW’s Optional Protocol

While NSPAW contains aspirational language regarding CEDAW implementation, including a pledge to take “action to address . . . and implementing CEDAW Committee recommendations,”¹⁴³ it contains no indication that the Government will sign or ratify the Optional Protocol to CEDAW. Similarly, the Government’s 2015 periodic report to the CEDAW Committee makes no mention the Optional Protocol to CEDAW.

4.2.4 RECOMMENDATIONS

- The Government must ensure that, in implementing legal measures to eliminate discrimination against women and establish legal protection of the rights of women on an equal basis with men, any laws prohibiting gender discrimination must embody legal or other material consequence for those who violate them, including sanctions for perpetrators of gender discrimination. Moreover, it must ensure the effective legal enforcement of women's entitlement to enjoy rights on an equal basis with men and the availability of legal remedies for women who experience gender-based discrimination.
- The Government must ensure the non-biased and non-discriminatory administration of justice and the actual, practical capacity of women to access courts and tribunals on an equal basis with men. In doing so, the Government must guarantee an independent, impartial, and effective judiciary that is free from not only political influence or interference, but also from prejudices or stereotypical gender notions about the role of women. Specifically, this must include reform of 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. Moreover, the Government must ensure that judges at all levels are adequately trained in women's rights and the provisions of CEDAW, including through training for the judiciary to ensure appropriate sensitization to gender inequality.
- The Government must ensure that any national human rights mechanism, including the MNHRC, is in full compliance with the Paris Principles on the Status of National Institutions for the Promotion and Protection of Human Rights. In particular, the MNHRC must be given adequate funding to provide for its own staff and premises, and members must take office through an official government act specifying their tenure. Moreover, women must enjoy easy access to all MNHRC services for the protection of their rights and the composition of MNHRC members and staff must be gender balanced at all levels.
- The Government must ensure that domestic laws—including traditional, customary, tribal or religious laws—may *never* be used as justification for failures to carry out its CEDAW obligations. The Government of Burma must therefore harmonize its civil, religious and customary law to be in conformance with CEDAW.
- The Government must ratify the Optional Protocol to CEDAW, thereby recognizing the competence of the CEDAW Committee to receive and consider complaints from women, as individuals or groups, who complain of gender discrimination.

Endnotes

- 1 Convention on the Elimination of All Forms of Discrimination Against Women, art. 2, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW], available at <http://treaties.un.org/doc/Publication/UNTS/volume%201249/v1249.pdf>.
- 2 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 28, on Article 2, of the Convention on the Elimination of All Forms of Discrimination against Women, on the Core Obligations of States Parties*, ¶ 17, U.N. Doc. CEDAW/C/GC/128 (Dec. 16, 2010) [hereinafter CEDAW, *General Recommendation No. 28*], available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>; see The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary 84 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., 2012) [hereinafter CEDAW: A Commentary].
- 3 CEDAW Commission, *Access to Justice – Concept Note for Half Day General Discussion* (on forthcoming General Recommendation), 3, (Feb. 18, 2013), available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/Concept-NoteAccessToJustice.pdf> [hereinafter *Access to Justice – Concept Note* (2013)]; see CEDAW: A Commentary, *supra* note 2, at 84-85 (clarifying that Art.2(c) of CEDAW requires an effective judiciary system and “adequate legal remedies” in order for women to obtain to fully enjoy their basic human rights); see also UN Women, *Realizing Women’s and Girls’ Full Enjoyment of All Human Rights*, in *Challenges and Achievement in the Implementation of the Millennium Development Goals for Women and Girls: Agreed Conclusions of the 2014 Commission on the Status of Women (“CSW”)*, 10, (2014) available at http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/58/csw58_agreed_conclusions.pdf; see also United Nations Development Programme (“UNDP”), *Legal Protection, in Access to Justice: Practice Note*, 9-10, (Sept. 3, 2004) [hereinafter UNDP, *Access to Justice: Practice Note* (2004)].
- 4 See generally UNDP, *Access to Justice: Practice Note* (2004), *supra* note 3.
- 5 CEDAW, *supra* note 1, arts. 2(b)-(c).
- 6 CEDAW: A Commentary, *supra* note 2, at 83; see Alda Facio & Martha I. Morgan, *Equity or Equality for Women?: Understanding CEDAW’s Equality Principles*, 60 Ala. L. Rev. 1134, 1156-1157 (2009).
- 7 CEDAW, *supra* note 1, arts. 15(1)-(2). In addition, under Article 15(2), States Parties “shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.” *Id.*
- 8 *Access to Justice – Concept Note* (2013), *supra* note 3, at 3-4; CEDAW: A Commentary, *supra* note 2, at 388 (further clarifying that the language in art. 15, “means that everyone is subject to the same system of law, with equal access to the same courts and tribunals, and has the same right to non-discriminatory administration of justice”).
- 9 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, ¶ 7-8, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004), available at [http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](http://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf) [hereinafter CEDAW, *General Recommendation No. 25*]; For further discussion on “substantive equality” and the State’s obligations under CEDAW, see Simone Cusack & Lisa Pusey, *CEDAW and the Rights to Non-discrimination and Equality*, 14 Melb. J. Intl. L. 2, 11 (2013).
- 10 Comm. on the elimination of Discrimination against Women, *General Recommendation No. 33, on women’s access to justice*, ¶ 2, U.N. Doc. CEDAW/C/GC/33 (Jul. 23, 2015) [hereinafter CEDAW, *General Recommendation No. 33*].
- 11 *Id.* at ¶ 14.
- 12 See *id.* at ¶ 18(a).
- 13 *Id.* at ¶ 21.
- 14 *Id.* at ¶ 25(a).
- 15 *Id.* at ¶ 15(a).
- 16 *Id.* at ¶¶ 40-53.
- 17 *Id.* at ¶ 32.
- 18 *Id.* at ¶¶ 11, 17(c), 33(b), 37(c).
- 19 *Id.* at ¶¶ 15, 18; Women’s Human Rights: CEDAW in International, Regional and National Law 151 (Anne Hellum & Henriette Sinding Aasen eds., 2013).
- 20 CEDAW, *General Recommendation 33, supra* note 10, ¶ 22.
- 21 *Id.* at ¶ 29(a).
- 22 CEDAW, *General Recommendation 33, supra* note 10, ¶ 15.
- 23 *Id.* at ¶ 36.
- 24 *Id.* at ¶¶ 13, 16, 17(a)(b)(c).
- 25 *Id.* at ¶¶ 37(a), (b).
- 26 CEDAW, *General Recommendation No. 28, supra* note 2, ¶¶ 28, 36.
- 27 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*, ¶ 1, U.N. Doc. E/CN.6/2008/CRP.1 (Feb. 11, 2008) [hereinafter *Results of the 40th CEDAW session, Annex II* (2008)]. See also National Institutions for the promotion and protection of human rights, G.A. Res. 48/134, 48th Sess., U.N. Doc A/Res/48/134 (Dec. 20, 1993) [hereinafter G.A. Res. 48/134].
- 28 *Id.* See also CEDAW, *General Recommendation No. 33, supra* note 10, ¶ 60.
- 29 *Results of the 40th CEDAW session, Annex II* (2008), *supra* note 27, at ¶ 2. See also G.A. Res. 48/134, *supra* note 27. 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.

- 30 Composition and Guarantees of Independence and Pluralism, G.A. Res. 48/134, Annex, 48th Sess., ¶¶ 2-3, U.N. Doc A/Res/48/134 (March 4, 1994) [hereinafter G.A. Res. 48/134 Annex], available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/48/134&Lang=E>.
- 31 *Id.*
- 32 *Results of the 40th CEDAW session, Annex II (2008)*, *supra* note 27, at ¶ 4.
- 33 *Id.*
- 34 See Comm. on the Elimination of Discrimination against Women, *General Recommendation No.21, on Article 15, of the Convention on the elimination of All Forms of Discrimination against Women, on the Equality in Marriage and Family Relations*, U.N. Doc. A/49/38 (Apr. 12, 1994) [hereinafter CEDAW, *General Recommendation No. 21*]; see also CEDAW, *General Recommendation No. 28*, *supra* note 2, at ¶ 33.
- 35 Concluding Observations of the Committee on the Elimination of Discrimination against Women, U.N. Doc. CEDAW/C/GNQ/CO/6 (Oct. 24, 2012) [hereinafter 2012 CEDAW Concluding Observations].
- 36 CEDAW, *General Recommendation No. 21*, *supra* note 34, at Art. 16; see CEDAW: A Commentary, *supra* note 2, at 420-421, 427, 432-436.
- 37 CEDAW, *supra* note 1, Art. 15(2); CEDAW, *General Recommendation No. 21*, *supra* note 34, at Art. 16; CEDAW: A Commentary, *supra* note 2, at 398.
- 38 CEDAW, *General Recommendation No. 21*, *supra* note 34.
- 39 CEDAW, *General Recommendation No. 28*, *supra* note 2, at ¶ 33.
- 40 *Id.*
- 41 CEDAW, *General Recommendation No. 33*, *supra* note 10, at ¶¶ 64(a)-(c).
- 42 *Id.* (emphasis added).
- 43 CEDAW, *General Recommendation No. 33*, *supra* note 10, at ¶ 67.
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- 46 CEDAW General Recommendation 33, *supra* note 10, at ¶ 26.
- 47 *Id.*
- 48 *Id.* at ¶ 47.
- 49 *Id.* at ¶ 28.
- 50 *Id.* at ¶¶ 19, 51(g), (h), (l).
- 51 William J. Topich & Keith A. Leitich, *The History of Myanmar 92* (2013); Christina Fink, *Living Silence: Burma Under Military Rule 32-42* (2001)[hereinafter *Living Silence*]; Amnesty International, *Myanmar: Twenty Years On, More Than 2,000 Political Prisoners* (Aug. 3, 2008), available at, <http://www.amnesty.org.au/news/comments/15973/>; see generally, Andrew Selth, *Burma's Armed Forces: Power without Glory* (2002); Human Rights Watch, *Burma's Forgotten Prisoners* (2009); Amnesty International, *Myanmar: Thousands of People Victims of Human Rights Violations* ASA 16/012/1992 (Oct. 28, 1992); US Department of State, *Country Reports on Human Rights Practices: Burma* (2002); Jacob Blaustein Institute et. al., *Myanmar Rule of Law Assessment*, 32, available at <http://www.ibi-humanrights.org/files/burma-rule-of-law-assessment.pdf>.
- 52 Paolo Sergio Pinheiro, *Report on the Situation of Human Rights in Myanmar*, 2 ¶ (c), U.N. Doc. E/CN.4/2003/41 (Dec. 27, 2002); Nick Cheesman, *Thin Rule of Law or Un-Rule of Law in Myanmar*, *Pacific Affairs: Vol.82, No. 4* (Winter 2009) [hereinafter Cheesman, *Thin Rule of Law* (2009)]; UNDP, *Bridges to Justice: Rule of Law Centres for Myanmar* at 5, available at http://www.mm.undp.org/content/dam/myanmar/docs/Publications/DemoGov/UNDP_MM_DG_Bridges_to_Justice.pdf; Asian Legal Resource Centre, *Submission to the Human Rights Council's Universal Periodic Review concerning human rights and rule of law in Myanmar*, ¶ 3, DOC. ALRC-UPR-10-001-2010 (June 20, 2010).
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- 54 Roger Normand, Oak Foundation, *Supporting Rule of Law in Myanmar: A Strategy for Funding Legal Change*, 9, (Feb. 6, 2013), available at <http://www.oakfnd.org/node/4753>. See also, IBA, *Rule of Law in Myanmar: Challenges and Prospects* 68; International Commission of Jurists, *Country Profile: Myanmar*, 11, available at, <http://icj.wengine.netdna-cdn.com/wp-content/uploads/2014/06/CIJL-Country-Profile-Myanmar-June-2014.pdf> [hereinafter IC], *Country Profile of Myanmar* (2014)].
- 55 The World Justice Project, *Rule of Law Index*, 36 (2014), available at http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf.
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- 122 Women's League of Burma, If they had hope, they would speak 9 (Nov. 2014) [hereinafter WLB, If They Had Hope (2014)]; Gender Equality Network Report (Jan. 2013), *supra* note 115, at 50.
- 123 Gender Equality Network Report (Jan. 2013), *supra* note 115, at 7.
- 124 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 115, at 7.
- 125 Gender Equality Network Report (Jan. 2013), *supra* note 115, at 10 (2013); Yen Snaing, *MPs Demand Parliament Considers Violence Against Women Measures*, The Irrawaddy, Feb. 3, 2015.
- 126 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)].
- 127 Gender Equality Network, *Behind the Silence* (Feb.2015), *supra* note 126, at 51; WLB, If They Had Hope (Nov. 2014), *supra* note 122, at 9.
- 128 2008 CEDAW Concluding Observations on Myanmar, *supra* note 112, at ¶ 12.
- 129 *Id.*, at ¶ 13.
- 130 *Id.*, at ¶ 23.
- 131 2015 CEDAW State Report, Myanmar, *supra* note 90, ¶ 8.
- 132 Maternity Leave, Leave and Holiday Act, Pyidaungsu Hluttaw Law, No. 58, Jan. 1, 1952 (amended July 2014).
- 133 2015 CEDAW State Report, Myanmar, *supra* note 90, 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 14th Waxing day of Thadinkyut 1373. M.E., Oct. 11, 2011; Settlement of Labour Dispute Law, The Pyidaungsu Hluttaw Law No. 5/2012, The 6th Waxing day of Tagu 1373, M.E., March 28, 2012; Employment and Skills Devt Law, Pyidaungsu Hluttaw Law No. 29/2013, 9th Wanning of Wargoung 1375 M.E., Aug. 30 2013; The Myanmar National Human Rights Commission Law, Pyidaungsu Hluttaw Law No. 21/2014, The 13th Waning of Tabaung 1375 M.E., Mar. 28, 2014 [hereinafter MNHRC Law]; Mass Media Law (March 14, 2014); Law on the Registration of Organizations, Pyidaungsu Hluttaw Law No. 31/2014, July 18, 2014.
- 134 Myanmar Nat'l Committee for Women's Affairs, Nat'l Strategic Plan for the Advancement of Women ("NSPAW") (2013-2022), Myanmar 2013, Women and Human Rights ¶ 15.
- 135 *Id.* at Women and Human Rights ¶ 15(c)(2).
- 136 *Id.* at Women and Human Rights ¶ 15(c)(3).
- 137 See, e.g., 2015 CEDAW State Report, Myanmar, *supra* note 90, at ¶¶ 45-75.
- 138 2013-2022 NSPAW, *supra* note 134, at Women and Human Rights ¶ 15(a)(5).
- 139 *Id.* at Women and Human Rights ¶ 15(a)(6).
- 140 See, e.g., 2015 CEDAW State Report, Myanmar, *supra* note 90, at ¶¶ 4, 14, 19-24.
- 141 2013-2022 NSPAW, *supra* note 134, at Women and Human Rights ¶ 15(d)(2).
- 142 2015 CEDAW State Report, Myanmar, *supra* note 90, at ¶¶ 17, 44, 129.
- 143 2013-2022 NSPAW, *supra* note 134, at Institutional Mechanisms for the Advancement of Women ¶ 14(c)(2).

4.3 PARTICIPATION OF WOMEN IN DECISION-MAKING (ARTICLE 7, GENERAL RECOMMENDATIONS 23, 25)

4.3.1 RELEVANT CEDAW GUIDANCE

An essential goal of CEDAW is to ensure women's equal participation in all aspects of public and political life. Equality in these areas is deemed necessary not only to achieve women's empowerment, but also to advance societies as a whole.¹ Women's right to participate in political decision-making positions was first recognized by the Universal Declaration of Human Rights in 1948, and then in subsequent international treaties.² CEDAW's Article 7 restates these goals by calling for all States parties to ensure that women enjoy equality of opportunity with men in public and political life. This includes the right to "vote in all elections and public referenda and to be eligible for election to all publicly elected bodies" and to "participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government."³ The obligation to ensure equal access extends to all areas of public and political life, even those not specifically set forth in CEDAW.⁴

Importantly, CEDAW takes the right to equal participation one step further by requiring States parties to ensure that women can access public and political decision-making opportunities without discrimination in law or in effect. In other words, the relevant consideration is whether women, in fact, have fairly equal representation in political decision-making mechanisms, even if the domestic legal regime does not on its face impede access to such mechanisms. States parties, CEDAW provides, must take affirmative actions to accelerate the realization of substantive equality, also known as equality of results, if women do not actually play an equal role in public and political decision-making.⁵

The CEDAW Committee, in General Recommendation 23, gives specific guidance to States parties on how to achieve substantive equality, and emphasizes that removing *de jure* barriers is not sufficient to comply with CEDAW mandates to accelerate the equal participation of women in the "political, economic, social, cultural, civil or any other field."⁶ The Committee notes that women's failure to achieve parity is often the result of "outmoded practices and procedures that inadvertently promote men" and urges the use of temporary special measures to ensure the equal participation of women.⁷ Temporary measures mentioned in General Recommendation 23 include: setting numerical goals and quotas as well as financial assistance and training for women candidates.⁸ The Committee further clarified temporary special measures in General Recommendation 25, describing the application of these measures not as "an exception to the norm of non-discrimination, but rather as an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of *de facto* or substantive equality of women with men in the enjoyment of their human rights and fundamental freedoms."⁹

It is important to note that the right to equal participation in public life also extends to engagement by women in civil society. Under CEDAW, States parties must "ensure to women, on equal terms with men, the right...[t]o participate in non-governmental organizations and associations concerned with the public and political life of the country."¹⁰ This directive applies to the active engagement and support of women in CEDAW implementation, including the Committee reporting and review process. Therefore, CEDAW mandates equal participation of women, both as individuals and as a collective political force.

4.3.2 BURMA SPECIFIC CONTEXT

Historically, women have been largely excluded from positions of political power in Burma, as well as from the formulation of Burma's laws, including the 2008 Constitution. The most important obstacle has been that militarization of society "undermined women's ability to participate in political, economic and social life and therefore limited their access to power."¹¹ In addition, legal and administrative provisions relating to women's issues are founded on the principle that women, rather than being competent leaders, are the weaker sex and therefore in need of protection

and supervision by men.¹² This paternalistic bent reflects the deep roots of Burma's cultural patriarchy and is also the pernicious by-product of over sixty years of repressive rule by a male-dominated military.¹³ In Burma, "multiple forms of gender discrimination interact to severely curtail women's ability to participate" in the political arena.¹⁴

During the reign of the military junta, restrictive laws on assembly, free speech and the media suppressed general civic participation.¹⁵ Women, however, faced additional political, societal and cultural obstacles to achieving positions of political power. Although individual women, such as Aung San Suu Kyi, have been significant in politics from colonial Burma to the present day, women as a whole have been severely underrepresented in the political arena. As Aung San Suu Kyi herself noted about Burma, "[w]omen are not playing a role in political life."¹⁶

Historically, women were only given positions within the Defense Services as medical or administrative support.¹⁷ Without a military background, women were ineligible, therefore, for many important political positions within ministries, the judiciary and the legislature and excluded from exercising influence.¹⁸ Moreover, women's exclusion from the military also disqualified them from the employment, education, business, joint venture and travel opportunities created by military status.¹⁹ Women's exclusion from activities which develop leadership qualities and inability to access educational opportunities impeded the acquisition of knowledge, critical thinking and analytical skills hindering their ability to participate in the political landscape.²⁰

But militarization is not the only factor contributing to the absence of women in positions of political power. Other important factors include: "traditional norms that ascribe authority and glory to men over women, a lack of confidence, a lack of acceptance of female leadership," women's lack of experience and inability to obtain necessary skills, "low intra-household bargaining power, high time constraints, [and]restrictions on women's travel."²¹ Even in areas and disciplines which women have been able to access (such as clerical and administrative positions), they have been excluded from high-ranking decision-making positions. For example, in the General Administrative Department of the executive branch, few women are in decision-making positions, even though women make up, on average, 38% of staff below "officer" level.²²

An examination of statistics detailing the number of women involved in politics is illuminating. During the Socialist regime from 1962 to 1988 women made up only two percent of those in government high-level positions and no women served in government high-level positions during the military regime from 1988 to 2011.²³ No women served as Ministers from 1962 to 2011.²⁴ Even in the democratic elections held in 1990, only 3.66% of total candidates were women and only 3%, or 15 out of 485, seats were won by women.²⁵ As of February 2015, women accounted for only 4.8% of combined seats in the upper and lower houses of the national legislature (Amyotha Hluttaw and Pyithu Hluttaw, respectively).²⁶ Furthermore, as of June 2014, women only made up 2.83% of seats at the state and regional level, 0% of administrators at the township level, and .11% of village heads.²⁷ Today, only 2 out of 33 Ministers are women.²⁸

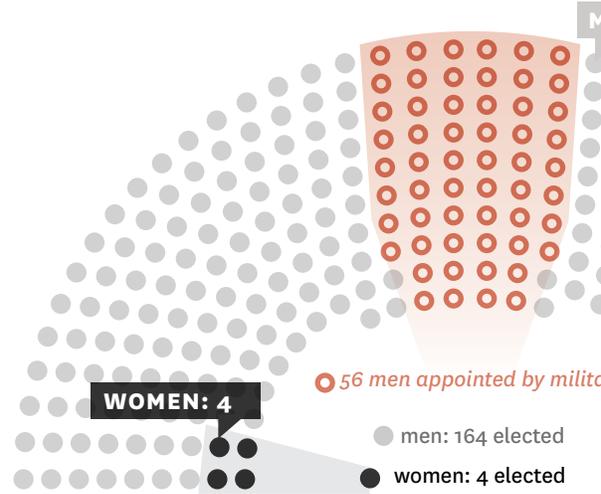
The 2008 Constitution, drafted largely by the military without civic participation, has further entrenched barriers to women's political participation. A familiarity with military matters is required for powerful positions within the executive, legislative and judicial branches.²⁹ In an example of outright discrimination, the 2008 Constitution provides that certain positions are suitable only for men.³⁰ No guidance is given within the 2008 Constitution with regard to what positions are suitable for men only, which risks capricious discrimination.

Importantly, the 2008 Constitution allocates 25% of parliamentary seats, in both the Pyithu Hluttaw and the Amyotha Hluttaw, to the male-dominated military.³¹ Because any constitutional amendment requires more than 25% approval, the military can, and does, single-handedly veto any constitutional amendments, including those that would reduce the influence and privileges of the military.³² To compensate for the military quota, women need to win a greater portion of elected parliamentary seats in order to achieve a certain percentage of overall legislative representation. In other words, to gain a 40% representation in total parliamentary seats, women would need to garner approximately 53%

**2013-2015
National Union Parliament**

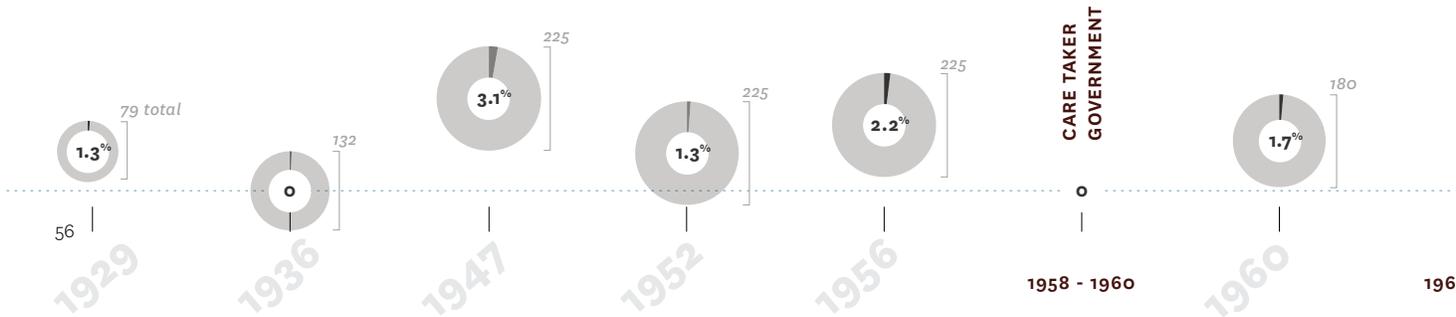
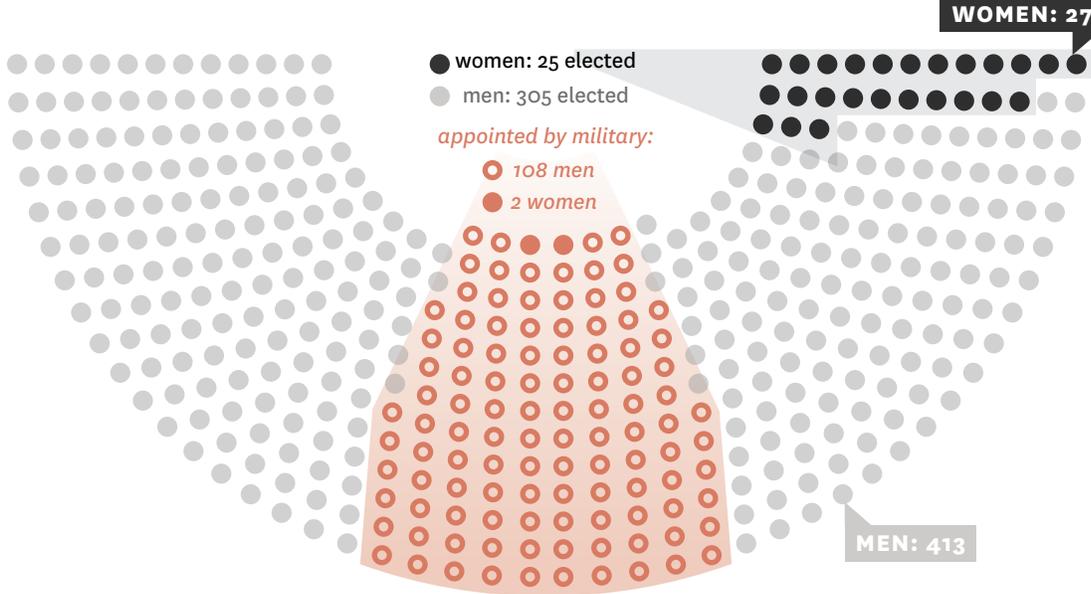
**Amyotha Hluttaw
(upper house)**

224 members



**Pyithu Hluttaw
(lower house)**

440 members



MEN: 220



50%

40%

(CEDAW SUGGESTED MINIMUM % OF WOMEN IN PARLIAMENT) 30%

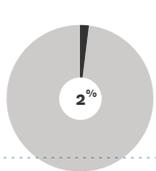
20%

Women in Parliament, 1929 (pre-independence) - 2012

10%

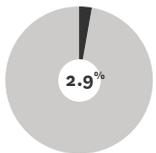
MILITARY RULE

1929 - 1974



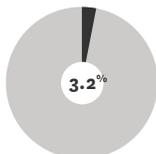
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1974



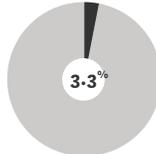
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1978



475

1981

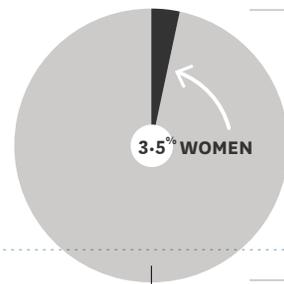


489

1985

MILITARY RULE

1988 - 2010



1541

2012

circle size = total number of individuals in parliament

0%

57

of the parliamentary seats available through general public election. Succumbing to pressure, the military appointed two women as part of its 25% quota, giving women .01% of seats reserved to the military.³³

The influence of the military has even pervaded GONGOs dedicated to women's development that have been the focal point for CEDAW implementation, namely the MNCWA and MWAFF.³⁴ The Government formed the MNCWA in 1996 "to carry out gender equality and women development programs," and the MWAFF in 2003 "to help in the implementation of the tasks" of the MNCWA.³⁵ These organizations, however, have been led by personnel without expertise in women's issues.³⁶ Leadership has been predominantly male, drawn from ministries, the judiciary and the police force, and some key positions have been held by spouses of male military leaders.³⁷ Therefore, the women on these committees derived their power from their husbands, have primary loyalty to their husbands and the Government, and are therefore not likely to challenge policies and programs that discriminate against women.³⁸

Recognizing the barriers to women's political participation following its 2008 review, the Committee issued specific suggestions and guidelines for the Government. For example, the Committee called on the Government to "use the formulation of its new electoral law as an opportunity to include women, in accordance with the provisions on non-discrimination in its Constitution, and to increase women's political participation," with a specific recommendation encouraging the use of "targets and quotas, as appropriate."³⁹ The Committee further urged Burma "to take concrete steps to create and ensure an enabling environment in which civil society and women's groups focused on gender equality and women's empowerment can conduct programmes and activities without restrictions or fear of reprisal."⁴⁰

While democratic progress has been made in Burma since 2008, women still face significant barriers preventing their full and equal participation in public and political life as required by CEDAW. Thus far, governmental policies have failed to display an understanding "of women's important roles in the public and political sphere, particularly in the reform process."⁴¹ For example, with respect to the Committee's specific suggestions in 2008, the current electoral laws do not include targets or quotas and civil society participation is still subject to sometimes restrictive governmental control.⁴² The absence of electoral quotas for women, which have been called for not only by the Committee but by international organizations and local lawmakers and NGOs,⁴³ will impede women's ability to make gains in the national elections scheduled for November 2015.

Improving women's participation requires, ideally, an extensive and coordinated government plan to remove structural legal barriers (in particular those contained in the 2008 Constitution), disassemble paternalistic cultural stereotypes, install temporary special measures (including quotas), undertake an extensive public awareness campaign and execute major improvements in women's access to education, livelihood, and health opportunities. The Government's plans for increasing women's participation in politics, as detailed in NSPAW, do not come close to this ideal.

4.3.3 ANALYSIS OF NSPAW

The Government recognized in NSPAW the need to increase the participation of women in political decision-making. A section specifically addressing "women and decision-making" lists as an objective: to "improve systems, structures and practices to ensure women's equal participation in decision-making and leadership at all levels of society."⁴⁴ Moreover, a specific research goal under NSPAW is to address "women's participation in Government including Parliaments, Parliamentary Committees, Ministries, Departments and political parties—at all levels," as well as "women's participation in senior, technical and professional positions and in the decision-making processes of Government Departments..."⁴⁵ To achieve these goals, however, the Government will need to draft, execute, and sufficiently fund an extensive and coordinated implementation plan in order to overcome the many structural and cultural barriers to women's participation.

The basis of a successful strategic implementation plan must be drafting new laws and administrative procedures to ensure women's equal participation, and amending laws that act as structural impediments to women's achievement.

To increase women's political participation, NSPAW calls for "[a]pplication of quota systems to ensure women's participation in decision-making in legislative, judicial and executive bodies,"⁴⁶ but does not outline specific parameters and objectives for designing such quota systems or how and when they would be instituted. This is of particular concern because seat guarantees for the military mean that women are already at a disadvantage for parliamentary seats.

In addition, despite NSPAW's aspirations to "raise awareness to address harmful customary laws and gender discriminatory practices that are identified as barriers to women's participation in leadership and decision-making," there is no commitment to take affirmative action to address this substantive inequality.⁴⁷ Such actions must include reforming officially promulgated laws and regulations, and drafting and passing new ones, to counteract the discriminatory effects of customary laws and gender stereotypes. To implement CEDAW, the Government will have to do more than simply "raise awareness" of issues—as General Recommendation 23 makes clear, affirmative action, including installing quotas, is necessary.

As for equal participation of women in civil society, NSPAW emphasizes the development of "partnerships and coordinating mechanisms that are inclusive of a broad range of shareholders including Government agencies, National and International Non-Governmental organizations, UN agencies, Civil Society Organizations, working groups and private agencies."⁴⁸ However, NSPAW does not address the Committee's recommendation to reform NGO requirements so that more grass roots and women's organizations may participate in political-decision making. The Government must be open and willing to working with all NGOs, even those critical the Government, to address the specific vulnerabilities faced by women across Burma.

Unfortunately, the Government's 2015 periodic report to the CEDAW Committee 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.⁴⁹ 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.

4.3.4 RECOMMENDATIONS

- The Government must increase women's participation in decision making in legislative, judicial, and executive bodies by installing temporary special measures and quotas guaranteeing at least 30% female representation, removing structural legal barriers (including those contained in the 2008 Constitution) executing major improvements to women's access to education, livelihood, and health opportunities, and disassembling paternalistic cultural stereotypes and customary laws.
- The Government must draft new laws and administrative procedures to ensure women's equal participation at the policymaking level, and amend laws that act as structural impediments to women's achievement.
- The Government must guarantee and facilitate broader inclusion, input and incorporation of grassroots and women's organizations in decision-making.

Endnotes

- 1 The Committee notes that “research demonstrates that if women’s participation reaches 30 to 35 percent (generally termed a ‘critical mass’), there is a real impact on political style and the content of decisions, and political life is revitalized.” Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 23, on Article 7, of the Convention on the Elimination of All Forms of Discrimination against Women, on Women in Political and Public Life*, ¶ 16, U.N. Doc. A/52/38 (Jan. 13, 1997) [hereinafter CEDAW, *General Recommendation No. 23*].
- 2 In 1953, the UN General Assembly passed the Convention on the Political Rights of Women to “equalize the status of men and women in the enjoyment and exercise of political rights” including the right to vote and hold political office. Convention on the Political Rights of Women, March 31, 1953, 193 U.N.T.S. 135, available at https://treaties.un.org/doc/Treaties/1954/07/19540707%2000-40%20AM/Ch_XVI_1p.pdf. In 1966, the International Covenant on Civil and Political Rights highlighted that these rights must be available to women without discrimination. International Covenant on Civil and Political Rights, art. 3, Dec. 16, 1966, 999 U.N.T.S. 171, available at <http://www.refworld.org/docid/3ae6b3a0.html>.
- 3 Convention on the Elimination of All Forms of Discrimination Against Women, art. 7(a)-(b), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW], available at <http://treaties.un.org/doc/Publication/UNTS/volume%201249/v1249.pdf>.
- 4 CEDAW, *General Recommendation No. 23*, *supra* note 1, at ¶ 5.
- 5 *Id.*, at ¶ 15.
- 6 *Id.*, at ¶ 18.
- 7 *Id.*, at ¶ 15.
- 8 *Id.*
- 9 *Id.*, at ¶ 18.
- 10 CEDAW, *supra* note 3, at Art. 7.
- 11 Jennifer Harriden, NIAS, *The Authority of Influence: Women and Power in Burmese History* 174 (2012) [hereinafter *Authority of Influence* (2012)]; 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).
- 12 Brenda Belak, *Women & the Law*, in *Gathering Strength: Women From Burma on Their Rights* 226 (2002); Paul Minoletti, *Women’s Participation in the Subnational Governance of Myanmar*, 30 (June 13, 2014).
- 13 Kyaw Hsu Mon, *Suu Kyi calls for More Women in Parliament*, *The Irrawaddy* (Oct. 4, 2013) (“There is very low involvement of women in the legislature in this country. . . it’s because we have been under the military [dictatorship] for half a century.”).
- 14 Minoletti (2014), *supra* note 12, at 3. See also Oxfam, CARE, Trocaire & Action Aid, *Women & Leadership*, 15 available at <https://www.care.org.au/wp-content/uploads/2014/12/Myanmar-Women-and-Leadership-in-Myanmar-Report.pdf>; Tharapi Than, *Women in Modern Burma* 96 (2014). For a fuller discussion, see *supra* section “Background on Burma” at footnotes 9-11.
- 15 Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), U.N. Doc. A/69/398 (Sept. 23, 2014) [hereinafter *Special Rapporteur Report* (Sept. 2014)].
- 16 Mon (2013), *supra* note 13.
- 17 Combined fourth and fifth periodic report of the Government of Myanmar to CEDAW Committee, CEDAW/C/MMR/4-5, (Jan. 8, 2015) [hereinafter 2015 CEDAW State Report, Myanmar].
- 18 Kyaw Zwa Moe, *From Top Brass to a Bureaucratic Class*, *The Irrawaddy* (Nov. 6, 2014); *Authority of Influence* (2012), *supra* note 11, at 176; Yoshihiro Nakanishi, *Strong Soldiers, Failed Revolution: The State and Military in Burma 1962-88* (March. 2013); David I. Steinberg, *Burma: The State of Myanmar* 214 (Nov. 2001)
- 19 See generally, Global Justice Center, *The Gender Gap and Women’s Political Power in Myanmar/Burma* (May 2013) [hereinafter GJC, *The Gender Gap* (2013)], http://globaljusticecenter.net/index.php?option=com_mtree&task=att_download&link_id=103&cf_id=34.
- 20 CEDAW Commission, *Girls’/Women’s Right to Education – Concept Note for Half Day General Discussion* (July 7, 2014), available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Womensrighttoeducation.aspx>.
- 21 Minoletti (2014), *supra* note 12, at 1; see generally *Authority of Influence* (2012), *supra* note 11.
- 22 Minoletti (2014), *supra* note 12, at 10.
- 23 *Elections in Asia and the Pacific: A Data Handbook, Volume I: Middle East, Central Asia, and South Asia* 603 (D. Nohlen, F. Grotz, and C. Hartmann, eds. 2001).
- 24 2015 CEDAW State Report, Myanmar, *supra* note 17, at ¶ 77. Than (2014), *supra* note 14; Mi Mi Kaing, *The World of Burmese Women* 8 (1984).
- 25 1990 Multi-Party Democracy General Elections, Compiled by Khun Kyaw Han 17 (Feb. 1, 2003).
- 26 Official Website of Myanmar Parliament, http://www.myanmarparliament.gov.mm/?page_id=144 (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 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%))).
- 27 Minoletti (2014), *supra* note 12, at 1.
- 28 2015 CEDAW State Report, Myanmar, *supra* note 17, at ¶ 77. See also Minoletti (2014), *supra* note 12, at 8. Yen Snaing, *Burma’s Government to Appoint Second Woman Minister*, *The Irrawaddy* (Feb. 11, 2014).
- 29 See Constitution of the Republic of the Union of Myanmar (2008), arts. 59, 232 and 301 [hereinafter 2008 Constitution]. See also GJC, *The Gender Gap* (2013), *supra* note 19.
- 30 2008 Constitution, *supra* note 28, at art. 352.

- 31 2008 Constitution, *supra* note 29, at art. 109(b) and 141(b), respectively.
- 32 *Id.*, at Art. 436. See ICTJ, *Impunity Prolonged: Burma and its 2008 Constitution*, 31 (Sept. 2009); Kyaw Phyo Tha, *Parliament Votes Against Constitutional Reform, Reserves Military Veto*, *The Irrawaddy*, June 25, 2015.
- 33 *First women military officers appointed to parliament*, Mizzima News (Jan. 14, 2014), <http://uscampaignforburma.org/january-2014-news/44-archived-news/january-2014-news/5607-mizzima-first-women-military-officers-appointed-to-parliament.html>; *Myanmar Military's First Women Representatives Join Parliament*, Radio Free Asia (Jan. 14, 2014), <http://www.rfa.org/english/news/myanmar/women-01142014143827.html>.
- 34 2015 CEDAW State Report, Myanmar, *supra* note 17, at ¶¶ 25, 28.
- 35 *Id.* at ¶¶ 30-31.
- 36 Authority of Influence (2012), *supra* note 11, at 240.
- 37 *Id.* at 246, 257.
- 38 *Id.* at 258-265.
- 39 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct 20-Nov. 7, ¶ 29 U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008).
- 40 *Id.* at ¶ 19.
- 41 Rep. of the Special Rapporteur on the situation of human rights in Myanmar, *Progress Report of the Special Rapporteur on the Situation of Human Rights in Myanmar* (Tomás Ojea Quintana), ¶16, U.N. Doc. A/HRC/69/398 (Sept. 23, 2014) [hereinafter Special Rapporteur Report (Sept. 2014)].
- 42 Amyotha Hluttaw Election Law No.4/2010, 9th Waning Moon of Tabaung 1371, Mar. 17, 2010; Pyithu Hluttaw Elecion Law No.3/2010, The 9th Waxing Moon of Tabaung 1371, Mar. 17, 2010; Special Rapporteur Report (Sept. 2014), *supra* note 42, at ¶ 18.
- 43 Nyein Nyein, *Think-Tank Calls for Quota to Boost Women's Role in Burmese Politics*, *The Irrawaddy* (Jun. 18, 2014) available at <http://www.irrawaddy.org/burma/think-tank-calls-quota-boost-womens-role-burmese-politics.html>; Special Rapporteur on the Situation of Human Rights in Myanmar, *Progress Report of the Special Rapporteur on the situation of human rights in Myanmar*, ¶¶ 63, 93(a) UN Doc. A/HRC/68/397 (Sept. 23, 2013).
- 44 Myanmar Nat'l Committee for Women's Affairs, Nat'l Strategic Plan for the Advancement of Women ("NSPAW") (2013-2022), *Women and Decision Making* § 13 [hereinafter 2013-2022 NSPAW].
- 45 *Id.* at § 13(a)
- 46 *Id.* at § 13(c)(4).
- 47 *Id.* at § 13(b)(3).
- 48 *Id.* at § 13(f).
- 49 2015 CEDAW State Report, Myanmar, *supra* note 17, at ¶¶ 76-85 (2015).

4.4 VIOLENCE AGAINST WOMEN (GENERAL RECOMMENDATION 19)

4.4.1 RELEVANT CEDAW GUIDANCE

Women cannot enjoy and exercise their human rights and fundamental freedoms on an equal basis with men if they fear for their own physical safety.¹ Accordingly, under CEDAW, the obligation of States parties to eliminate discrimination against women and ensure women's equality necessarily includes an obligation to enhance women's physical security and end violence against women.² Notably, the CEDAW Committee has recognized that situations of armed conflict often lead to increased violence against women, particularly sexual violence, requiring specific protective and punitive measures in conformance with CEDAW.³ For the purpose of this report, analysis of Burma's CEDAW obligations in the context of sexual violence in armed conflict is addressed separately in "Sexual Violence, Access to Justice, and Political Participation of Women in Conflict and Post-Conflict Settings."

Under CEDAW, violence against women is defined broadly, creating a wide scope of circumstances implicating a State party's obligation to act. The definition encompasses violence that is directed against a woman because she is a woman and violence that affects women disproportionately, including acts that inflict physical, mental or sexual harm or suffering, as well as threats of such acts, coercion, and other deprivations of liberty.⁴ Moreover, CEDAW obligations concerning violence against women are not restricted to violence committed by governments. Under CEDAW Article 2(e), States parties must take all appropriate measures to eliminate violence against women by any person, organization, or enterprise, including violence that occurs within the family.⁵ Indeed, the Committee has called family violence "one of the most insidious forms of violence against women," affecting women of all ages who are subjected to violence of all kinds, including battery, rape, other forms of sexual assault, mental and other forms of violence.⁶

CEDAW's broad definition of violence against women is complemented by an expansive scope of measures required of States parties to eradicate it. For all forms of violence against women the Committee has emphasized that States parties must take appropriate and effective legal measures to provide protection for women and punishment for perpetrators, including establishing laws and legal mechanisms such as penal sanctions, civil remedies, and compensatory provisions.⁷ The Committee has also emphasized that relevant laws and legal mechanisms must equally give adequate protection to all women in society and must respect the integrity and dignity of all women.⁸ In addition, gender-sensitivity training of judicial and law enforcement officers and other public officials is deemed essential for the effective implementation of these CEDAW obligations.⁹ Alongside effective legal measures, States parties must also take preventive measures, including public information and education programs to change attitudes concerning the roles and status of men and women, as well as protective measures, including refuges, counseling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.¹⁰

4.4.2 BURMA SPECIFIC CONTEXT

Violence against women in Burma is widespread and diverse; it takes many forms and is carried out by many different types of actors.¹¹ Throughout their lives, women in Burma often face emotional, economic, physical, sexual, and intimate partner violence and harassment in both the home and in public.¹² Family members, the community, and the military perpetrate this violence,¹³ and in most cases the country's legal framework is insufficient to ensure justice, protection and rehabilitation for victims.¹⁴

One recent study of violence against women in Burma found not only that all women interviewed for the study had experienced at least one type of violence, but also that almost all women had experienced at least one form of physical abuse by an intimate partner.¹⁵ Further, a study on domestic violence in the Paluang community found that Paluang men are socialized into a culture of violence, and thus see violence as a necessary means of asserting authority over a perceived lesser being—women.¹⁶ Such violence has a devastating impact on stability of the family, negatively impacts children and threatens the development of the community.¹⁷

The harms women in Burma face from gender-based violence are compounded by the fact that Burma's legal system provides insufficient protections, legal and otherwise, for these women.¹⁸ Burma remains one of only two ASEAN countries lacking a specific law criminalizing domestic violence.¹⁹ Moreover, Burma currently has no comprehensive laws to prevent violence against women or sexual harassment and no law allowing victims to obtain restraining orders against abusers.

Three years ago, the Government announced that it had commenced a process of drafting comprehensive legislation to address violence against women. While this is a significant opportunity to acknowledge and correct fundamental deficiencies in Burma's legal framework, the Government has yet to release publicly the contents of any proposed legislation or hold an open and broad-based public forum for consultation regarding the law. The lack of progress is notable since the Government has passed 143 new laws since 2011.²⁰

In addition, deficiencies in Burma's outdated, colonial-era laws such as the Penal Code, the Code of Criminal Procedure, and the Evidence Act present substantial obstacles to addressing violence against women, including family violence and sexual violence.²¹ These systemic and structural deficiencies violate CEDAW and illustrate precisely why legal measures required under CEDAW can help frame issues in a domestic context.

Women's rights advocates criticize Burma's Penal Code as a reflection of outdated stereotypes that call into question the behavior of women who experience violence and characterize them as socially diminished, and for not recognizing that violence against women is a violation of a woman's personal integrity.²² The few provisions of the Penal Code that actually address violence against women are ambiguous and at times contradictory, falling far short of CEDAW obligations to implement effective legal frameworks.

For instance, while Section 375 of the Penal Code includes non-consensual "sexual intercourse" as a criminal element of rape, the undefined requirement of "penetration" as a component of "sexual intercourse" leaves the overall definition of rape ambiguous, for instance in cases of forced non-penile penetration.²³ Nor does the Penal Code include any specific provisions concerning unwanted sexual touching or sexual harassment outside the context of sexual intercourse, although Section 354 does criminalize assault intended to "outrage [a woman's] modesty" (a troubling example of outdated and ambiguous language justifying scrutiny of a woman's "modesty" as a pre-condition for access to justice).²⁴ Moreover, the Penal Code's characterization of rape explicitly excludes non-consensual sex between married couples. Disturbingly, because the definition of rape under Section 375 applies only to women who are not married to their attacker, the Penal Code neither prohibits nor punishes the rape of women by their husbands, unless they are under 14 years of age.²⁵ The Penal Code further omits any specific mention of domestic violence against women, and no legal mechanisms exist, under the Penal Code or elsewhere, allowing women to obtain restraining orders to protect them against their aggressors, who could be spouses, relatives, or domestic partners.²⁶

A revision of Section 375 has been proposed by the parliament, but with the exception of changing the legal age of sexual consent from 14 to 16 years, there are no proposed changes to the other provisions, including an expanded definition of rape and or the elimination of the marital rape exception.²⁷

Meanwhile, neither Burma's Code of Criminal Procedure nor its Evidence Act contains any substantive protections for the integrity and dignity of women during the investigation and prosecution of cases involving violence against women.²⁸ Indeed, the Code of Criminal Procedure does not appear to have any specific provisions concerning violence against women. Meanwhile, under the Evidence Act, the few examples of provisions that do address violence against women appear to do more harm than good, particularly in cases of sexual violence. For instance, under the Evidence Act, a woman's previous sexual conduct and character is admissible as evidence to discredit her testimony concerning allegations of her rape.²⁹ The law also permits judges to both compel victims of rape to testify against their attackers and to draw an adverse inference from a victim's refusal to answer questions about the rape.³⁰ And while the Evidence

Act does require courts to presume lack of consent when a woman testifies she did not consent, the lack of other evidence to corroborate such testimony can constitute a substantial barrier to justice. In the words of one court, it is considered “notoriously unsafe” to convict a man of rape based on the uncorroborated testimony of a woman.³¹

These shortcomings are reinforced and reflected by a cultural habit of victim blaming within Burma.³² For instance, when women report violence to the police, the authorities tend to give advice and take actions designed to keep the couple together (likely due to the widespread stigma of divorce).³³ 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.³⁴

In light of these deficiencies in Burma’s legal framework for addressing violence against women, the CEDAW Committee in 2008 urged Burma 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.”³⁵ Among other things, the CEDAW Committee called upon the Government’s to address the types of legal deficiencies described above, including by “ensur[ing] that violence against women and girls, including domestic violence and all forms of sexual abuse, constitutes a criminal offence; that perpetrators are prosecuted, punished and rehabilitated; and that women and girls who are victims of violence have access to immediate means of redress and protection.”³⁶ Moreover, it also requested that the Government “remove any impediments faced by women in gaining access to justice” with regard to gender-based violence, which would include reforms to address the deficiencies in the Penal Code, the Code of Criminal Procedure, and the Evidence Act described above, and recommended “implementation of training for the judiciary and public officials, in particular law-enforcement personnel and health-service providers, in order to ensure that they are sensitized to all forms of violence against women and can provide adequate gender-sensitive support to victims.”³⁷

4.4.3 ANALYSIS OF NSPAW

NSPAW identifies addressing violence against women as one of its 12 Key Priority Areas, and includes a commitment to “build the capacity of the Myanmar Police Force, judicial officers, health care staff and volunteers to actively respond to, and prevent all forms of violence against women and girls.”³⁸ NSPAW also contains a pledge to “tak[e] legal action against perpetrators of violence against women” while pledging to “[e]nsure that all women and girls affected by violence have access to services, in both urban and rural areas.”³⁹

While these aspirational commitments constitute welcome steps, NSPAW devotes little to no attention to addressing the fundamental deficiencies in Burma’s law that constitute substantial and often insurmountable barriers to justice for victims of violence and can ensure impunity for perpetrators. For example, notwithstanding pledges to “develop and strengthen laws” to eliminate violence against women, NSPAW does not call for a comprehensive violence against women law, nor does it advocate for any legal reforms to correct flaws in Burma’s Penal Code, Code of Criminal Procedure, and Evidence Act. No progress can be made in the campaign to protect women from violence, including domestic violence, without major changes to the legal regime, including: provisions of the Penal Code that ambiguously define rape and other sexual violence crimes; provisions of the Evidence Act that permit prosecutors and courts to further violate the dignity and integrity of victims of sexual violence through evidentiary procedure; and the absence of any specific provisions dealing with violence against women whatsoever under the Code of Criminal Procedure.⁴⁰

Notably, the Government’s 2015 periodic report to the CEDAW Committee includes recognition of the need for a comprehensive law addressing violence against women, including a positive commitment to draft and enact an “Anti-Violence against Women Law” under the Ministry of Social Welfare, Relief, and Resettlement’s Department of Social Welfare.⁴¹ The periodic report also includes welcome commitments concerning extensive research and public awareness-building on violence against women, as well as a national strategy to combat trafficking of women and girls.⁴² Critically, however, like NSPAW, the periodic report lacks any discussion of necessary reforms to existing legislation

that prevent victims of violence against women from seeking justice. In particular, as in NSPAW, the Government's periodic report makes no reference to deficiencies embedded in Burma's Penal Code, Code of Criminal Procedure, and Evidence Act, and indeed suggests that existing laws are sufficient to provide justice for women who have experienced violence.⁴³

4.4.4 RECOMMENDATIONS

- The Government must enact new legislation guaranteeing comprehensive protection from all forms of violence against women, including emotional, economic, domestic and sexual violence (including marital rape), as well as sexual assault and sexual harassment. The new legislation should also provide clear criminal penalties, civil remedies, rehabilitation and reparations in all cases of violence against women.
- The Government must amend its existing laws relating to violence against women, including provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act, to ensure such laws adhere to prevailing international standards, removing antiquated notions of family and sexual violence, and guarantee justice in the form of criminal punishment, victim rehabilitation and reparations.
- The Government must ensure that its laws respect the integrity and dignity of women who have experienced gender-based violence. This must include repealing any procedural and evidentiary provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act that violate the integrity and dignity of women during the investigation and prosecution of cases involving violence against women.
- The Government must combat Burma's culture of victim blaming including by establishing protective measures and support services for victims of violence women and implementation of gender-sensitive training of judicial and law enforcement officers and other public officials in connection with cases of violence against women.
- For specific recommendations on the intersection of armed conflict and violence against women, please see *infra* section "Sexual Violence, Access to Justice, and Political Participation of Women in Conflict and Post-Conflict Settings."

Endnotes

- 1 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 19, of the Convention on the Elimination of All Forms of Discrimination against Women, on Violence against Women*, ¶ 1 (1992) [hereinafter CEDAW, *General Recommendation No. 19*].
- 2 *Id.* at ¶ 4.
- 3 *Id.* at ¶ 16.
- 4 *Id.* at ¶ 6.
- 5 Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 16, Art. 2(e) [hereinafter CEDAW]; CEDAW, *General Recommendation No. 19*, *supra* note 1, at ¶ 9.
- 6 CEDAW, *General Recommendation No. 19*, *supra* note 1, at ¶ 23.
- 7 *Id.* at ¶ 24(t)(i).
- 8 *Id.* at ¶ 24(b).
- 9 *Id.* at ¶ 24(b).
- 10 CEDAW, *General Recommendation No. 19*, *supra* note 1, at ¶ 24(f), (k).
- 11 Gender Equality Network, *Behind the Silence: Violence Against Women and their Resilience*, Nov. 24, 2014, at 1 [hereinafter Gender Equality Network Report (Nov. 2014)]. See also, UNFPA, *Responding to Gender Based Violence in Myanmar*, http://www.themimu.info/sites/themimu.info/files/documents/Ref_Doc_GBV_Donor_Briefing_21July2014.pdf.
- 12 Gender Equality Network Report (Nov. 2014), *supra* note 11, at 2.
- 13 See Gender Equality Network, *Briefing Paper: Behind the Silence – Violence Against Women and their Resilience, Myanmar*, Oct. 2014, at 2, 3 [hereinafter Gender Equality Network Report (Oct. 2014)]; Women’s League of Burma, “If they had hope, they would speak”, *The ongoing use of state-sponsored sexual violence in Burma’s Ethnic Communities*, Nov. 2014, at ii, 4-5. See also U.S. Dep’t of State, 2009 Human Rights Report: Burma (March 2010), available at <http://www.state.gov/j/drl/rls/hrrpt/2009/eap/135987.htm>.
- 14 Action Aid, *Violence Against Women and Girls and Access to Justice in Myanmar: Gender Analysis Brief*, (Nov. 2014). See also Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws*, Jan. 2013, at 1 [hereinafter Gender Equality Network Report (Jan. 2013)]
- 15 Gender Equality Network, *Behind the Silence: Violence against Women and their Resilience, Myanmar*, Feb. 2015, at 25 [hereinafter Gender Equality Network Report (Feb. 2015)]
- 16 Palaung Women’s Organisation, *Voices for Change: Domestic Violence and Gender Discrimination in the Palaung area*, Nov. 25, 2011, at 5 [hereinafter PWO Report (Nov. 2011)]. See also, Medford E. Spiro, *Gender hierarchy in Burma: cultural, social and psychological dimensions*, in *Sex and Gender Hierarchies* 316, 319 (Barbara D. Miller, ed., 1993).
- 17 PWO Report (Nov. 2011), *supra* note 16, at 6.
- 18 Gender Equality Network Report (Jan. 2013), *supra* note 14, at 1, 22.
- 19 PWO Report (Nov. 2011), *supra* note 16, 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 14, at 10.
- 20 Official Website of Myanmar Parliament, www.myanmarparliament.gov.mm/?page_id13429. (last visited June 25, 2015)
- 21 Gender Equality Network Report (Jan. 2013), *supra* note 14, at 7.
- 22 See e.g. Gender Equality Network Report (Jan. 2013), *supra* note 14, at 8, 9.
- 23 *Id.* at 7-8.
- 24 *Id.* at 9-10.
- 25 See Myanmar Penal Code, ¶ 375-376; Gender Equality Network Report (Jan. 2013), *supra* note 14, 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.* General approval of the marriage has been sufficient to satisfy the consent requirement. *Id.* Males are able to marry once they attain physical maturity. *Id.*
- 26 Gender Equality Network Report (Jan. 2013), *supra* note 14, at 10.
- 27 Yen Snaing, *Bill Seeks to Modernize Parts of Burma’s Penal Code*, *The Irrawaddy*, Jun. 22, 2015, available at <http://www.irrawaddy.org/burma/bill-seeks-to-modernize-parts-of-burmas-penal-code.html>.
- 28 Gender Equality Network Report (Jan. 2013), *supra* note 14, at 8.
- 29 *Id.* at 9.
- 30 *Id.*
- 31 *Id.*
- 32 Gender Equality Network Report (Nov. 2014), *supra* note 11, at 3; J. Freccerreo & K. Seelinger, *Safe Haven: Sheltering Displaced Persons from Sexual and Gender-Based Violence, Case Study: Thailand*, May 2013, at 31, available at <http://www.unhcr.org/51b6e3239.pdf>.
- 33 Gender Equality Network Report (Nov. 2014), *supra* note 11, at 6.
- 34 *Id.* at 6.
- 35 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42 Sess. Oct. 20-Nov. 7, ¶ 23, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter 2008 CEDAW Concluding Observations on Myanmar].
- 36 *Id.*
- 37 *Id.*

- 38 Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women* ("NSPAW") (2012-2022), Myanmar 2013, § 10(b)(4) [hereinafter 2013-2022 NSPAW].
- 39 2013-2022 NSPAW § 10(c)(1)-(2).
- 40 2013-2022 NSPAW § 10(c)-(d).
- 41 Combined Fourth and Fifth Periodic Report of the Government of Myanmar to CEDAW Committee, ¶ 17, U.N. Doc. CEDAW/C/MMR/4-5, (Jan. 8, 2015) [hereinafter 2015 CEDAW State Report, Myanmar]
- 42 *Id.* at ¶ 45-48, 55-75.
- 43 *Id.* at ¶ 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.")

4.5 SEXUAL VIOLENCE, ACCESS TO JUSTICE, AND POLITICAL PARTICIPATION OF WOMEN IN CONFLICT AND POST-CONFLICT SETTINGS (GENERAL RECOMMENDATIONS 28, 30)

4.5.1 RELEVANT CEDAW GUIDANCE

Situations of armed conflict pose grave threats to civilians. Women are especially vulnerable since conflict exacerbates existing gender inequalities and places them at heightened risk of violence, which prevents their equal enjoyment and exercise of fundamental rights.¹ In particular, the routine use of sexual violence as a tactic of war is one of the most destructive violations suffered by women and girls during and after conflict.² Post-conflict transition processes routinely exclude women and women's issues and rarely provide reparations, which means that cessation of conflict often does not eliminate inequalities, ameliorate women's suffering, or make women whole.³

Importantly, the full protection of women's human rights at *all* times is one of CEDAW's fundamental objectives and a State party's obligations under CEDAW apply continuously before, during, and after situations of armed conflict.⁴ Additionally, through its General Recommendation 30 on women in conflict prevention, conflict, and post-conflict situations, the Committee has provided authoritative guidance on how CEDAW obligations must ensure the ability of women to exercise fundamental rights on an equal basis with men in conflict-related contexts. For purposes of this analysis, three obligations of States parties are particularly relevant: (1) protection against sexual violence during and after times of armed conflict; (2) ensuring that perpetrators of sexual violence are brought to justice; and (3) promoting the full participation of women in formal peacemaking and post-conflict reconstruction.

When dealing with sexual violence in conflict, post-conflict or transitional situations, States parties' obligations under CEDAW are interpreted within the broader framework of international law and international humanitarian law.⁵ In particular, resolutions of the UN Security Council are "crucial political frameworks for advancing advocacy regarding women, peace and security."⁶ Of specific note is Security Council Resolution 1325 on women, peace and security, adopted in October 2000, calling "on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict" and to prosecute those responsible.⁷ Since 2000, the Security Council has passed an additional six resolutions as part of its Women, Peace and Security agenda in order to set forth state and international responsibilities to protect women in conflict, include women in post-conflict processes, and provide reparations to victims.⁸ In addition, CEDAW obligations are also informed by jurisprudence of international criminal tribunals and the Rome Statute of the International Criminal Court, pursuant to which conflict-related violence against women can constitute war crimes, crimes against humanity, or constituent acts of genocide.⁹

Sexual Violence in Conflict and Post-Conflict Settings

Gender-based violence in conflict is documented in a range of forms, including arbitrary killings, torture and mutilation, and various forms of sexual violence including rape, forced marriage, forced prostitution, forced impregnation, forced termination of pregnancy, and forced sterilization.¹⁰ The Committee has found it "indisputable" that women and girls are targeted by both State and non-State actors for sexual violence as a tactic of war, with the intent to humiliate, dominate, instill fear in, disperse, or forcibly relocate members of targeted communities or ethnic groups.¹¹ Moreover, sexual violence in conflict does not stop with official ceasefires or the signing of peace agreements. In fact, as the Committee acknowledges, all forms of gender-based violence, in particular sexual violence, escalate in post-conflict settings.¹² These violations constitute an egregious form of discrimination prohibited by multiple articles of CEDAW, under which obligations of States parties do not cease during times of conflict.¹³

The Committee has therefore made it clear that States parties are obligated to adopt strategies and measures to eliminate violence against women during and after armed conflict, regardless of whether the violence was perpetrated by

the government or another actor.¹⁴ For instance, through General Recommendation 30, the Committee issued a wide range of recommendations detailing how States parties should address sexual violence in times of armed conflict, including:

- Prohibition of all forms of gender-based violence by State and non-State actors, including through legislation, policies, and protocols, and implementation of a zero tolerance policy against sexual violence in armed conflict;¹⁵
- Adoption of gender-sensitive investigative procedures to address sexual violence;¹⁶
- Institution of gender-sensitive training and adoption of codes of conduct and protocols for the police and military, including peacekeepers, and allocation of sufficient funds and other resources to implement these initiatives.¹⁷

Addressing Impunity for Perpetrators of Sexual Violence in Conflict

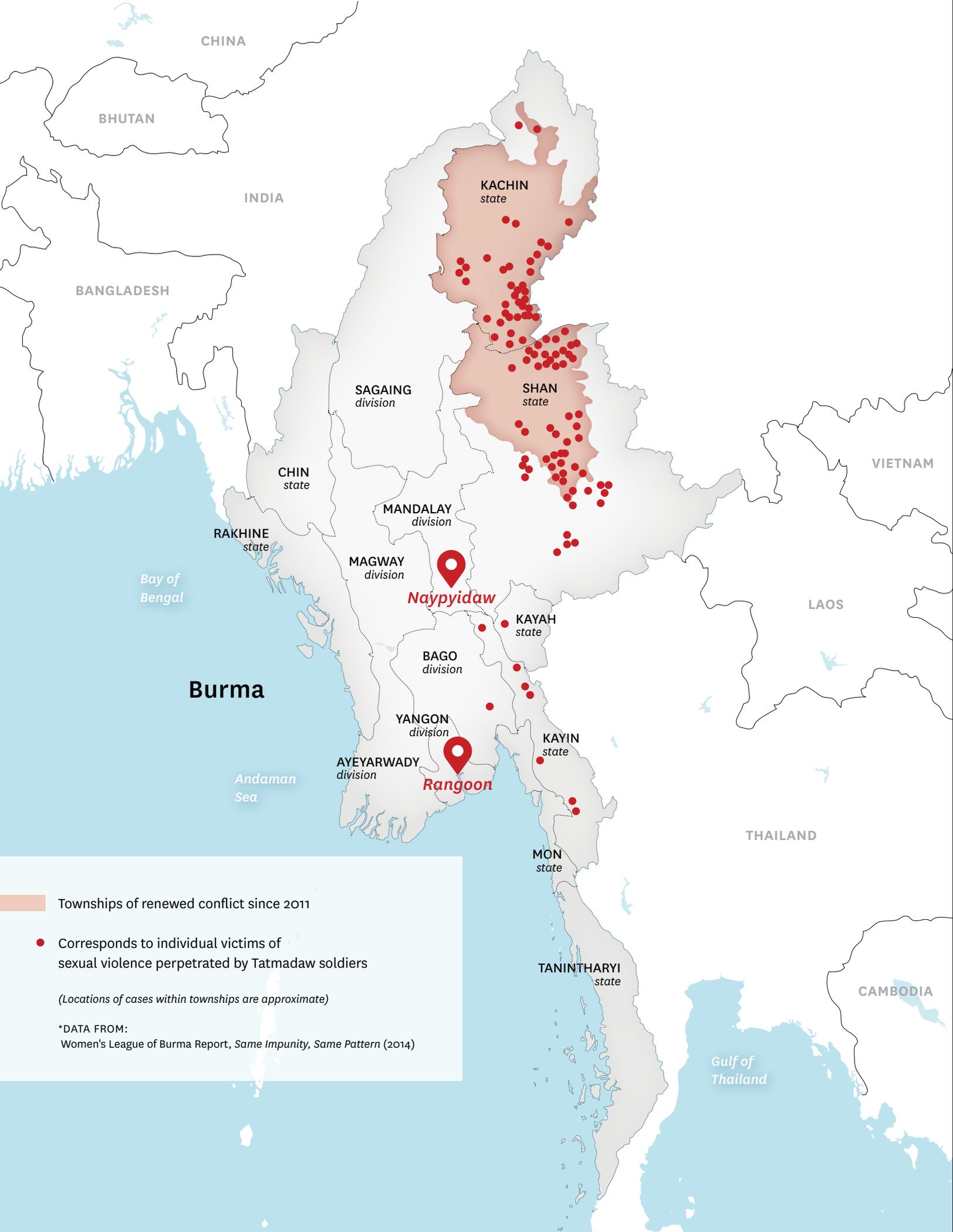
In conflict and post-conflict situations, States parties must investigate and punish all forms of gender-based violence and ensure women's right to adequate and effective remedy and reparations for sexual violence suffered during and after conflict.¹⁸ However, access to justice is more difficult in situations of conflict and post-conflict, in part because formal justice systems may no longer exist or function.¹⁹ Moreover, transitional justice mechanisms such as truth commissions or hybrid courts that are instituted to replace or support dysfunctional judicial systems have historically failed victims of gender-based violence by not adequately delivering justice and reparations, thereby entrenching the impunity enjoyed by perpetrators of sexual violence in conflict.²⁰ Thus, as the Committee has acknowledged, "the most egregious and pervasive violations which have occurred during conflict often remain unpunished in transitional justice mechanisms and are 'normalized' in the post-conflict environment."²¹ Often, and in violation of explicit UN policy, transitional post-conflict processes grant amnesties to ex-combatants, even those who have committed human rights abuses, including sexual violence.²² Taken together, these failures constitute violations of CEDAW Articles 1, 2, 3, 5(a), and 15, among others.

The Committee has offered specific recommendations to States parties regarding how to fulfill their obligations to ensure access to justice for victims of sexual violence in conflict and post-conflict settings. These recommendations directly echo principles of international law underscoring the responsibility of all states to end impunity and to prosecute those responsible for war crimes, including crimes of sexual and other violence against women and girls, as well as the need to exclude such crimes from amnesty provisions.²³ The Committee's recommendations call on States parties to:

- Ensure a comprehensive approach to transitional justice that incorporates mechanisms which are gender sensitive and promote women's rights;²⁴
- Ensure that transitional justice mechanisms guarantee women's access to justice by mandating that bodies address all gender-based violations, reject amnesties for gender-based violations, and ensure compliance with the recommendations and decisions issued by such mechanisms;²⁵
- Ensure that support for reconciliation processes does not result in blanket amnesties for any human rights violations, especially sexual violence against women and girls, and that such processes reinforce efforts to combat impunity for such crimes.²⁶

Participation of Women in Post-Conflict Transition

In situations of post-conflict transition, promotion of gender equality and women's participation in decision-making processes is often under-prioritized or sidelined as incompatible with reconstruction objectives, in violation of obligations to ensure women's equal representation in political and public life under CEDAW Articles 7 and 8 as well as Security Council Resolutions on Women, Peace and Security.²⁷ In response, the Committee has repeatedly expressed concern that women's voices are silenced and marginalized in post-conflict and transition periods and recovery pro-



Townships of renewed conflict since 2011

- Corresponds to individual victims of sexual violence perpetrated by Tatmadaw soldiers

(Locations of cases within townships are approximate)

*DATA FROM:
Women's League of Burma Report, *Same Impunity, Same Pattern* (2014)

cesses, stressing that women's equal and meaningful participation in all branches of government, appointment to leadership positions in government, and ability to actively participate in civil society are "prerequisites for creating a society with lasting democracy, peace and gender equality" in a post-conflict setting.²⁸ Moreover, the Committee has also made it clear that in fulfilling obligations to ensure equal participation of women in political and public life in the post-conflict context, States parties must give women an equal start, including through the adoption of temporary special measures to accelerate substantive equality under CEDAW Article 4(1).²⁹

To address these concerns, the CEDAW Committee has recommended that all States parties in post-conflict transition:

- Ensure that legislative, executive, administrative, and other regulatory instruments do not restrict women's participation in the prevention, management, and resolution of conflicts;³⁰
- Ensure women's equal representation at all decision-making levels in national institutions and mechanisms dealing with crimes committed during the conflict;³¹
- Ensure that women and civil society organizations focused on women's issues and representatives of civil society are included equally in all peace negotiations and post-conflict rebuilding and reconstruction efforts;³²
- Provide leadership training to women in order to ensure their effective participation in the post-conflict political processes;³³
- Ensure that new constitutions contain temporary special measures to accelerate substantive equality, including through temporary special measures designed to enhance women's participation as candidates for government leadership positions.³⁴

4.5.2 BURMA SPECIFIC CONTEXT

As explained in the "Background on Burma" section above, Burma has been in armed conflict for over 60 years. Despite the Government's recent limited democratic reforms, Burma's political landscape remains tightly controlled by the military, which is still engaged in armed conflict with various ethnic minority groups. While continuing conflict has impacted women in myriad ways, this report highlights three specific areas in which CEDAW provides strict responsibilities for States parties: (1) to eliminate sexual violence during conflict; (2) to end impunity for perpetrators of sexual violence; and (3) to ensure women's participation in post-conflict processes.

Sexual Violence in Conflict and Post-Conflict Settings

Observers, including the Special Rapporteur on the situation of human rights in Myanmar, have repeatedly noted the high level of state-sponsored sexual violence occurring in Burma's ethnic areas as part of on-going ethnic conflict.³⁵ Sexual violence has been reported in both ceasefire and non-ceasefire areas in multiple ethnic states.³⁶ Since 2010, there have been 118 documented incidents of sexual violence by the military.³⁷ From 2002 to 2007, the nationwide number was 875, 128 of which were rapes of girls under the age of 18.³⁸ Military-orchestrated rapes are committed by foot-soldiers and officers alike, and often feature extreme brutality, gang rapes, and/or sexual slavery.³⁹ In many cases, women and girls die either as a result of injuries sustained during the rape, or are killed after-the-fact to prevent them from reporting their attacks or recounting their experiences.⁴⁰ Reports indicate that many figures regarding state-sponsored rape in ethnic areas are far lower than reality, as many cases go unreported.⁴¹

This pattern of state-sponsored sexual violence against ethnic minority women has continued despite the country's transition to a quasi-civilian government. In fact, the transition to "democracy" has not included any Government efforts to remove the legal and administrative pillars that provide impunity for perpetrators of sexual violence in conflict.⁴² Since 2011, continued conflict and large-scale development projects in ethnic minority communities have in-

creased military presence, and thereby increased military-perpetrated sexual violence in those areas.⁴³ For example, in January 2015, two Kachin women were beaten, raped and killed in Shan State allegedly by soldiers from a Light Infantry Battalion stationed nearby.⁴⁴ These attacks, linked to military offensives in resource rich ethnic areas, are reported to have been committed in more than 35 townships and 38 different battalions, suggesting that they are a part of a military strategy of using sexual violence against ethnic communities.⁴⁵ In addition, armed conflict has intensified the conditions at refugee and IDP camps, where gender-based violence is commonplace.⁴⁶ While domestic violence is the most common form of violence against women in the displaced persons camps, sexual assault, sexual exploitation, and trafficking are also major threats to the camps' female population.⁴⁷

Despite the evidence indicating otherwise, the Government consistently denies allegations of widespread and systematic sexual violence against ethnic women. President Thein Sein stated during an October 2012 interview that Burma's military was "very disciplined" and there was therefore "no reason for the military to commit acts of rape or murder."⁴⁸ Later, in March 2013, Senior General Min Aung Hlaing stated that "since we train our Tatmadaw men to acknowledge and adhere to the Geneva Convention, our Tatmadaw have never committed any war crimes and soldiers who [committed punishable acts] have had effective action taken against them according to military regulations."⁴⁹ Neither the military nor the Government has publicly disclosed information regarding these alleged "effective" actions, including the charges filed or the legal standards applied.

The Committee has recognized the pervasive nature of the problem. In the 2008 Concluding Observations, the CEDAW Committee "express[ed] its deep concern at the high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women, including Shan, Mon, Karen, Palaung and Chin women."⁵⁰ Since 2008, despite the installation of a civilian government that claims to be instilling democratic reforms, sexual violence against ethnic women continues to be a pattern and practice of the military that remains unchecked by the Government.

It should be noted that in June 2014 the Government signed the Declaration of Commitment to End Sexual Violence in Conflict.⁵¹ This pledge commits the Government to ending sexual violence in conflict, ending impunity for perpetrators of sexual violence in conflict and ensuring that victims of sexual violence in conflict receive support and reparations. Therefore, the Government's failure to adequately address allegations of state-sponsored sexual violence violates Burma's obligations under CEDAW, international law and international humanitarian law.

Addressing Impunity for Perpetrators of Sexual Violence

The military's widespread and systematic campaign of sexual violence against ethnic women is made possible by the culture of impunity that insulates perpetrators of human rights abuses.⁵² In particular, the "failure to investigate, prosecute and punish those responsible for rape and sexual violence has contributed to an environment conducive to the perpetuation of violence against women and girls in Burma."⁵³ The Human Rights Council and UN General Assembly have passed a combined 17 resolutions over the past 15 years urging the Government to end rape and other forms of sexual violence, and to end impunity for those responsible for violations of human rights.⁵⁴ The UN General Assembly Resolution in 2011 highlighted the Government's failure to heed previous calls by the UN to end impunity.⁵⁵

Failure to address sexual violence is made possible by structural deficiencies in Burma's legal system itself. For example, Article 445 of the 2008 Constitution guarantees 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."⁵⁶ This provision can be construed as a guarantee of immunity for military actors from investigation, prosecution, or punishment for crimes committed in carrying out their roles, including for sexual violence committed in conflict and post-conflict circumstances.⁵⁷ In 2009, the Special Rapporteur on the human rights situation in Myanmar stated that Article 445 "provides for blanket immunity for State agents, contrary to the very essence of accountability for human rights violations."⁵⁸

In addition to Article 445, the 2008 Constitution further entrenches impunity by establishing military autonomy over all its own judicial processes and giving the Commander-in-Chief “final and conclusive” authority over all cases and complaints.⁵⁹ Therefore, all serious human rights violations committed by the military, including rapes and sexual assaults, fall under the jurisdiction of a totally military-controlled judicial system.⁶⁰ Under the 2008 Constitution, the Commander-in-Chief can simply overturn verdicts as he sees fit and any civilian prosecution of a member of the military must be agreed to by the military.⁶¹ This system guarantees impunity for military personnel.

Deficiencies in the domestic legal system also contribute to the culture of impunity by providing insufficient legal protections for women who have experienced the military’s sexual violence.⁶² These include flaws in Burma’s outdated, colonial-era laws such as the Penal Code, the Code of Criminal Procedure, and the Evidence Act, which present substantial obstacles to addressing sexual violence in the context of Burma’s CEDAW obligations and are discussed in the Access to Justice section above.⁶³

Even if cases against the military could be heard outside of military courts, Burma “lacks an independent, impartial, and effective judiciary, which is not only essential for its transition to democracy but also necessary to...safeguard human rights and fundamental freedoms,” including the right of women to access legal remedies for rights violations, such as sexual violence in conflict.⁶⁴ Traditionally, the judiciary in Burma has been viewed as “weak, incompetent and corrupt” and the 2008 Constitution limits the judicial branch’s power.⁶⁵ Judges have not been vetted during the transition to civilian rule and the 2008 Constitution requires a minimum tenure of judicial experience for appointment to certain courts—making these positions available only to judges in power during the military juntas.⁶⁶ Accordingly, judges are often holdovers from the previous military regime which, at a minimum, calls into question their judicial independence.⁶⁷

Finally, the culture of impunity is further buttressed by the remoteness, and ongoing nature, of the military’s campaigns. International observers are often unable to access these remote areas due to geographic obstacles or administrative roadblocks. In addition, there is a cultural stigma against reporting sexual violence and complaint mechanisms either do not exist or are insufficient to address the breadth of the violence.⁶⁸ Women coming forward to report conflict-related crimes of sexual violence face harassment and retaliation, including threats, torture and arbitrary detention.⁶⁹ Meager financial compensation is often offered in order to discourage women from seeking justice.⁷⁰ To date, few, if any, perpetrators of sexual violence during the armed conflict in Burma have been investigated, prosecuted, or punished through judicial processes, and few victims have received any sort of redress or reparation.⁷¹

In the 2008 Concluding Observations, the Committee expressed concern regarding the “apparent impunity” of military perpetrators of sexual violence against ethnic women in conflict situations as well as reports of threatening, intimidation, and punishment of victims.⁷² The Committee urged the Government “to take immediate steps to put an end to those violations” and “to prosecute and punish the perpetrators, including military personnel.”⁷³ However, because structural, legal, and informal barriers to justice remain in place despite the institution of a civilian government, women remain unable to access effective means of redress and remedy.

Participation of Women in Post-Conflict Transition

Since 2011, the nominally civilian government has signed initial ceasefire agreements with 14 armed ethnic groups.⁷⁴ The negotiation of these ceasefires was performed almost exclusively by men which marginalized women and violated international law.⁷⁵ More recently, the Government agreed in principle to negotiate a draft nationwide ceasefire.⁷⁶

It is widely acknowledged that women have been historically excluded from participating in negotiations for peace and transitional processes.⁷⁷ In 2013, the 52-member delegation representing the Government included only two women (who are duly elected representatives of the Pyithu Hluttaw).⁷⁸ The 11-member “central committee” did not include any women.⁷⁹ The Special Rapporteur found that “women have been largely excluded and have not been a part of the ne-

gotiating teams thus far.”⁸⁰ It should be noted that women are generally absent from ethnic delegations as well.⁸¹ This directly contravenes CEDAW as well as Security Council Resolutions addressing the need for women’s involvement in post-conflict settings.⁸²

Women in Burma are often excluded from decision-making processes due to social and cultural inequalities.⁸³ Thus, the exclusion of women in the ongoing peace processes is a reflection of the broader societal belief that political decision-making is a male’s responsibility as well as the notion that men are more involved in these issues as direct combatants in conflict.⁸⁴ Related to this idea is the notion that security and ceasefire issues take priority over broader social and gender concerns.⁸⁵

Unfortunately, though not surprisingly, none of the preliminary ceasefire agreements made a reference to women, or any reference to accountability for acts of systematic sexual violence perpetrated against ethnic populations by the military.⁸⁶ Indeed, evidence indicates that the ceasefire agreement frameworks and their implementation continue to ignore underlying gender roles and associated power dynamics that lay the basis for institutionalized gender discrimination.⁸⁷ The exclusion of women from peace processes can lead to irreversible losses for women, since crucial conflict-related issues of concern to women, such as sexual violence, go unmentioned and therefore unaddressed in peace accords.⁸⁸ In short, if women are not included at the negotiation table, women’s issues and views are not reflected in peace agreements, thereby exacerbating women’s marginalization in the economy, society, and politics.⁸⁹ Therefore, the current peace processes in Burma must be expanded to include women, women’s issues, and the larger contextual issues behind gender relations.

4.5.3 ANALYSIS OF NSPAW

As explained in more detail in the previous section on “Violence against Women,” NSPAW contains lofty and aspirational language concerning the elimination of gender-based violence.⁹⁰ In addition, NSPAW includes a commitment to “build the capacity of the Myanmar Police Force, judicial officers, health care staff and volunteers to actively respond to, and prevent all forms of violence against women and girls.”⁹¹ On its face, NSPAW’s language on gender-based violence would appear to include—or at least not exclude—contemplation of sexual violence by military actors against ethnic women in conflict and post-conflict situations. In addition, NSPAW specifically calls for a “Plan of Action addressing Security Council Resolutions about conflict-related sexual violence.”⁹²

The stark reality of the Burma military’s ongoing campaign of sexual violence against ethnic women demands details, not generalities, and actions, not promises. NSPAW’s one oblique reference to Security Council Resolutions is not sufficient to meet Burma’s obligations to address conflict-related sexual violence as required by international law, including CEDAW. Even that reference to a “Plan of Action” has been ignored, since no further mention has been made of it since NSPAW’s adoption.

Moreover, NSPAW does not directly address the gender-related concerns of conflict and completely ignores the significant legal barriers that must be dismantled in order to ensure justice for victims of sexual violence in conflict. NSPAW does not suggest any changes to the 2008 Constitution, legal structure, or justice mechanisms to remove the culture of impunity that prevails. As required by international law and as defined by the Committee, conflict and post-conflict settings require multiple specific remedies for women who experience sexual violence. NSPAW does not meet this standard, and without addressing these fundamental aspects of Burma’s political and legal landscape, sexual violence in conflict will continue and become further entrenched.

NSPAW similarly avoids taking a position on the need to include women in peace negotiations and other transitional processes as required by international law and CEDAW. Sections of NSPAW that call for increasing women’s participation make no reference to the applicability in a peace-building context. Without addressing the lack of meaningful participation of women in these important dialogues, the voices of women remain silenced and marginalized, in violation of CEDAW and international law.

The Government's 2015 periodic report to the Committee contains some welcome language that appears to improve upon NSPAW's lack of specificity regarding gender-related concerns in connection with conflict—albeit only limited improvements with substantial room for additional steps. For instance, the periodic report references “a zero tolerance policy against any sexual misconduct by the military personnel” and limited figures concerning prosecution of sexual violence perpetrated by military actors.⁹³ However, despite a blanket assertion that victims of gender-based violence committed by the military “can candidly complain to nearby military or civil authorities in order to take action against offenders,” and that “military authorities will take prompt actions against accused military personnel as complaints are received,” the periodic report substantially lacks specific steps for implementation of any strategic plan to identify and eliminate sexual violence by military actors against ethnic women in conflict and post-conflict situations.⁹⁴ Nor does the periodic report acknowledge the significant legal barriers that must be dismantled in order to ensure justice for victims of sexual violence in conflict, including any changes to the 2008 Constitution, legal structure, or justice mechanisms in order to remove Burma's prevailing culture of impunity. Similarly, while the periodic report, unlike NSPAW, does reference modest steps towards greater inclusion of women in peace negotiations and transitional processes, it omits any specific steps to ensure meaningful and genuine participation by women beyond mere tokenism.⁹⁵

4.5.4 RECOMMENDATIONS

- Sexual Violence in Conflict and Post-Conflict Settings
 - The Government must acknowledge the military's historical and ongoing use of sexual violence in conflict and prohibit sexual violence in conflict, by state and non-state actors, through legislation, policies, protocols, and a zero tolerance policy.
 - The Government must adopt gender sensitive investigation procedures and trainings for police, military, and other government personnel.
- Addressing Impunity for Perpetrators of Sexual Violence
 - The Government must amend the 2008 Constitution to dispose of its provisions securing impunity for military personnel who commit sexual violence in conflict, including sections 445 and 343(b).
 - The Government must amend its existing laws relating to violence against women, including provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act, to ensure such laws adhere to prevailing international standards, removing antiquated notions of family and sexual violence, and guarantee justice in the form of criminal punishment, victim rehabilitation and reparations.
 - The Government must prosecute all perpetrators of sexual violence in conflict, regardless of rank, according to international standards and in accordance with its obligations under UN Security Council Resolutions.
 - The Government must undertake a vetting program to ensure that governmental, legislative or judicial officials were not participants or perpetrators of the military's campaign of sexual violence in conflict.
- Participation of Women in Post-Conflict Transition
 - The Government must ensure women's equal participation at ongoing peace processes, including through the use of quotas and temporary special measures.
 - The Government must incorporate gender issues and women's rights into peace negotiation agendas and ongoing processes.
 - The Government must guarantee women's access to justice by guaranteeing there will be no amnesties for gender-based crimes during the conflict.

Endnotes

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- 2 2002 Women, Peace and Security, *supra* note 1, at 15; U.N. Security Council, *Conflict-Related Sexual Violence: Report of the Secretary General*, U.N. Doc. S/2015/203 (Mar. 23, 2015).
- 3 U.N. Security Council, Women's Participation in Peacebuilding: Report of the Security Council, U.N. Doc. A/65/354-S/2010/466 (Sept. 7, 2010); UN Women, *Gender and Post Conflict Governance: Understanding the Challenges* (Oct. 2012), available at <http://www.unwomen.org/~media/headquarters/media/publications/en/oscgenderandpostconflictgovernance.pdf>.
- 4 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, ¶ 2, U.N. Doc. CEDAW/C/GC/30 (2013) [hereinafter CEDAW, General Recommendation No. 30].
- 5 *Id.* at ¶ 24.
- 6 *Id.* at ¶ 25.
- 7 S.C. Res. 1325, ¶ 10, U.N. Doc. S/RES/1325 (Oct. 31, 2000).
- 8 S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008); S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sep. 30, 2009); S.C. Res. 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009); S.C. Res. 1960, U.N. Doc. S/RES/1960 (Dec. 10, 2010); S.C. Res. 2106, U.N. Doc. S/RES/2106 (June 24, 2013); S.C. Res. 2122, U.N. Doc. S/RES/2122 (Oct. 18, 2013).
- 9 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 23. Accordingly, the CEDAW Committee instructs States parties to give due consideration to the complementary protections for women and girls stemming from international humanitarian, refugee and criminal law, when implementing their CEDAW obligations. Concluding Observations on the Fourth and Fifth periodic reports of Bosnia and Herzegovina, ¶¶ 9(b), 10(b), U.N. Doc. CEDAW/C/BIH/CO/4-5 (July 30, 2013) [hereinafter 2013 CEDAW Concluding Observations on Bosnia and Herzegovina].
- 10 Rashida Manjoo & Calleigh McRaith, *Gender Based Violence and Justice in Conflict and Post-Conflict Areas*, 44 Cornell Intl L. J. 11, 11 (2011); CEDAW, General Recommendation No. 30, *supra* note 4, at ¶¶ 34-35. For a definition of conflict-related sexual violence, see UN Action Against Sexual Violence in Conflict, *Analytical and Conceptual Framing of Conflict-Related Sexual Violence*, 2, (June 2011) available at <http://www.stoprapenow.org/uploads/advocacyresources/1321456915.pdf>.
- 11 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 35, quoting S/Res 1820, *supra* note 8.
- 12 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 35; see also Rep. of the Special Rapporteur on Violence Against Women to the Economic and Social Council (Radhika Coomaraswamy), U.N. Doc. E/CN.4/2001/73 (Jan. 23, 2001).
- 13 See, e.g., Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, Articles 1, 2, 3, & 5(a) [hereinafter CEDAW]; CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 2.
- 14 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*, ¶ 11, CEDAW/C/GC/28 (2010) [hereinafter CEDAW, General Recommendation No. 28].
- 15 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 38(a)-(b).
- 16 *Id.* at ¶ 38(c).
- 17 *Id.* at ¶ 38(c), (e).
- 18 *Id.* at ¶¶ 74, 77.
- 19 *Id.* at ¶ 74; see also U.N. Secretary-General, *United Nations Approach to Transitional Justice: Guidance Note of the Secretary-General*, 3 (2010); UN Women & UNDP, *Improving Women's Access to Justice During and After Conflict: Mapping UN Rule of Law Engagement* (July 2, 2014).
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- 21 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 76.
- 22 *Id.* at ¶ 66.
- 23 See, e.g., S/RES/1820, *supra* note 8, at ¶ 4; S/RES/1889, *supra* note 8, at ¶ 3; S/RES/1325, *supra* note 8, ¶ 11; see also CEDAW, General Recommendation No. 30, *supra* note 4, at ¶¶ 23-34; Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Amnesties*, U.N. Doc. HR/PUB/09/1, U.N. Sales No. E.09.XIV.1 (2009).
- 24 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 81(a).
- 25 *Id.* at ¶ 81(b).
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- 27 Office of the United Nations High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: national consultations on transitional justice*, at 22, U.N. Doc. HR/PUB/09/2, U.N. Sales No. E.09.XIV.2 (2009); see, e.g., S/C/RES 1325, *supra* note 8, at ¶ 2; see also Karen O'Connor, *Gender and Women's Leadership: A Reference Handbook*, II, at 311 (2010).

- 28 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 42.
- 29 *Id.* at ¶¶ 44, 70-73. See also UN Women, *Women's Participation in Peace Negotiations: Connections between Presence and Influence* (Aug. 2010) [hereinafter *Women's Participation in Peace Negotiations* (2010)].
- 30 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 46(a); see also Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25, on Article 4, Special Measures*, U.N. Doc. HRI/GEN/1/Rev.7 (2004) [hereinafter CEDAW, General Recommendation No. 25]; see generally Fionnuala Ni Aolain, Dina Francesca Haynes & Naomi Cahn, *On the Frontlines: Gender, War and the Post-Conflict Process* (2011).
- 31 CEDAW, General Recommendation No. 30, *supra* note 4, at ¶ 46(b).
- 32 *Id.* at ¶ 46(c).
- 33 *Id.* at ¶ 46(d).
- 34 *Id.* at ¶ 72, 73(c).
- 35 Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Tomás Ojea Quintana), ¶ 38, U.N. Doc. A/69/398 (Sept. 23, 2014) [hereinafter Quintana, Special Rapporteur Report (Sept. 2014)]; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the Human Rights Council (Tomás Ojea Quintana), ¶ 36, U.N. Doc. A/HRC/22/58 (Apr. 17, 2013) [hereinafter Quintana, Special Rapporteur Report (Apr. 2013)]; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Tomás Ojea Quintana), ¶¶ 44, 49, U.N. Doc. A/67/383 (Sept. 25, 2012) [hereinafter Quintana, Special Rapporteur Report (Sept. 2012)]; Janell Mills, *Militarism, Civil War and Women's Status in Burma, in Women in Asia: Tradition, Modernity and Globalisation*, 282 (Louise Edwards & Mina Roces, eds., 2000); IHRC at Harvard Law School, *Crimes in Burma*, at 51-58 (2009) [hereinafter *Crimes in Burma* (2009)], available at <http://hrp.law.harvard.edu/wp-content/uploads/2009/05/Crimes-in-Burma.pdf>; Women's League of Burma, *If they had hope, they would speak: The ongoing use of state-sponsored sexual violence in Burma's Ethnic Communities*, Nov. 2014, at ii, 4-5 [hereinafter WLB, *If They Had Hope* (Nov. 2014)].
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- 40 *Impunity Prolonged* (2009), *supra* note 38, at 11-13; *Crimes in Burma* (2009), *supra* note 35, at 54-56, 60. See also WLB Report (Jan. 2014), *supra* note 38, at 12.
- 41 Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the Human Rights Council (Yanghee Lee), ¶ 35, U.N. Doc. A/HRC/28/72 (Mar. 23, 2015) [hereinafter Lee, Special Rapporteur Report (Mar. 2015)]; Pinheiro, Special Rapporteur Report (Sept. 2006), *supra* note 36, at ¶ 30; WLB, *If They Had Hope* (Nov. 2014), *supra* note 35, at ii (the report also notes that these figures are likely to be "a fraction" of the number of abuses actually taking place).
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4.6 WOMEN AND HEALTH (ARTICLE 12, GENERAL RECOMMENDATION 24)

4.6.1 RELEVANT CEDAW GUIDANCE

Recognizing that inequality, at both the individual and societal level, negatively impacts health,¹ CEDAW comprehensively addresses women's equal access to health in Article 12 and weaves health-related protections through several other articles and general recommendations.² These multiple and diverse provisions make clear that States parties must take a deliberate and comprehensive approach to ensuring women's equal and non-discriminatory access to health care in order to fulfill their obligations under CEDAW.

Article 12 requires States parties to "eliminate discrimination against women in the field of health care in order to ensure, on an equal basis of equality of men and women, access to health care services, including those related to family planning."³ Article 12 implicates both individual and collective spheres of health rights since individual access to health care is frequently a function of individual circumstances *and* the collective nature of health care systems.⁴

Importantly, Article 12 protects the right to non-discriminatory *access* to health care services, rather than the right to health as such.⁵ Under CEDAW, "access" encompasses women's knowledge and comprehension of necessary information, including the effectiveness, risks and benefits of health care options, service locations, hours of operation, and legal permissibility of such services.⁶ In light of this requirement, the Committee has identified multiple legal and regulatory barriers to comprehensive health care, including limits on access to contraception and criminalization of abortion.⁷ Still, it should be noted that the emphasis on access presupposes the availability and knowledge of sustainable services.⁸

Full implementation of CEDAW's health care provisions is complicated by the fact that, in many States, health care services are provided by private (non-state) actors. Accordingly General Recommendation 24 on Article 12 obliges State parties "to take action to prevent and impose sanctions for violations of rights by private persons and organizations."⁹ Under this requirement, States parties have a due diligence obligation to establish effective health care systems to prevent and respond to acts of discrimination by acts of non-State actors.¹⁰

4.6.2 BURMA SPECIFIC CONTEXT

Burma's citizens do not have quality, affordable, or even accessible, health care. The national health care system in Burma is lacking as a result of an antiquated legal regime, decades of government underinvestment in both infrastructure and development and barriers to access.¹¹ Between 2009 and 2011, Burma's health care expenditures amounted to a meager 0.2% of GDP, with only minor increases to 0.8% and 1.1% in 2012 and 2013, respectively.¹² Despite this marginal increase in spending, these increases must be contextualized with Burma's particularly low investment in health (Burma still spends less on health than any other ASEAN country).¹³

As a result, Burma's national health care system is in desperate need of improvement. The country suffers from poor access to basic services, general service unavailability, disparities in availability and affordability of essential medicines, and an inadequate number of properly-trained health professionals.¹⁴ In fact, there is only 1 doctor per 3315 people, and one midwife per 1195 people.¹⁵

Owing to an absence of government services, most of Burma's population is forced to rely on exceptionally costly private providers, polyclinics, or monasteries that provide basic primary care services.¹⁶

Paralleling many of Burma's broad-based developmental issues, women are disproportionately affected by the deficiencies of the country's health care system.¹⁷ This issue is only made worse by poverty, geographical barriers, poor quality of care and the shortage of health personnel, especially midwives.¹⁸

These constraints contribute to the high rate of maternal mortality in the country, with a rate of 200 deaths per 100,000 live births¹⁹—amongst the highest in the region.²⁰ Major causes of this elevated rate are women's difficulties

travelling to the appropriate care providers and the unavailability of skilled birth attendants (far below the level recommended by the World Health Organization).²¹

Women in Burma have limited access to reproductive health care and family planning resources. Due to paternalistic policies and attitudes, contraceptive use is seen as a woman's responsibility and access is predicated on a woman's knowledge, ability and willingness to seek it out.²² However in many cases, men, other family members, or the government, control a woman's ability to use contraception or birth spacing methods.²³ For example, to obtain a sterilization procedure a woman must apply for approval to a medical board (which can take up to five months).²⁴ Sterilization without meeting these requirements may rise to the level of a criminal offense.²⁵ Consequently, these barriers limit women's knowledge of, or access to, various contraceptive methods to which they are entitled.²⁶

The situation is more desperate for Burma's rural women, with modern contraception widely more prevalent in urban areas.²⁷ UNFPA has found that 49% of married urban women used modern contraceptives, while only 34% of married rural women did the same.²⁸ This is particularly troubling because 70% of women in Burma live in rural areas.²⁹ Still, general access to contraception is exceptionally difficult and an estimated 80% of women in eastern Burma have never used birth control.³⁰

Women's limited knowledge about, access to, and use of, family planning methods also leads to unwanted pregnancies.³¹ Troublingly, however, abortion is illegal in Burma, even in cases of rape (unless the procedure is performed to save the mother's life).³² As a result, women seeking abortions must rely on clandestine and unsafe abortion services.³³ Under Burma's law, not only is a woman who attempts to induce an abortion liable to serve a three-to-ten year term in prison, to pay a fine, or both, so too is anyone attempting to help her.³⁴ Unsurprisingly then, abortion is the third most common cause of maternal death in Burma.³⁵

In the Concluding Observations of Burma's 2008 CEDAW review, the Committee called upon the Government to "strengthen its efforts in the area of health, including by allocating the necessary resources for the implementation of various projects and programmes...."³⁶ Recognizing particular issues of concern, the Committee called on the government to "reduce, as a matter of priority, the incidence of maternal mortality, as well as deaths caused by...maternal complications."³⁷ The Committee also urged Burma to make every effort to increase access to health care facilities and to increase knowledge of, and access to, affordable contraceptive methods.³⁸ It recommended sex education be widely promoted and targeted at adolescent girls and boys and that education programs take due account of the traditions and physical barriers facing rural women.³⁹ Finally, the Committee recommended the Government continue seeking financial and technical support from the international community and civil society to improve women's health.⁴⁰

In 2009 the Government developed and began implementing the Five Year Plan for National Reproductive Health 2009-2013.⁴¹ The Plan was designed to improve the health of mothers and children by reducing maternal, neonatal and child mortality and morbidity.⁴² However, there is no publically available information on the implementation of the Plan and reforms do not appear to have improved women's access to health care.⁴³

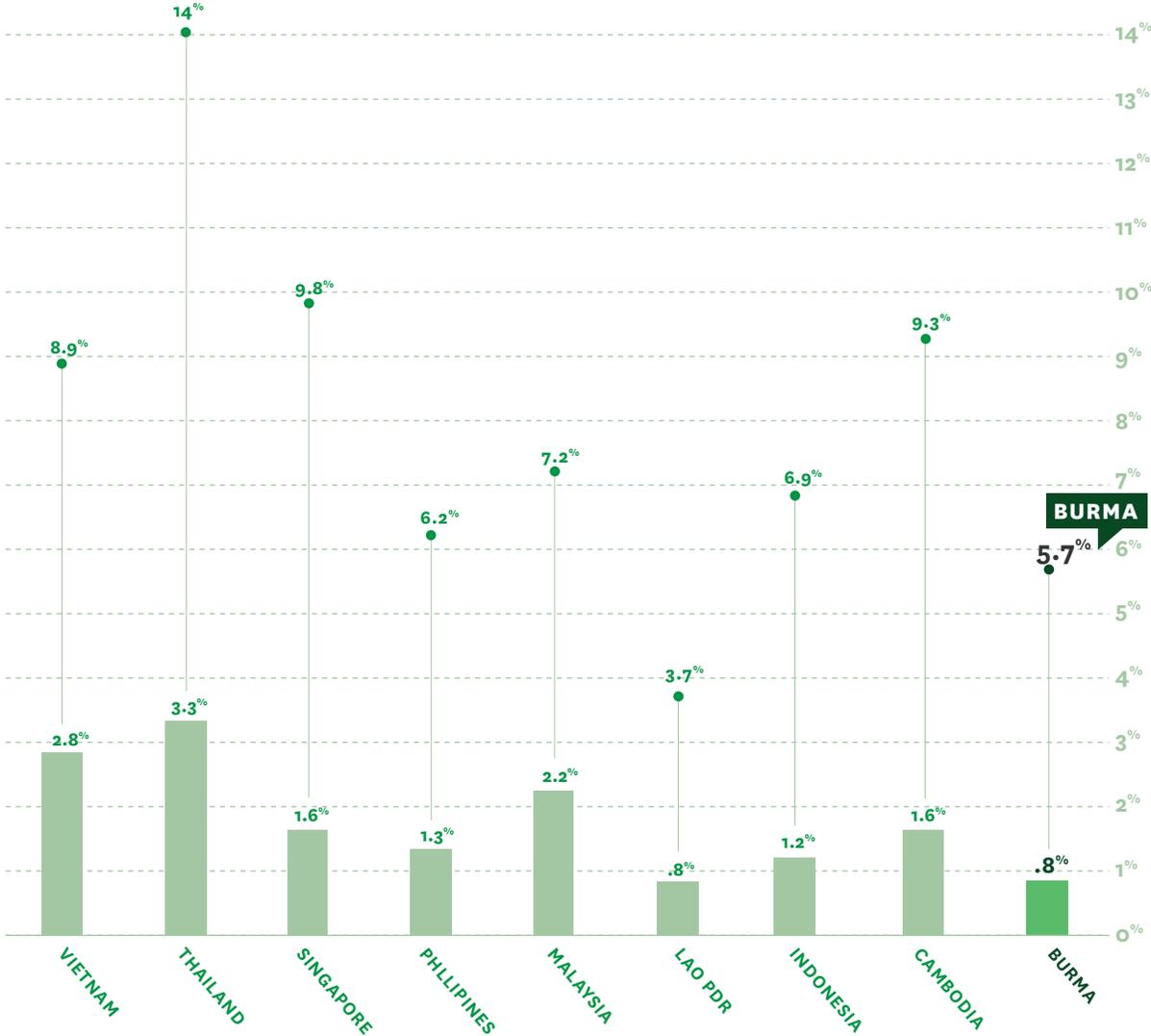
More recently, Burma's national legislature passed a set of so-called "Laws on the Protection of Race and Religion" that threaten to further entrench widespread gender-based discrimination, including in the context of equal access to health care.⁴⁴ In particular, the proposed Population Control Health Care Bill provides for a 36-month "birth spacing" interval for women between child births.⁴⁵ This clearly violates the Government's international obligations to ensure the right of women, on an equal basis with men, to "decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."⁴⁶ The law also contains no protections against use of forced contraception, forced abortion, or forced sterilization as implementation or enforcement measures, which violate 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, all on an equal basis with men.

Health spending in Burma compared to that of other ASEAN countries, 2011 - 2012

Health

● % of total government expenditure

■ % of GDP



Source: Myanmar Ministry of Finance and Revenue (2012) and Economic and Social Commission for Asia and the Pacific Statistical Yearbook 2011.

Note: Burma figures are for 2012-2013; all other figures are for 2009.

Collectively, the disproportionate effect on women of a dilapidated health care system, the paternalistic approach to women's health decisions, the illegality of abortion and the Government's insufficient education on women's health do not come close to fulfilling CEDAW's Article 12 mandate on women's equal access to health care.⁴⁷ In light of these issues, and given the troubling direction towards further gender-based inequality signaled by the "Race and Religion" laws, the Government needs not only to take heed of the numerous and diverse issues outlined above and addressed by the Committee in 2008, but also make sure that implementation is comprehensively contemplated, planned and executed.

4.6.3 ANALYSIS OF NSPAW

NSPAW's "Women and Health" section offers important and commendable indications of the Government's commitment to "strengthen laws, systems, structures and practices to protect, promote and fulfill women's and girls' right to quality and affordable health care, including sexual and reproductive health care."⁴⁸ However, NSPAW falls short in three main areas: (1) not comprehensively addressing the shortcomings of the healthcare system; (2) no precise and specific practical implementation plan; and (3) no benchmarks for success.

NSPAW mentions women's access to "basic" health care in numerous places,⁴⁹ but fails to directly acknowledge the shortcomings of the nationwide health care system or issues facing women only. In light of the countless issues facing Burma's broader health system, this absence is troubling. In order to ensure that women's access to health care is on par with its international obligations, it is important that the system's infrastructure, on the whole, is sturdy, reliable and robust.

NSPAW fails to ensure, or even mention, that women are entitled to access health care on an equal basis as men.⁵⁰ Instead, NSPAW generally aims to strengthen women's access to "quality" health care.⁵¹ It must be noted that even if NSPAW succeeds in this goal, women's access to health care may be less than that of men, contravening CEDAW. On reproductive health and rights, NSPAW suggests the Government will provide health care services to adolescents and rural women to prevent underage pregnancies and the spread of sexually transmitted diseases.⁵² NSPAW further highlights the Government's priority of reducing stereotypes surrounding access to reproductive health care and distribution of free contraception to indigent women.⁵³ However, NSPAW fails to specifically and discretely address the country's issues, such as handling obstetric emergencies, high maternal mortality, abortion care and sex education.

While the Government's additional allocation of funding in its 2013 budget toward improving the medical system⁵⁴ is commendable, sustained improvement and development of Burma's health infrastructure requires a more concrete commitment. Ad hoc financial contributions to the health care system will not suffice and specific investment in training medical professionals, improving technology, and broadening access to medicine will be important components for strengthening the health system.

NSPAW's general objective and goals, while steering Burma on the path towards conformance with CEDAW, are highly generalized and fail to provide a definitive picture of how they will be implemented. The extent to which Burma's health care system fails its female population underscores the need for detailed and comprehensive measures which set forth precisely how the Government intends to achieve its stated objective and goals. Accordingly, the broad language reflected in NSPAW is insufficient to improve women's equal access to health care.

NSPAW further fails to establish or mention any frameworks by which to measure the success of its various goals on health. Again, taking into consideration the underdevelopment and deep-rooted patriarchy embedded in Burma's health care system, NSPAW's praiseworthy goals would be best served with concrete and measureable benchmarks to help assess success.

The Government's 2015 periodic report to the CEDAW Committee echoes NSPAW's generalized pronouncements, omitting discussion of specific, measurable steps towards practical realization of access to health care for women on

an equal basis with men. For instance, in discussing implementation of CEDAW Article 12, the periodic report does little more than list 11 national laws and policies related to health—less than half of which appear directly related to women and/or reproductive health.⁵⁵ And while setting out positive aspirations concerning improvement in maternal mortality and prevention of sexually-transmitted diseases, an overall emphasis on birth spacing as a reproductive health policy tool is cause for concern over lack of safeguards to protect the right of women to freely decide matters concerning the number and spacing of children. Finally, the Government's periodic report does not appear to mention any explicit prohibitions against use of forced contraception, forced abortion, or forced sterilization as implementation or enforcement measures.

In order to ensure that women are provided the equality guaranteed to them by and through CEDAW, the Government must end its pattern of generalized pronouncements and instead undertake a long-term, detailed and focused effort addressing the various health needs of women.

4.6.4 RECOMMENDATIONS

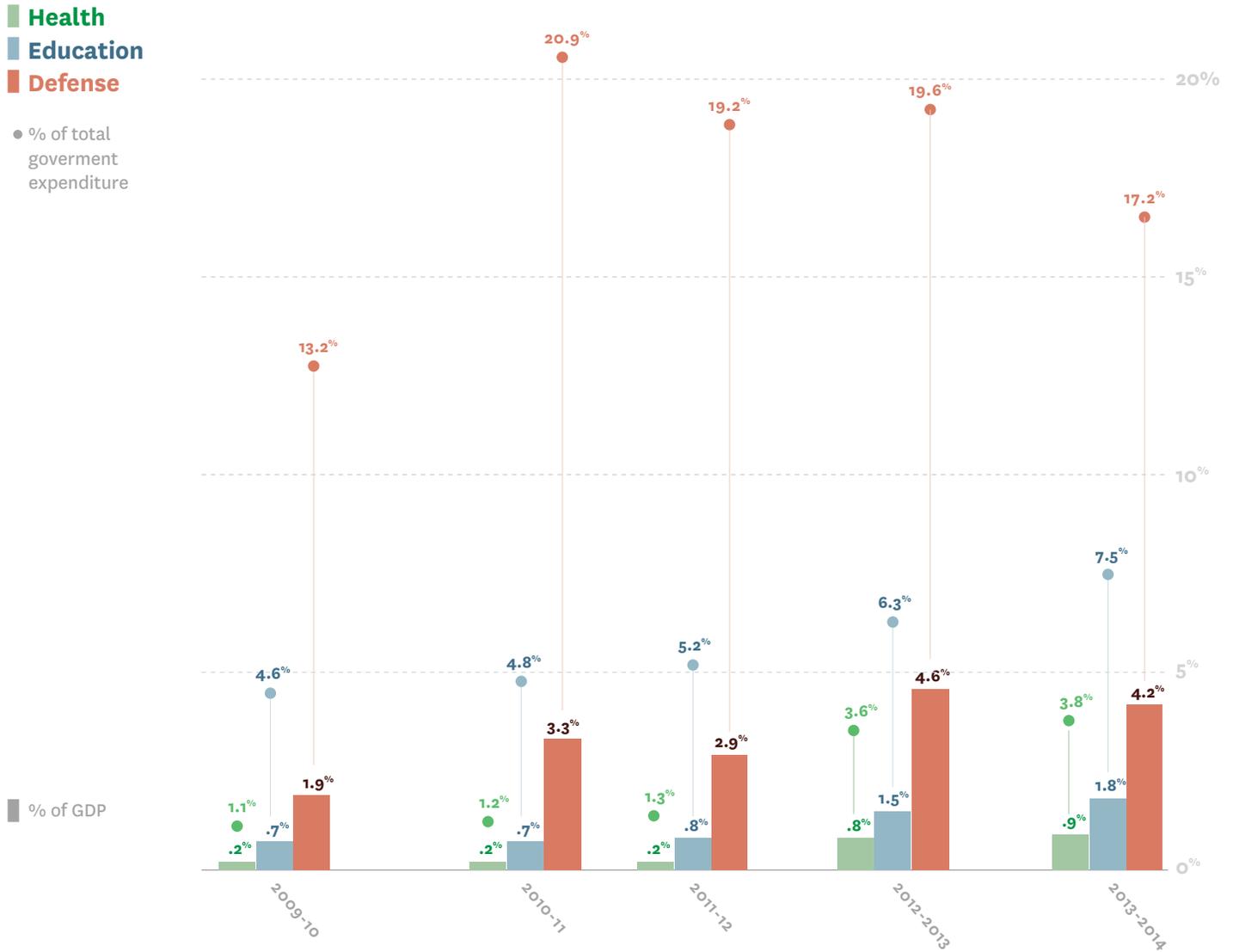
- The Government must expand NSPAW's goal on women's health to ensuring women's equal access to health care.
- In concert with ensuring women's equal access to health care, the Government must increase funding dedicated to strengthening the national health care system, including in training medical professionals, improving technology, broadening access to facilities and medications, and ensuring private providers administer aid in line with Burma's international obligations.
- The Government must dedicate special attention and resources to reducing the unacceptably high maternal mortality rate, including increasing the number of midwives and facilities capable of handling obstetric emergencies.
- The Government must eliminate barriers to women's access to reproductive health care, including by repealing the Penal Code provision criminalizing abortion, and any other legislative requirements impeding a woman's autonomy over her body and her health.

Endnotes

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- 43 *Id.* at 22.
- 44 Feliz Solomon, *Burma Parliament Passes Contentious "Race and Religion" Bills*, The Irrawaddy, Aug. 20, 2015. The "race and religion" laws include the Population Control Healthcare Bill, Religious Conversion Bill, Buddhist Women's Interfaith Marriage Bill, and Monogamy Bill. See Press Release, UN High Commissioner of Human Rights, Myanmar "needs urgently to get back on track," U.N. Press Release (Feb. 25, 2015); Shwe Aung, *Speaker urges laws to protect Burma's national race, religion*, Democratic Voice of Burma News, Feb. 27, 2014, available at <https://www.dvb.no/news/speaker-urges-laws-to-protect-burmas-national-race-religion-burma-myanmar/37855>. See also Joint Statement by Amnesty International and the International Commission of Jurists, *Myanmar: Parliament must reject discriminatory 'race and religion' laws*, (Mar. 3, 2015) available at <https://www.amnesty.org/en/documents/asa16/1107/2015/en/>.
- 45 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.
- 46 CEDAW, art. 16(f).
- 47 David Steinberg, *Turmoil in Burma: contested legitimacies in Myanmar* 129 (2005).
- 48 Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women ("NSPAW") (2013-2022)*, Myanmar 2013, at Women and Health § 9 [herein after 2013-2022 NSPAW].
- 49 See e.g. 2013-2022 NSPAW, at Women and Health § 9(a)(1), (a)(4), (b)(2), (b)(3).
- 50 *Id.* at § 9.
- 51 *Id.*
- 52 *Id.* at § 9(c)(4).
- 53 *Id.* at § 9(b)(3); (c)(4).
- 54 B. Shobert, *Healthcare in Myanmar*, Forbes, Aug. 19, 2013, available at <http://www.forbes.com/sites/benjaminshobert/2013/08/19/healthcare-in-myanmar>. Health represented 1.3% and 2.93% of the Government's budget in years 2011 and 2012, respectively (World Health Organization, Global Health Observatory Data Repository: Myanmar, <http://apps.who.int/gho/data/node.main.75?lang=en>), and 3.15% and 3.38% in 2013 and 2014 (projected), respectively (DVB, *Health, education spending to increase in 2014*, Democratic Voice of Burma News, Jan. 9, 2014, available at <https://www.dvb.no/news/health-education-spending-to-increase-in-2014-burma-myanmar/35887>).
- 55 Myanmar, Combined Fourth and Fifth Periodic Report to CEDAW Committee, U.N. Doc. CEDAW/C/MMR/4-5, ¶ 112 (2015). The laws and policies directly addressing women and/or reproductive health are the Myanmar Maternal and Child Welfare Association Law (1991), the Myanmar Reproductive Health Policy (2002), the Five-Year Strategic Plan for Reproductive Health (2009-2013), the National Strategic Plan for the Advancement of Women (2013-2022), and the Standard Guide Line on Adolescent Reproductive Health (2013). Other laws and policies referenced include the Union of Myanmar Public Health Law (1972), the National Health Policy (1993), the Adolescent Health and Development Plan (2009-2013), the 30-year Long Term Health Development Plan (2001-2030), the National Health Plan (2011-2016), and the Myanmar National Strategic Plan on HIV/AIDS (2011-2015).

Defense Spending in Burma compared to Education and Health as a % of total expenditure and of GDP, 2009 - 2014



Source: Myanmar Economic Monitor, The World Bank Group, October 2013.

Note: Slight disparities exist between the World Bank Group data on Health and Education spending and the data provided by the Myanmar Ministry of Finance and Revenue and the Economic and Social Commission for Asia and the Pacific 2011.

4.7 WOMEN AND EDUCATION (ARTICLE 10)

4.7.1 RELEVANT CEDAW GUIDANCE

Education is an essential tool for achieving the goals of equality, development and peace and is considered to be a basic human right.¹ Women's equal access to education is therefore foundational to ensuring equality and ending discrimination against women. In Article 10, CEDAW calls for the elimination of discrimination that prevents women and girls from accessing education of all levels and types—including formal, non-formal, and vocational training. The importance of access to education is also embedded in CEDAW's numerous calls for economic and social equality.²

CEDAW requires States parties to fulfill four discrete responsibilities on education. First, States parties must ensure that women receive the same quality and type of education and have the same potential to benefit from such education as men.³ This includes ensuring that women have access to the same curricula as men, and reducing disproportionate female dropout rates.⁴

Second, taking into consideration that discrimination against girls in access to education often starts at a very young age, and that learning stereotyped gender roles can impact a child's education, States parties must address all types and levels of education for both rural and urban women.⁵ This includes pre-school through the tertiary level in academic and technological-vocational fields.⁶

Third, the initiatives employed must eliminate stereotypical concepts of the roles of men and women in society.⁷ Education has proven to be an effective tool in combating traditional notions of gender that perpetuate patriarchal and paternalistic social and economic frameworks.⁸ Thus, instead of further ingraining traditional conceptions of masculine and feminine roles in society, States parties must change the content of educational materials so as to ensure they do not reinforce gender stereotypes.⁹

Last, States parties must ensure that education within their borders promotes women's enjoyment of rights in personal, family, political and public life.¹⁰ Where the right of women and girls to education is fully implemented and advanced, women are empowered and equipped to claim rights through that education.¹¹ Robust education further helps women access labor markets and increase economic opportunities and renders women less likely to enter illegal and risky economic pursuits.¹²

It has been widely accepted that equal access to education benefits not only girls and women but also their families and communities.¹³ Thus, equality of, access to, and attainment of a full and quality education is necessary for the betterment of society and women as agents of change.¹⁴

4.7.2 BURMA SPECIFIC CONTEXT

Burma's education system is in grave need of improvement due to decades of armed conflict and underinvestment.¹⁵ While there is a long tradition of widespread literacy, in recent history the Government's investment in education has been anemic. For example, 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 (compared to 20.3% in the Philippines in the same year).¹⁶ In order to make up for the funding gap, schools often charge students unofficial fees for educational materials and administrative costs.¹⁷ Many families in rural areas cannot afford to pay these fees and must take their children out of school.¹⁸ In border areas controlled by ethnic groups that have been mired in conflict, many schools remain closed and those that are open are often critically under-resourced—without books, and staffed by voluntary and untrained teachers.¹⁹

The result is an education system that has failed consecutive generations. The average adult in Burma has received only 2.8 years of schooling, and roughly 10% of Burma's children between ages five and nine are not enrolled in school.²⁰ Of those who enroll, 12% do not complete the first school year, 19% will not complete more than five years of primary school,²¹ and roughly 20% complete secondary school.²²

These nationwide obstacles are amplified in the case of girls and women seeking to obtain an education. While the nationwide ratio of girls-to-boys in Burma's primary schools is almost in parity, access to education varies markedly at the local and regional level.²³ The level is higher in rural areas where there is attrition of boys into productive work—with ratios ranging from 98 girls to 137 girls per 100 boys.²⁴ However, the opposite is true in urban areas with 87.8 girls per 100 boys.²⁵ In the ethnic areas, girls' education has been hampered by armed conflict and school attendance rates for rural girls are lower than their urban counterparts.²⁶ These variations violate CEDAW's requirement of women's equal access to education and the elimination of traditional stereotypes of men's and women's roles in society.²⁷

Similarly, literacy rates between genders are much closer to parity at the national level than at the local and regional level. However, in both cases, women are less literate than men. According to the 2014 Census conducted by Myanmar's Department of Population, the male literacy rate is 92.6%, while women's literacy rates are only 86.9%.²⁸ Low status and extreme isolation of many of Burma's ethnic women contribute to female literacy rates as low as 38.3% (compared to 44.8% of men) in the conflict-ridden Eastern Shan state.²⁹ As is the case with differentiated school attendance, the variation and general lower level of female literacy in Burma violates Burma's obligations under CEDAW.³⁰

At the university level, differential admissions criteria are applied based on the applicant's gender and specialization. That is, women applicants are required to earn significantly higher marks than men when seeking to study certain specializations, including medicine and engineering.³¹ These policies were put in place for specializations where women currently outnumber men and men are likewise required to earn higher marks than women to study specialization in which they outnumber women.³² While seemingly benign, in practice 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.³³

Women's equal access to education is hindered by Burma's culture of patriarchy and traditional gender stereotypes that place men's education at a premium. When family resources are scarce and schools distant, families are more likely to educate their sons and have their daughter focus on homemaking activities.³⁴ Even in school, the substance of what is taught is likely laden with historical gender roles, especially when taking into consideration that Burma's current curriculum has not been assessed for gender stereotyping.³⁵

These gender stereotypes are intensified by the deep and long-lasting militarization in Burma. The Burma military has shaped gender roles in Burma's society by reifying masculinity and marginalizing femininity.³⁶ That is, the visibility and predominance of the military, and lack of women in it, reinforces the perception that women should take on submissive social roles.³⁷ The result is that men are seen as the active contributors to society and educational opportunities for women and girls are subordinate to those for men and boys.³⁸

In 2008, the CEDAW committee noted several of these challenges and urged Burma to "enhance its compliance with Article 10 of the Convention and ensure that 'education for all' is realized." It further encouraged the Government to "take steps to overcome traditional attitudes that in some rural areas constitute obstacles to girls' and women's education" and recommended "measures to ensure equal access of girls and women to all levels of education and retain girls in school."³⁹

Burma's Ministry of Education is currently in the thirteenth year of its "Thirty-Year Long-Term Education Development Plan."⁴⁰ The Plan is the most ambitious endeavor of the Ministry of Education, with six "core areas" and 36 separate development programs.⁴¹ The Plan's ultimate goals are to generate qualitative development of higher education, contribute to national development, and preserve national identity and culture. However, none of the Plan's "core areas," nor any of the development programs, specially address gender and women's access to education. As such, the Development Plan has not considerably improved women's access to education and major adjustments should be made to ensure a gendered perspective to Burma's education system.

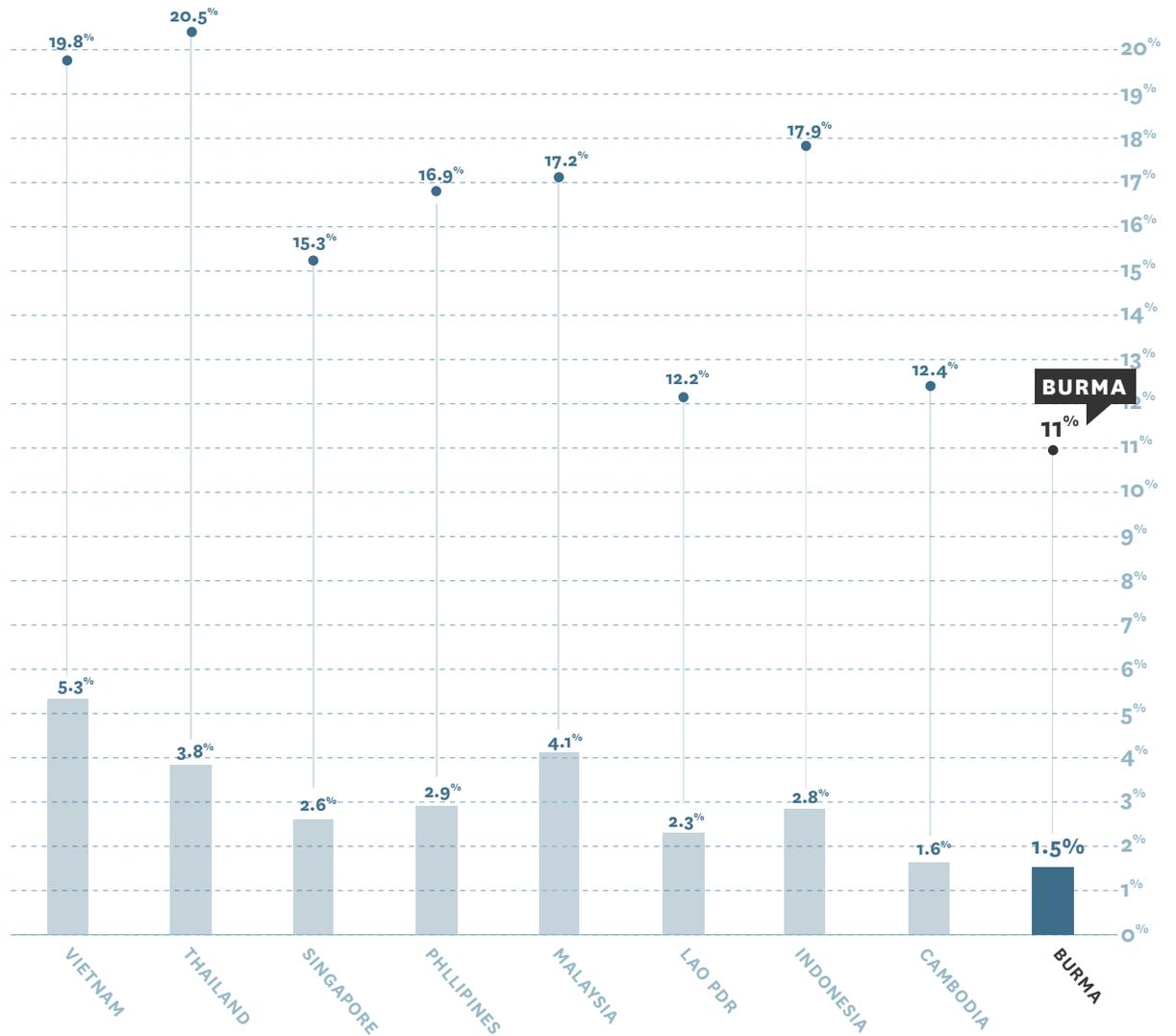
In sum, Burma's educational system is not in full compliance CEDAW. To be successful, NSPAW must recognize and aggressively dismantle the practical and cultural barriers to women's equal access to education.

Education spending in Burma compared to that of other ASEAN countries, 2011 - 2012

Education

● % of total government expenditure

■ % of GDP



Source: Myanmar Ministry of Finance and Revenue (2012) and Economic and Social Commission for Asia and the Pacific Statistical Yearbook 2011.

Note: Burma figures are for 2012-2013; all other figures are for 2009.

4.7.3 ANALYSIS OF NSPAW

NSPAW's education section mirrors CEDAW in its aim to "strengthen systems, structures and practices for ensuring access to quality formal and non-formal education for women and girls."⁴² Encouragingly, the section calls for robust research and surveys on topics ranging from obstacles to women's access to formal and non-formal education to women's enrollment and completion rates.⁴³ NSPAW also endeavors to raise awareness of the importance of women's education and to eliminate customs that have historically been obstacles to women's education.⁴⁴

However, NSPAW falls short of what is perhaps CEDAW's most important educational mandate: that women receive the *same* quality and type of education and have the *same* potential to benefit from such education as *men*.⁴⁵ Instead of viewing the issue in relation to the opportunities of men, NSPAW generally aims to improve women's access to quality education. Importantly though, NSPAW could succeed in this aim and still have an educational system that marginalizes and discriminates against women. In short, even if NSPAW is wholly successful in implementing its educational goals, there is no guarantee that women will then have equal access to education as men as required by CEDAW.

Further, NSPAW fails to make any mention of how the Government intends to finance the NSPAW's specific goals and aims. Suffice it to say, if these aims are to be achieved in any meaningful way and in light of historical underinvestment, the Government will need to substantially increase its investment in women's education.

Finally, while NSPAW indicates that the Government is willing to address the topic of women's education in a forthright manner, it contains few details of how the Government actually intends to meet its CEDAW obligation. That is, NSPAW is refreshingly ambitious in setting goals for ending discrimination against women in the education sector, but fails to include any concrete means to carry out these goals—particularly in light of the education realities facing Burma's women. For example, NSPAW states that the Government will undertake "practical initiatives" focused on "the inclusion of human rights, sex and gender equality education in both formal and non-formal curricula"⁴⁶ but fails to include details as to what such initiatives will include.

NSPAW's deficiencies concerning equal access to education by women and girls are reflected in the Government's 2015 periodic report to the CEDAW Committee. For instance, despite inclusion of a generalized national strategy for access to education, there appears to be little description of how the Government plans to achieve access to education by women and girls on an equal basis with men.⁴⁷ While the Government correctly identifies a critical need for research into the state of gender inequality in education, there is little additional information on actual strategic action for equal access to education to fill the gaps left open in NSPAW.⁴⁸

On education, NSPAW is a reasonable start. It is thematically encouraging but it is also, in fact, vague and missing important practical aspects of implementation and enforcement. In order to fully bring Burma in line with its CEDAW obligations, the Government must develop detailed implementation and enforcement measures to ensure NSPAW achieves its laudable goals.

4.7.4 RECOMMENDATIONS

- The Government must guarantee that women are provided education on *equal* grounds to that of men, including by ensuring men and women attend school at the same rates, ensuring school curricula do not reinforce harmful gender stereotypes, and ensuring women have access to all levels and types of education.
- The Government must increase investment in education generally, and women's education more specifically, in order to achieve NSPAW's aims.
- The Government must develop and execute practical initiatives that provide detailed accounts of how NSPAW will be executed and implemented.

Endnotes

- 1 The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary 255 (Marsha A. Freeman, Christine Chinkin & Beate Rudolf eds., 2012) [hereinafter CEDAW: A Commentary].
- 2 Convention on the Elimination of All Forms of Discrimination Against Women, Preamble, Dec. 18, 1979, 1249 U.N.T.S. [hereinafter CEDAW] (“Noting that the States parties to the International Covenant on Human Rights have the obligation to ensure the equal rights of men and women to enjoy *all economic, social, cultural, civil and political rights* . . . Recalling that discrimination against women violates the principles of equality and rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the *political, social, economic and cultural life* of their countries, hampers growth of the prosperity of society . . . Concerned that *in situations of poverty women have the least access to food, health, education, training and opportunities for employment* . . . Convinced that the establishment of the new international economic order based on equality and justice will contribute significantly toward the promotion of equality between men and women. . . .”) (all emphases added). See also Article 1 and its definition of discrimination which includes reference to “fundamental freedoms in the political, economic, social, cultural, civil or any other field” (emphasis added); CEDAW, art 3 (“States parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”) (emphasis added); See also CEDAW Statement, *Protection of Girl’s Right to Education* (Oct. 19, 2012).
- 3 CEDAW, *supra* note 2, art. 10(a).
- 4 *Id.* art. 10(b).
- 5 *Id.* art. 10(a); CEDAW: A Commentary, *supra* note 1, at 260.
- 6 CEDAW, *supra* note 2, art. 10(a).
- 7 *Id.* Art. 10(c).
- 8 CEDAW Committee, *Girls’/Women’s Right to Education - Concept Note on the Draft General Recommendation*, ¶ 4.1 [hereinafter *Girls’/Women’s Right to Education - Concept Note*], available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/WomensRightEducation/ConceptNote.docx>.
- 9 CEDAW, *supra* note 2, art. 10(c); CEDAW, *supra* note 2, art. 2; 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*, ¶¶ 13, 21, 36, 38(d)-(e), CEDAW/C/GC/28 (2010) [hereinafter CEDAW, *General Recommendation No. 28*]. See also *Girls’/Women’s Right to Education - Concept Note*, *supra* note 8, at ¶ 4.1.
- 10 CEDAW, *supra* note 2, art. 2(a), (c), (e), (g), (h). See also *Girls’/Women’s Right to Education - Concept Note*, *supra* note 8, at ¶ 2.1(e).
- 11 *Girls’/Women’s Right to Education - Concept Note*, *supra* note 8, at ¶ 4.4.
- 12 *Id.* at ¶ 4.4.
- 13 Fourth World Conference on Women, Beijing, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, Platform for Action ¶ 69, [hereinafter *Beijing Platform for Action*].
- 14 *Id.* at ¶ 69.
- 15 See David Steinberg, *Burma: The State of Myanmar* 209-210 (2001).
- 16 UNICEF, *Snapshot 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. 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>.
- 17 David Steinberg, *Turmoil in Burma: contested legitimacies in Myanmar* 135-136 (2005).
- 18 See Martin Hayden & Richard Martin, *Recovery of the Education System in Myanmar*, 2(2) *J. of Int’l & Comparative Education* 47, 51 (2013).
- 19 See generally *id.* at 53.
- 20 UNFPA, *Report on Situation Analysis of Population and Development, Reproductive Health in Myanmar*, at 61 (July 2010) [hereinafter UNFPA (2010)]; see also Myanmar Ministry of Immigration and Population, Department of Population, 2014 Census Data, Series D: Education [hereinafter Myanmar Census Data (2014)], <http://www.dop.gov.mm/moip/index.php?route=census/state&path=21>.
- 21 UNFPA (2010), *supra* note 20, at 61; Myanmar Census Data (2014), *supra* note 20.
- 22 UNFPA (2010), *supra* note 20, at 77; Myanmar Census Data (2014), *supra* note 20.
- 23 IDEA International Institute & IHLCA Project Technical Unit, *Integrated Household Living Conditions Survey in Myanmar: Poverty Profile*, at 20, June 2007 [hereinafter *Poverty Profile* (2007)]; UNFPA (2010), *supra* note 20, at 77, 141.
- 24 UNFPA (2010), *supra* note 20, at 54, 120.
- 25 *Id.* at 20.
- 26 *Id.* at 119; Teresa O’Shannassy, *Burma’s Excluded Majority: Women, Dictatorship and the Democracy Movement*, 17, Catholic Institute for International Relations (2000).
- 27 CEDAW, *supra* note 2, art. 10(a); *Girls’/Women’s Right to Education - Concept Note*, *supra* note 8, at ¶ 2.1.
- 28 Myanmar Census Data (2014), *supra* note 20.
- 29 *Poverty Profile* 2003-2005, *supra* note 23, at 120.
- 30 CEDAW, *supra* note 2, art. 10(a); *Girls’/Women’s Right to Educa-*

tion - Concept Note, *supra* note 8, at ¶ 2.1.

- 31 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>.
- 32 *Id.*
- 33 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>.
- 34 Tharaphi Than, *Women in Modern Burma* 49, 52 (2014).
- 35 See Rep. of the Special Rapporteur on the Situation of Human Rights in Myanmar to the Human Rights Council (Tomás Ojea Quintana), U.N. Doc. A/HRC/19/67, ¶ 52 (Mar. 7, 2012) [hereinafter Quintana, Special Rapporteur Report (Mar. 2012)].
- 36 Burma Lawyer's Council, *A grim perspective for Burmese of women* (2010) [hereinafter *A grim perspective* (2010)], available at <http://www.socialwatch.org/node/11603>; see Uta Klein, *The Contribution of the Military and Military Discourse to the Construction of Masculinity in Society* (1999), available at <http://www.eurowrc.org/13.institutions/3.coe/en-violence-coe/11.coe-oct99.htm>.
- 37 *A grim perspective* (2010), *supra* note 36; Klein, *supra* note 36.
- 38 See Women's League of Burma, *In the Shadow of the Junta: CEDAW Shadow Report 1-2* (2008), available at <http://womenof-burma.org/in-the-shadow-of-the-junta-cedaw-shadow-report/>.
- 39 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct. 20-Nov. 7, ¶ 35, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter 2008 CEDAW Concluding Observations on Myanmar].
- 40 Myanmar Ministry of Education, *Panorama of Myanmar Higher Education*, <http://www.myanmar-education.edu.mm/dhel/promoti-of-accessibility-quality-and-diversity-in-higher-education/> (last visited June 23, 2015).
- 41 *Id.*
- 42 Myanmar Nat'l Committee for Women's Affairs, Nat'l Strategic Plan for the Advancement of Women ("NSPAW") (2013-2022), Education and Training § 8, Myanmar 2013 [hereinafter 2013-2022 NSPAW].
- 43 *Id.* at Education and Training § 8(a)(1)-(5).
- 44 *Id.* at Education and Training, § 8(b)(1)-(3).
- 45 CEDAW, *supra* note 2, art. 10(a).
- 46 2013-2022 NSPAW, *supra* note 43, at Women, Education and Training § 8(c)(1).
- 47 Combined Fourth and Fifth Periodic Report of the Government of Myanmar to CEDAW Committee, ¶¶ 88-96, CEDAW/C/MMR/4-5, (Jan. 8, 2015) [hereinafter 2015 CEDAW State Report, Myanmar].
- 48 *Id.* at ¶ 90.

4.8 WOMEN AND EMPLOYMENT (ARTICLE 11, GENERAL RECOMMENDATIONS 16, 17)

4.8.1 RELEVANT CEDAW GUIDANCE

Discrimination in education, training, hiring, remuneration, vertical and horizontal mobility, all impede women's full economic and occupational life.¹ Similarly, inflexible working conditions, lack of access to resources and inadequate sharing of family responsibilities further limit women's ability to participate in an economic life equal to that of men.

Recognizing this, CEDAW's Article 11 addresses comprehensively States parties' obligations to eliminate discrimination against women in employment and occupation.² These obligations include ensuring that women have equal opportunities with men regarding their choice of profession and employment, guaranteeing women's rights to equal remuneration for work of equal value, social security, and protection of health and safety in the workplace.³ Article 11 also addresses the need to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work.⁴

Importantly, the Committee has repeatedly articulated its recommendation that States parties adopt temporary special measures in the field of employment to facilitate and ensure women's *de jure* and *de facto* equality.⁵

Further, while States' reports rarely refer to the problem of unpaid women workers of family enterprises,⁶ States parties are obliged to quantify and include unremunerated domestic activities of women in the calculation of their gross domestic product.⁷

As is true with all of the substantive topics covered by CEDAW, armed conflict aggravates and amplifies the challenges facing women. For example, while during conflict women take on roles held by men in the formal employment sector, it is not uncommon in post-conflict settings for women to lose formal-sector jobs and return to the household or to the informal sector.⁸ Also, in conflict areas, where female-headed households are common, women's survival is often subjugated to the demands of the armed forces.

In short, improved status in the national employment sector is crucial for long-term development of women's economic, and general, equality. This is reflected in CEDAW's numerous provisions relating to women and employment and States parties must keep this in mind when developing policies and strategies in furtherance of these provisions.

4.8.2 BURMA SPECIFIC CONTEXT

During the reign of the military junta, Burma's state-controlled economy stagnated, leading to widespread poverty and underdevelopment.⁹ Since 2011, Burma's quasi-civilian government has instituted economic reforms intended to stimulate the economy and attract foreign investment.¹⁰ Burma's abundant natural resources, young labor force and proximity to Asia's dynamic economies have attracted foreign investment, though investors have been hesitant to commit to an economy rife with corruption and underdeveloped infrastructure.¹¹ Despite increased foreign investment, living standards have not improved for a majority of Burma's population and the country remains one of the poorest in Asia.¹² The government has been slow to address underlying impediments to economic growth, which are the result of decades of neglect and mismanagement by the military junta, as well as the monopoly (for the military and cronies) on the mechanics of economic growth.¹³

In spite of limited economic improvements, women's role in Burma's economy remains undervalued and underdeveloped, with low formal labor force participation.¹⁴

Women's unremunerated work (specifically, work within the household) in caring for their families have not been included in the country's overall labor snapshot and few women in Burma currently have the luxury of choosing their field of employment or deciding whether or not to engage in paid work.¹⁵ Women's difficulty in accessing the economic benefits of a more open economy is the result of their lesser economic status, itself the result of complicated historic, cultural and geographic factors.

Militarization is one of the major factors negatively affecting women's employment within Burma and the country's decades of military rule have served to limit women's employment opportunities. As part of militarization, the male-dominated military extended its control over the country's political and economic institutions, effectively barring women from attaining positions of influence in government and negating much of the former economic independence and status.¹⁶ Further, because women have only been allowed to serve administrative or nursing functions in the military,¹⁷ they have been denied the employment, business and relationship-building opportunities created by active military status (thus available only to men). Militarization has also served to reinforce traditional paternalistic notions embedded in society regarding jobs that are not "appropriate" for women.¹⁸ These deeply embedded stereotypes and discriminatory cultural mores have led to a situation in which women are viewed as inferior and in need of protection rather than as valuable contributors to a vibrant economy.

Existing gender stereotypes, which identify women as mothers and homemakers, have proved especially resistant to change. Despite reforms, women are still responsible for the bulk of the housework and child-rearing activities, even when engaging in some other income-generating work outside the household.¹⁹ In fact, girls, unlike boys, are expected to help care for their younger siblings and perform household chores.²⁰ While younger generations are divorcing themselves from these traditional stereotypes, housework is still considered the women's domain, and it is rare to find households where tasks are shared equally—even when women are also employed outside the home.²¹ Restricted by their family responsibilities, women engage primarily in part-time work that can be done from the home or close to it (running small goods shops, sewing, making sweets and snacks for sale at nearby markets or schools).²² Cultural mores also consider it inappropriate or risky for women to work closely with men under certain conditions, for example late at night or with little supervision, apparently because in these situations, women are seen to be sexually vulnerable.²³

There are even specific areas where employment of women is prohibited outright. Paragraph 352 of the 2008 Constitution facially discriminates against women's equal employment in stating, "the Union shall...not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. *However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.*"²⁴

Further, paragraph 59 of the 2008 Constitution sets out that the President and Vice-President "shall be well acquainted with the affairs of the Union" including "the military."²⁵ However, since women have not traditionally been allowed to serve actively in the military, this provision could be construed as disqualifying a woman to hold those offices.²⁶

In the employment fields in which women are well-represented, they are often poorly remunerated as compared to men and do not achieve high-ranking positions within the profession.²⁷ For example, women make up more than 50% of judges throughout the country. However, men outnumber women by more than 2 to 1 in the High Courts and no women serve at the Supreme Court level.²⁸ Further, as of June 2014 there are no women township administrators anywhere in Burma.²⁹ Thus, even where women have been able to enter certain professions, they are excluded from positions of power within that profession. Finally, few women work in conditions that respect occupational safety, motherhood or women's health generally.³⁰ 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.³¹

The situation is even more difficult for Burma's rural women, where armed conflict has raged for decades. In rural areas, women have worked traditionally alongside men on the farm with very few wage-earning opportunities or opportunities to raise their standard of living.³² Armed conflict in rural ethnic areas, and its accompanying dearth of government programs and active attempts to sequester and starve out armed opposition groups, has negatively impacted the overall economic and employment situation in those areas. Further, human rights organizations report high amounts of prostitution and human trafficking among Burma's women and children, indicating that meaningful employment is either unavailable or inaccessible.³³

Finally, and importantly, decades of ethnic conflict have negatively impacted the overall economic health of ethnic regions, and women's economic and employment stability in particular. Even the implementation of ceasefires may not help improve women's position within the economy, as men returning from conflict will resume their priority status. All these factors have combined to limit women's economic and employment options, in violation of CEDAW's Article 11.

In 2008, the CEDAW Committee acknowledged these issues and requested that Burma "ensure equal opportunities for women in the labour market, in accordance with article 11 of the Convention"³⁴ and called on the Government to "review its labour laws and ensure that employment legislation applies to and is enforced in public and private sectors."³⁵

Women's employment opportunities have not improved, however, since 2008, even with the increased focus on foreign investment and the economy. The residual effects of decades of militarization, the continuation of ethnic conflicts, and deeply entrenched cultural stereotypes continue to inhibit women's ability to meaningfully participate in the workforce. Therefore, women's economic and professional opportunities are remain woefully limited, in violation of CEDAW's Article 11 requirements.

4.8.3 ANALYSIS OF NSPAW

NSPAW's section on women's equal access to employment states its main objective is to "strengthen systems, structures and practices to ensure fairness and equal rights for women in relation to employment, credit, resources, assets, and economic benefits."³⁶

Promisingly, NSPAW demonstrates some understanding of the various challenges facing women and calls for nine different surveys on, amongst other things: women's participation in the public and private economic sectors; the challenges women face in accessing economic opportunities; the situation of female migrant workers; and disparities in wages between women and men.³⁷

However, NSPAW is troublingly silent on the issue of gender and economic reform. Specifically, the Government's focus on economic growth and foreign investment has, to date, been devoid of any gender component, including the use of temporary special measures to secure women's share of the growth, and generally has ignored potential negative impacts for women.

Moreover, although NSPAW's myriad surveys will help the Government understand the nature of the various challenges facing women and their employment, NSPAW lacks practical provisions on implementation. In fact, NSPAW's implementation plan for its employment goals is limited to "practical initiatives" focused on "provid[ing] equal access to employment and resources."³⁸

To be sure, NSPAW is to be applauded for its ambitious goals and calls for research on ending discrimination against women in the employment sector. However, in order to meaningfully achieve these goals, the Government must also outline and incorporate more detailed and deliberate strategies in addressing the value of domestic work, increasing accessibility of employment opportunities, and removing discriminatory stereotypes and practical barriers to women's employment. Additionally, the Government must create a mechanism by which to measure the success of its various initiatives.

Unfortunately, the Government's 2015 periodic report to the CEDAW Committee offers little to improve on NSPAW's shortcomings in the area of equal access to employment and other economic benefits. For instance, the periodic report relies on provisions of the 2008 Constitution as a primary means of ensuring gender equality in employment. However, as explained by the Government, under Burma law, "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."³⁹ This view not only categorically discriminates against women with respect to employment in certain sectors, it also does so based on outmoded stereotypes as to the type of work women are able to perform, in violation of CEDAW.

As for domestic legislation for gender equality in employment, the periodic report asserts that “(8) laws related to women’s rights have been amended or enacted.”⁴⁰ However, only the Social Security Law includes specific provisions related to women; the rest only relate to labor generally. Despite mention of statistics indicating modest growth in participation of women in Burma’s labor force,⁴¹ the periodic report, like NSPAW, does not provide specific, practical provisions concerning implementation of its international obligations in the realm of gender equality in employment.

While setting ambitious goals is an essential part in ensuring improvement of women’s employment situation within Burma, NSPAW is substantively and functionally incomplete for want of a gender analysis of the growing economy and more concrete implementation provisions. Without taking these issues into consideration, it will be exceptionally difficult for the Government to bring the country in compliance with CEDAW’s article 11 requirements.

4.8.4 RECOMMENDATIONS

- The Government must initiate studies, programs, and temporary special measures to better understand and ensure Burma’s economic growth, and that the Government’s focus thereon does not discriminate against women.
- The Government must develop and execute practical initiatives that provide detailed accounts of how NSPAW’s provisions relating to women’s employment will be executed and implemented. These should include temporary measures, incorporation of women’s unremunerated tasks into Burma’s gross domestic product, 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 armed conflict in a way that does not discriminate against women.
- The Government must undertake a review of the 2008 Constitution and other domestic legislation and amend or repeal any provisions that in purpose or effect discriminate against women in the realm of employment.

Endnotes

- 1 Fourth World Conference on Women, Beijing, Sept. 4-15, 1995, *Beijing Declaration and Platform for Action*, ¶ 152 [hereinafter Beijing Declaration and Platform for Action].
- 2 The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary 281 (Marsha A. Freeman, Christine Chinkin, Beate Rudolf, eds., 2012) [hereinafter “CEDAW: A Commentary”].
- 3 Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, art. 11(1)(a)-(f) [hereinafter “CEDAW”].
- 4 CEDAW art 11(2); CEDAW: A Commentary, p. 285.
- 5 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25, on Article 4, Paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures*, ¶¶ 4, 37, U.N. Doc. HRI/GEN/1/Rev.7 (2004) [hereinafter CEDAW: *General Recommendation 25*].
- 6 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 16 on Unpaid Women Workers in Rural and Family Enterprises*, ¶ (a) (1991).
- 7 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 17 on Measurement and Quantification of the Unremunerated Domestic Activities of Women and their Recognition in the Gross National Product* (1991).
- 8 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations*, ¶ 42 (2013).
- 9 David Steinberg, Turmoil in Burma: contested legitimacies in Myanmar 137-138 (2005); Janell Mills, *Militarism, civil war and women’s status: a Burma case study*, at 279, in *Women in Asia: Tradition, Modernity, and Globalization* (L. Edwards & M. Roes, eds., 2000).
- 10 See Organization for Economic and Co-operation and Development, *OECD Investment Policy Reviews: Myanmar 2014*, at 17-19.
- 11 McKinsey Global Institute, *Myanmar’s moment: Unique opportunities, major challenges*, at 1-3 (June 2013); OECD IPR Myanmar, *supra* note 10, at 50.
- 12 See McKinsey Global Institute: Myanmar’s moment, *supra* note 10, at 17-18. See also CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> (last accessed June 22, 2015).
- 13 See McKinsey Global Institute, Myanmar’s moment, *supra* note 10, at 18. CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> (last accessed June 22, 2015).
- 14 See generally Asia Development Bank, *Interim Country Partnership Strategy: Myanmar 2012-2014*, at 2 (Oct. 2012).
- 15 Jessica Harriden, NIAS, *The Authority of Influence: Women and Power in Burmese History* 250 (2012) [hereinafter Authority of Influence (2012)].
- 16 *Id.* at 174.
- 17 Combined Fourth and Fifth Periodic Report of the Government of Myanmar to CEDAW Committee, ¶ 37, U.N. Doc. CEDAW/C/MMR/4-5 (Jan. 8, 2015) [hereinafter 2015 CEDAW State Report, Myanmar].
- 18 Successive government appeared to condone cultural and traditional concept of focusing on women’s predominance in “feminine” profession such as nursing and teaching, and stating that women needed to balance their career aspirations with their family duties. (Authority of Influence (2012), *supra* note 15, at 251).
- 19 Paul Minoletti, *Women’s Participation in the Subnational Governance of Myanmar*, Discussion Paper #3 in Subnational Governance in Myanmar Discussion Paper Series (June 2014) at 17; Tharaphi Than, *Women in Modern Burma* 60 (2014).
- 20 Than, *Women in Modern Burma*, *supra* note 19, at 52.
- 21 *Id.* at 60; UNFPA, *Report on Situation Analysis of Population and Development, Reproductive Health and Gender in Myanmar*, p. 153 (Jul. 10, 2010).
- 22 Minoletti, *Women’s Participation*, *supra* note 19, at 17.
- 23 Brenda Belak, *Gathering Strength: Women from Burma on Their Rights* 161 (Images Asia, 2002), available at <http://www.ibiblio.org/obl/docs/GS11.economy-and-labour.pdf>.
- 24 Constitution of the Republic of the Union of Myanmar (2008), Art. 352 (emphasis added) [hereinafter “2008 Constitution”].
- 25 *Id.* at art. 59(d).
- 26 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 10th 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.)
- 27 Than, *Women in Modern Burma*, *supra* note 19, at 60; UNFPA Report, *supra* note 21, at 155.
- 28 International Bar Association Report, *The Rule of Law in Myanmar: Challenges and Prospects*, at 56 (Dec. 2012).
- 29 Minoletti, *Women’s Participation*, *supra* note 19, at 10.
- 30 UNFPA Report, *supra* note 21 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)).
- 31 Social Security Law, 2012, Pyidaungsu Hluttaw Law No. --/2012, *The Waxing/Waning Day of 1373 M.E.*, arts. 25-28 (Apr. 1, 2014).
- 32 UNFPA Report, *supra* note 21, at 153; and Belak, *Gathering Strength*, *supra*, note 23, at 153.

- 33 Authority of Influence (2012), *supra* note 15, at 187.
- 34 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct. 20-Nov. 7, 2008, ¶ 37, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008).
- 35 *Id.*
- 36 Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women* ("NSPAW") (20103-2022), Myanmar 2013, Women and the Economy, §12.
- 37 *Id.* at §§ 12(a)(1)-(7).
- 38 *Id.* at § 12(c)(1).
- 39 2015 CEDAW State Report, Myanmar ¶ 97.
- 40 *Id.* at ¶¶ 8-16, 98, 101. The laws are: the Social Security Law (Aug. 31, 2012); Minimum Wage Law (Jul. 12, 2013); Labour Organization Law (Oct. 11, 2011); Settlement of Labour Dispute Law (Mar. 28, 2012); Employment and Skills Development Law (Aug. 30, 2013); Myanmar National Human Rights Commission Law (Mar. 28, 2014); Mass Media Law (Mar. 14, 2014); and the Organization Registration Law (Jul. 18, 2014).
- 41 *Id.* at ¶ 99.

4.9 WOMEN FACING MULTIPLE FORMS OF DISCRIMINATION (ARTICLES 2, 14, GENERAL RECOMMENDATIONS 24, 28, 30)

4.9.1 RELEVANT CEDAW GUIDANCE

Recognizing that women's experiences are not homogenous, CEDAW Article 2 requires that States parties take into account and address the multiple forms of discrimination that women face.¹ Specifically, the Committee has found that:

*the discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways than men. States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.*²

In this context, the Committee has identified groups that are "more vulnerable to multiple forms of discrimination with respect to education, health, social and political participation and employment," including women with disabilities, women belonging to ethnic or minority groups, rural women and migrant women.³

For example, in the context of health, the Committee has found that since the health status of women can vary, "special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups."⁴ Similarly, with respect to women and girls affected by conflict, CEDAW requires that States parties address their rights and distinct needs.⁵ This is because, as the Committee has explained, "[w]omen are not a homogenous group and their experiences of conflict and specific needs in post-conflict contexts are diverse...discrimination against women is also compounded by intersecting forms of discrimination."⁶

Intersecting forms of discrimination can also exacerbate barriers to accessing justice. The Committee has found that vulnerable groups of women, including "rural women, indigenous women, migrant women, displaced or refugee women, elderly women, women with HIV/AIDS, women with disabilities and women belonging to ethnic or religious minorities" can face particular difficulties with respect to access to justice.⁷ Furthermore, belonging to a vulnerable group can result in "complicated legal status" which in turn impacts their access to rights and justice.⁸ On this basis, the Committee has found that "unregistered and irregular migrants, stateless women, refugees, and trafficked women may lack identity cards or may be excluded from legislative or constitutional rights guarantees."⁹

The Committee has also provided extensive guidance with respect to discrimination faced by rural women, which are established in CEDAW Article 14. Article 14 provides that States parties must take into account the "particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas."¹⁰ This means full participation in development planning at all levels, access to adequate health care and educational programs and provisions, and access to agricultural credit loans and equal treatment in land resettlement schemes.¹¹

In order to effectively address these multiple and intersecting layers of discrimination that women may face, CEDAW mandates not only the elimination of laws and policies which could directly and indirectly cause such discrimination, but that States parties also accelerate the achievement of substantive equality by these groups through the use of temporary special measures to eliminate "multiple forms of discrimination against women and its compound negative impact upon them."¹² The Committee has operationalized this requirement and asks that States parties "address the implementation of the Convention with respect to different groups of women, in particular those subject to multiple forms of discrimination" in their reports to the Committee.¹³

4.9.2 BURMA SPECIFIC CONTEXT

CEDAW's recognition that women can face multiple forms of discrimination is particularly important in considering women's rights in Burma for several reasons. First, Burma has a varied geography with a large rural population. Second, demographically, the population is composed of over 100 different ethnicities and multiple religions. Third, prolonged conflict has decimated populations in certain areas and resulted in a large refugee and IDP population. Therefore, it is impossible to consider Burma's compliance with CEDAW without first understanding the layers of discrimination and the disparity in experience this has, and continues, to cause. This section considers a sampling of the issues that lead to multiple forms of discrimination against women in Burmese society: rurality, ethnicity and religion (with the latter two being interrelated).

Roughly 70% of Burma's population lives in rural areas,¹⁴ which have twice the poverty rate of Burma's urban areas¹⁵ and limited infrastructure.¹⁶ As a result, those living in Burma's rural areas have distinct challenges and needs that must be addressed. For example, UNICEF's statistical set on Burma 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.¹⁷ Accordingly, in 2008, the Committee wrote in its Concluding Observations that "[t]he Committee calls upon the State party to take the necessary measures 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 by ensuring that they participate in decision-making processes and have improved access to, inter alia, health care, education and social services."¹⁸

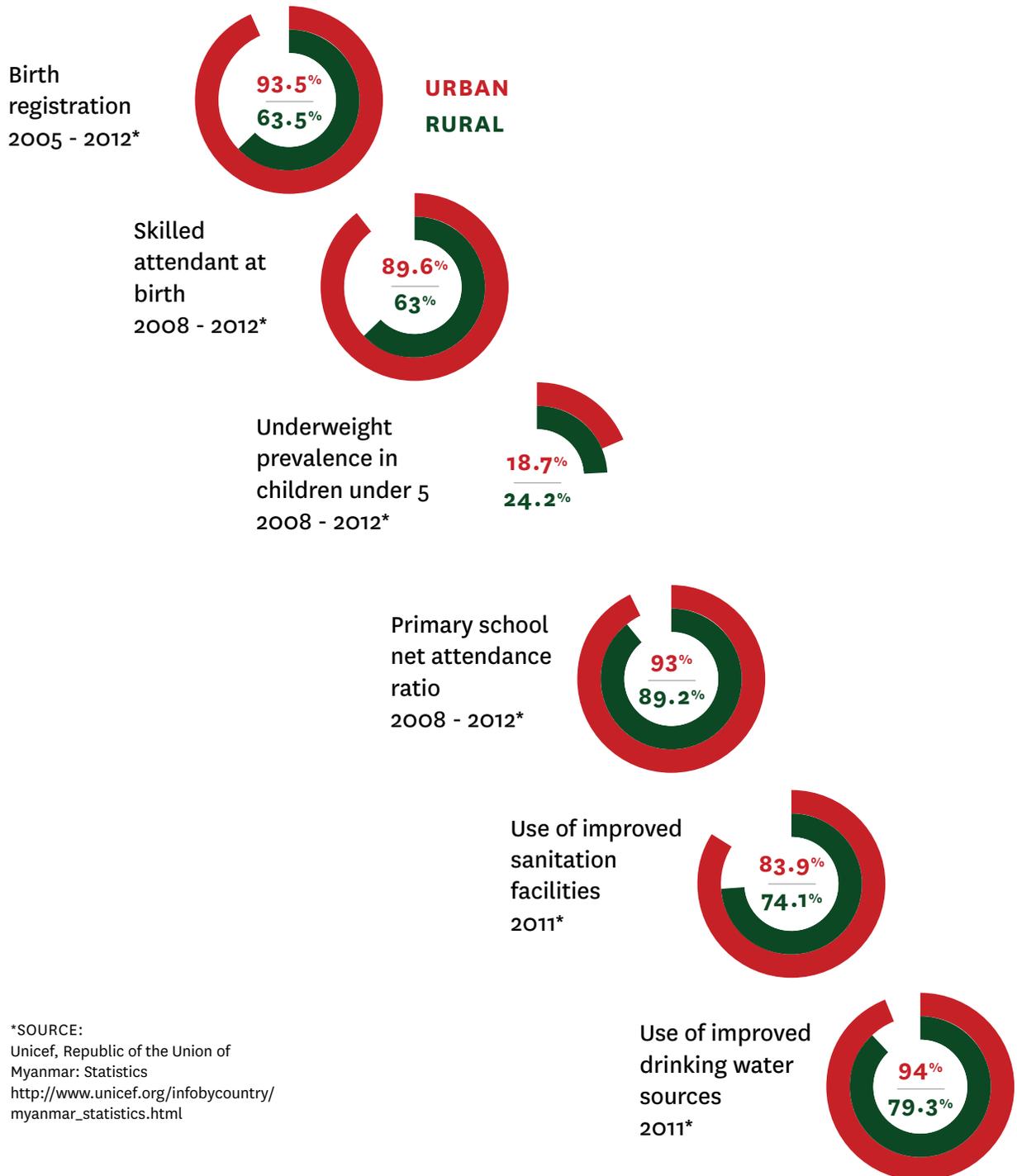
Other major, and often interrelated, factors contributing to discrimination in Burma are ethnicity and religion.¹⁹ Burma is composed of a majority (two-thirds) Burman population and a minority composed of over 100 different ethnicities, with several major groups: Shan, Karen, Kachin, Rakhine, Mon, Kayah and Chin.²⁰ With respect to religion, Burma is composed of a supermajority Buddhist population, constituting approximately 90% of the population and minority populations of Christians, Muslims and others, including animists.²¹ Some of the minority religions are linked to minority ethnic populations (Kachin and Christian, Rohingya and Muslim).²²

Discrimination against ethnic women in Burma cannot be understood without understanding the multifarious and intersecting factors imposed by Burma's social and political landscape. Burma's prolonged armed conflict is one such factor, with ethnic women being targeted for sexual violence, being excluded from ceasefire and peace negotiations (see *infra* section on *Sexual Violence, Access to Justice and Political Participation of Women in Conflict*) and bearing the brunt of displacement—all of which combine to compound the discrimination faced by ethnic women.

One ethnic group that has suffered particular discrimination is the Rohingya, a Muslim minority group in northern Rakhine State. According to the Special Rapporteur on the situation of human rights in 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."²³ For example, in February 2014, Médecins Sans Frontières (MSF) was forced to suspend its operations in Rakhine state (established in 1992²⁴) due to accusations of favoritism towards the Rohingya population.²⁵ One report showed that within three weeks of the suspension of activities "anecdotal evidence and medical estimates show that about 150 of the most vulnerable have died . . . more than 20 of them pregnant women facing life-threatening deliveries . . . [MSF] had been the only way for pregnant women facing difficult deliveries to get a referral to a government hospital."²⁶ While MSF was permitted to resume activities in December 2014,²⁷ the CEDAW Committee's 2008 Concluding Observations on the issue still resonate, urging the Government to:

urgently eliminate all forms of violence and discrimination against women in Northern Rakhine State and in particular to alleviate the heavy restrictions on the movement of residents within Northern Rakhine State, especially women and girls. The

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*Committee further urges the State party to lift the orders concerning marriage authorization and restriction of pregnancy which violate the human rights of these women. The State party should also take effective measures to improve their access to primary health care and basic education.*²⁸

Further, the Government continually fails to recognize the Rohingya's right to self-determination.²⁹ The Special Rapporteur on the situation of human rights in Myanmar has found that rather than validate Rohingya as an ethnic group the Government insists on classifying them as Bengali (linking their origin to Bangladesh, not Burma)³⁰ because that "could allow a claim of indigenous status and corresponding rights under the [2008] Constitution."³¹ This refusal to recognize the Rohingya as a group is further demonstrated by the Government's use of the term Bengali, not Rohingya, in its 2015 State Report to the Committee,³² as well as the exclusion of the term from the 2014 census, which resulted in the exclusion from the census of 1.2 million Rohingya in Rakhine State.³³ It has also resulted in formal discrimination under the Citizenship Law of 1982.³⁴ The Special Rapporteur has asserted that the Citizenship Law violates international human rights law, including Article 9 of CEDAW, and must be amended.³⁵ In its 2008 Concluding Observations the CEDAW Committee called for the same³⁶ and "urge[d] the State party to grant citizenship to residents, in particular the Muslims of Northern Rakhine State based on their long-standing ties to Myanmar, to allow these people, in particular the women, the full enjoyment of their human rights."³⁷

The continued persecution of and discrimination against the Rohingya has resulted in a migration crisis, where in the first quarter of 2015, 25,000 people fled Burma and Bangladesh by sea under highly dangerous and deplorable conditions, resulting in at least 1050 deaths.³⁸ The High Commissioner for Human Rights has stated that until the government addresses the institutional discrimination against the Rohingya population, "this precarious migration will continue...Whether fleeing persecution, discrimination, poverty or other human rights violations, or moving in search of decent work and a life with dignity, all migrants who take to the seas in such perilous circumstances are in need of protection."³⁹

Importantly, persecution faced by the Rohingya, based both on religion and ethnicity does not constitute all religious discrimination in the country. The US Commission on International Religious Freedom, which designates states "that engage in or tolerate particularly severe violations of religious freedom that are ongoing and egregious,"⁴⁰ has listed Burma as a country of particular concern since 1999.⁴¹ In fact, the Government's Ministry of Religious Affairs' objectives themselves preclude the possibility of religious freedom in Burma—one objective being to "allow freedom of faith", and the very next calling for the "purification, promotion and propagation of the Theravada Buddhist Sasana."⁴²

Recent legislation, in particular a package of four so-called "Laws on the Protection of Race and Religion," threatens to further entrench widespread gender-based discrimination against women,⁴³ 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.⁴⁴ 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."⁴⁵

The Buddhist Women's Special Marriage Bill aims to regulate interfaith marriage by imposing strict rules concerning the conduct of non-Buddhist men—and only men—towards their Buddhist wives, whose conduct is not addressed by the proposal.⁴⁶ This law blatantly violates international norms protecting the rights of women to enter and fully participate in marriage on an equal basis with men.⁴⁷ Moreover, by solely regulating the conduct of men with regard to women, it also reinforces negative prejudices and customs based on the supposed inferiority and superiority of women and men, respectively, and on stereotyped roles for women and men, in contravention of CEDAW.⁴⁸

Meanwhile, the Population Control Health Care Bill provides for a 36-month "birth spacing" interval for women between child births.⁴⁹ UN experts, who have expressed alarm at the passage of this law have cautioned that, "evidence shows that attempts to impose strategies aimed at 'controlling population growth' often disproportionately target marginalized and minority groups and can have discriminatory, coercive and punitive effects that go against basic rights and freedoms, particularly those of women."⁵⁰

The Religious Conversion Bill, which creates an onerous state regulated system for conversion violates the fundamental rights to freedom of religion under international human rights law.⁵¹ The Monogamy Bill, which criminalizes polygamy (which is already illegal under Burma's Penal Code), as well as extramarital affairs, is also of serious concern. The head of the UN Working Group on Discrimination against Women has stated that "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."⁵²

Rurality, ethnicity and religion are but a few of the multiple layers of discrimination faced by women in Burma (other issues include displacement, disability and age). They must be understood and actively addressed by the Government of Burma if it is to truly eliminate discrimination against women.

4.9.3 ANALYSIS OF NSPAW

There is not a section of NSPAW devoted to the needs of vulnerable women; however, there are limited references to their needs peppered throughout NSPAW.

The needs of rural women are addressed throughout NSPAW. In particular, the section "Women and Livelihoods" sets as goals the "increase[d] the capacity of women in urban and rural areas to implement community-based initiatives by collaborating with women's organizations"⁵³ and "free or paid access for women in urban or rural areas to vocational training and marketable livelihoods that are relevant to location."⁵⁴ The needs of rural women are also mentioned in other sections such as "Women, Education and Training," and "Women and Domestic Violence" which provide that specific services will be available and provided for both rural and urban women.⁵⁵

Despite the Government's recognition that the needs of rural women extend across all sectors and that all services provided to urban women must also be extended to rural women, NSPAW includes no analysis of how implementation plans designed to reach rural women must differ from their urban counterparts. Without a framework that addresses the additional logistical hurdles of meeting the needs of women living far from urban centers, the Government will be unable to meet its CEDAW obligations. Additionally, NSPAW offers no definition of what the Government defines as rural. Such a definition is important for policy and planning purposes.

While NSPAW contains marginal protections for rural women, it barely addresses the needs of women belonging to ethnic or religious minorities. In the section on "Women and Human Rights" NSPAW notes the need to build "public awareness, *including ethnic and minority groups*, on the rights of women."⁵⁶ With respect to religious groups, NSPAW only commits to the "revision, development, and application of existing civil, religious, and customary laws so as to protect, promote and fulfill the human rights of women." Finally, as in all its other sections, NSPAW calls for all surveys and studies to be disaggregated based on sex, age, ethnicity and location.

However, NSPAW's failure to include specific action points on addressing the specific needs of vulnerable populations within each category of NSPAW shows that the Government is unprepared to address all of the various intersecting layers of discrimination faced by women belonging to ethnic and religious minorities. For example, as discussed by the Committee, vulnerable populations face specific challenges in areas such as health, access to justice, education and livelihoods. Accordingly, the implementation of any and all relevant sections of NSPAW must address their needs.

4.9.4 RECOMMENDATIONS

- The Government must undertake a specific and targeted effort at understanding, addressing, and improving the special status and situation of vulnerable women subject to multiple forms of discrimination.
- The Government must provide specific information concerning its efforts to improve the status of rural women and

develop, implement and publish logistical information about how its policies will be designed to reach rural women, including by officially defining “rural” to ensure consistent policy promulgation.

- The Government must recognize the varying factors causing multiple discrimination against the country’s ethnic communities, specifically the armed conflict, the military’s targeting of ethnic women for sexual violence, ethnic women’s exclusion from the peace process, and the complications of internal displacement.
- The Government must end the systematic and institutional discrimination against the Rohingya, must recognize them as an ethnic group, amend Citizenship Law 1982 to bring it into compliance with CEDAW, and ensure their access to health and justice services by permitting unhampered humanitarian access to northern Rakhine State.
- The Government must repeal the “Race and Religion” laws.

Endnotes

- 1 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*, ¶ 18, U.N. Doc. CEDAW/C/GC/28 [hereinafter, CEDAW, General Recommendation No. 28].
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- 3 Concluding Observations on the Seventh Periodic Report of New Zealand, 52d Sess., Jul. 9-27, 2012, ¶ 35, U.N. Doc. CEDAW/C/NZL/CO/7 (Jul. 27, 2012).
- 4 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 24 on women and health*, ¶ 6 (1999).
- 5 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 30 on pm Women in Conflict Prevention, Conflict and Post-Conflict Situations*, ¶ 7, U.N. Doc. CEDAW/C/GC/30 (2013).
- 6 *Id.* at ¶ 6.
- 7 CEDAW Committee, *Access to Justice – Concept Note for Half Day General Discussion* (on forthcoming General Recommendation), p. 13, (Feb. 18, 2013), available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/Concept-NoteAccessToJustice.pdf> [hereinafter *Access to Justice -- Concept Note* (2013)].
- 8 *Id.*
- 9 *Id.*
- 10 Convention on the Elimination of All Forms of Discrimination against Women, art. 14(1), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].
- 11 CEDAW Committee, *Rural Women – Concept Note for the General Recommendation on Article 14 of CEDAW (prepared with support of FAO, IFAD, WFP, and UN Women)*, at 11-12, available at <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Rural-Women.aspx>.
- 12 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 25 on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, ¶ 12, U.N. Doc. CEDAW/C/GC/25.
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- 14 The World Bank, Rural population (% of total population), <http://data.worldbank.org/indicator/SP.RUR.TOTL.ZS> (last visited June 29, 2015).
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- 18 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct. 20-Nov. 7, ¶ 45, U.N. Doc. CEDAW/C/MMR/3 (Nov. 7, 2008).
- 19 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&dld=222119#wrap-per> (last visited June 29, 2015).
- 20 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).
- 21 US Commission on International Religious Freedom, *2015 Annual Report*, at 27 (2015).
- 22 US Dept. of State, International Religious Freedom Report 2013, *supra* note 18.
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- 27 *MSF Restarts Basic Medical Services*, *supra* note 24.
- 28 2008 Concluding Observations, *supra* note 18, at ¶ 43.
- 29 Special Rapporteur Report (Sept. 2014), *supra* note 23, at ¶ 46; Rep. of the Special Rapporteur on the situation of human rights in Myanmar to the General Assembly (Yanghee Lee), ¶ 46, U.N. Doc. A/HRC/28/72 (Mar. 23, 2015) [hereinafter Special Rapporteur Report (Mar. 2015)].
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- 31 Amnesty International, *Why are the Rohingya fleeing Myanmar?* (May 28, 2015) available at <https://www.amnesty.org/latest/news/2015/05/why-are-the-rohingya-fleeing-myanmar/>.

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- 34 Amnesty International, *Why are the Rohingya fleeing Myanmar?*, *supra* note 31; Human Rights Watch, World Report 2015: Burma, *supra* note 33.
- 35 Special Rapporteur Report (Sept. 2014), *supra* note 23, at ¶ 53.
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- 42 Official Website of the Ministry of Religious Affairs for the Union of the Republic of Myanmar, http://www.mora.gov.mm/mora_ministry1.aspx (last visited Jun. 29, 2015).
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- 52 OHCHR, *UN rights experts alarm*, *supra* note 44.
- 53 Myanmar Nat’l Committee for Women’s Affairs, Nat’l Strategic Plan for the Advancement of Women (“NSPAW”) (2012-2022), Women and Livelihoods § 7(b) (2).
- 54 *Id.* at § 7(c) (4).
- 55 *Id.* at Women, Educations and Training § 8(c) (2), Women and Domestic Violence §§ 10(a) (1), 10(c) (2).
- 56 *Id.* at Women and Human Rights, 15(d) (2) (emphasis added).

4.10 ELIMINATING NEGATIVE PRACTICES, STEREOTYPES, AND MEDIA PORTRAYALS (ARTICLES 5, 16, GENERAL RECOMMENDATION 21)

4.10.1 RELEVANT CEDAW GUIDANCE

Social hierarchies viewing women as inferior to men exist. The paternalistic image of women only as child-bearers and -rearers, as weak, vulnerable and in need of protection, and as incompetent decision makers, and ignores women's function as valuable and integral members of society.¹ These traditional stereotypes bolster gender inequality in every facet of society, increasing the incidence of violence against women and putting women's lives and health at risk.²

One main purpose of CEDAW is to eliminate harmful gender stereotypes which often are so embedded within "language, images, practices, norms, and values," that people may not even be aware that their social actions are furthering them.³ Specifically, under CEDAW Article 5, States parties must take appropriate measures to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."⁴

Ethnic, religious, and cultural traditions tend to further entrench stereotypical roles of women within society—particularly as it relates to women's rights in marriage and family relations.⁵ Moreover, traditional concepts of gender are further embedded by antiquated and discriminatory laws, policies, and practices.⁶ Addressing the intersection of cultural practices and gender stereotypes, the Committee has emphasized that cultural traditions cannot undermine women's inalienable and non-derogable human rights and cautions States parties to take "sufficient steps" to curb the effect of harmful practices.⁷ In short, regardless of customs, religion or traditions, women must be treated equally under the law.⁸

Similarly, traditional gender norms can be intensified by media depictions of conventional gender and fixed parental roles.⁹ CEDAW recognized the importance of eliminating limiting or negative media stereotypes by requiring States parties to abolish discriminatory practices, including by "ensur[ing] that there are no damaging stereotypes in the media, in educational materials, and similar forms of expression, even when these are presented by private actors."¹⁰ General Recommendation 23 on women in political and public life further notes, "stereotyping, including that perpetrated by the media, confines women in political life to issues such as the environment, children and health, and excludes them from responsibility for finance, budgetary control and conflict resolution."¹¹

Regarding stereotypes and marriage, CEDAW clarifies and reaffirms that men and women have the same rights to enter into marriage, same right to freely choose a spouse, and equal personal rights within the marriage.¹² Because many marriage customs strengthen patriarchal social roles and impede women's access to their rights, the Committee stresses "the serious emotional and financial consequences" potentially resulting from marriage and emphasizes the importance of States parties discouraging polygamy.¹³

As a final point, it is important to note that fully and earnestly combatting negative stereotypes against women is crucial, not only to ensure women's equal status within society as a general matter, but also to make advances in each of CEDAW's other substantive areas (such as access to justice, political participation and education).

4.10.2 BURMA SPECIFIC CONTEXT

Traditional gender stereotypes are pervasive in Burma and are supported by religious, cultural, political, traditional, and customary practices. Women in Burma are generally understood to be secondary to men.¹⁴ They are perceived as weak, in need of protection, and incapable of making their own decisions.¹⁵ Typically viewed solely as mothers, wives and daughters, it is believed that women's proper place is in the home.¹⁶ Conversely, men are considered to be

society's natural decision-makers, leaders, and bread-winners.¹⁷ Deeply embedded in the country's consciousness, traditional perceptions of women such as these create barriers that preclude women in Burma from seeking non-traditional life paths. Making the issue worse, these traditional and harmful stereotypes pervade all aspects of public and private life in Burma.¹⁸

For instance, within Burma, notions of male superiority are often conceptualized in "Buddhist" terms, reinforcing the belief that gender stereotypes are entirely natural.¹⁹ For example, many of Burma's Buddhists believe in *hpon*, or an innate spiritual superiority.²⁰ Women are believed to be unable to possess *hpon* and therefore men's possession of *hpon* makes them spiritually superior to women.²¹ Importantly, this notion of male spiritual superiority is often accepted by non-Buddhist, non-Burman ethnic communities,²² demonstrating the pervasiveness of deeply-embedded negative stereotypes of women.²³

Another factor contributing to the pervasiveness of harmful stereotypes of women in Burma is the country's sixty years of conflict and militarization. The culture of militarism within Burma promotes a sense of hyper-masculinity, which creates and reinforces traditional perceptions of male and female roles in society and equates masculinity with the military's physical force.²⁴ That is, the military's visibility within daily life and its dominant influence within political structures serve to embed stereotypical perceptions that women's "proper" place in society is in the home and subordinate to that of men. What's more, this militarization is not limited to areas and cultures controlled by the government. The sixty years of ethnic conflict has created a paradigm of masculine dominance and feminine subordination and unimportance in the country's border and ethnic regions.

One way in which these stereotypes have manifested themselves in women's experience in Burma is in men's perceived entitlements to women's lives, bodies and sexuality. For example, as discussed in the Violence Against Women section, Burma's Penal Code does not prohibit marital rape (unless the victims is less than 14 years old), reinforcing the traditional notion that wives, and their sexuality, are the property of their husbands. Further, the "Laws on the Protection of Race and Religion" entrench widespread gender-based discrimination, including through propagation of harmful, negative stereotypes and practices concerning women. In particular, the Buddhist Women's Special Marriage Bill regulates interfaith marriage by imposing strict rules concerning the conduct of non-Buddhist men—and only men—towards their Buddhist wives, whose conduct is not addressed by the proposal.²⁵ This law blatantly violates international norms protecting the rights of women to enter and fully participate in marriage on an equal basis with men.²⁶

By solely regulating the conduct of men with regard to women, these laws reinforce negative prejudices and customs based on the supposed inferiority and superiority of women and men, respectively, and on stereotyped roles for women and men, in contravention of CEDAW.²⁷ Such differential treatment of men and women is not only discriminatory, but also further entrenches the masculine notions that women are unable to make their own decisions and need protection.

Regarding media stereotypes, it must be kept in mind that media in Burma is largely controlled by the military-dominated government (and Government-aligned cronies) and is subject to numerous restrictive laws and draconian policies.²⁸ For example, the 1950 Emergency Provisions Act bans content that would "affect the morality or conduct of the public or a group of people in a way that would undermine the security of the Union or restoration of law and order."²⁹ Additionally, the 2004 Electronics Transactions Law prohibits any individual or group from electronically sending information regarding government issues or national security, or messages of a cultural or economic nature.³⁰ These restrictions on media can, and have, fueled the media's traditional and conservative depiction of women. In other words, media depictions of women have long been subject to government control, itself informed by the militarism and masculinity prevalent in Burma's culture.³¹

Harmful practices and negative stereotypes of women extend beyond the examples presented here. However, due to an absence of research, studies, data, and other signifiers of the problem, data on such practices and stereotypes is lacking.

In its 2008 review of Burma, the Committee noted its concern regarding “the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life”³² The Committee was further concerned that “such customs and practices perpetuate discrimination against women and girls, as reflected in their disadvantageous and unequal status in many areas, including in public life and decision-making and in marriage and family relations.”³³

The Government has not engaged in any meaningful efforts to combat negative or limiting stereotypes of women. Due to the broad-based and deeply-engrained character of negative gender stereotypes within Burma, it is crucial that NSPAW include thoughtful and comprehensive provisions designed to eliminate any notion of superiority between the sexes.

4.10.3 ANALYSIS OF NSPAW

NSPAW’s treatment of negative practices and stereotypes is discouragingly sparse and disparate. In a section on “The Girl Child,” the Government asserts it will “implement community based awareness activities to reduce and eliminate customs, superstitions and belief that are obstacles to girls’ advancement...”³⁴ In “Women and Human Rights,” NSPAW calls for implementation of “[n]ational statistics, surveys and information management systems related to the analysis of data on the status of human rights including the areas of marriage and inheritance.”³⁵

While “awareness activities” and “information management” are steps in the right direction, they are not nearly robust enough to combat the discriminatory perceptions women are subject to in all parts of Burma’s society. More concrete and deliberate steps must be taken to uproot patriarchy in Burma and establish women’s equal rights in the social, economic, cultural, religious and political spheres.

Recognizing the importance of the role that the media plays in addressing stereotypes, NSPAW devotes a section to “Women and the Media”, stating that “[t]he key objective is to develop and strengthen systems, structures and practices for the media to promote the advancement of women, and to raise public awareness about women’s rights and their contribution to society.”³⁶ NSPAW also indicates its intention to “raise awareness of media professionals of the need to reduce gender stereotyping and discrimination against women in their workplaces.”³⁷ While such awareness campaigns are encouraging, reform of the tight strictures on press freedom are necessary to ensure the media’s ability to reduce gender stereotyping and to break the Government’s influence over portrayals of women. To this end it should be noted that while recent progressive developments are welcome, none of them are specifically designed to combat negative stereotypes of women—more media voices does not necessarily mean gender-sensitive voices.

Regrettably, the Government’s 2015 periodic report to the CEDAW Committee is similarly lacking in specific, action-oriented, and measurable steps towards practical implementation. While acknowledging the need for more specific strategies and more effective public awareness on eliminating social and cultural gender discrimination norms, the periodic report offers little more than vaguely-described “awareness raising programs” and “development tasks” in coordination with unspecified civil society partners.³⁸ Moreover, in the periodic report, the Government appears to suggest that given Burma’s diversity of races, cultures, customs, traditions, and religions, substantial and comprehensive research on gender-related norms and practices is a necessary first step towards eliminating negative practices, stereotypes, and media concerning women and girls.³⁹ However, while the undertaking of such research is clearly important, it must not preclude immediate steps towards elimination of harmful gender stereotypes that exist nationwide in all aspects of social and cultural life.

Because traditional, and discriminatory, gender roles are so deeply ingrained, a more direct and visible effort to ensure women's equal rights is necessary. If Burma is to fulfill its CEDAW obligation to modify cultural patterns to eliminate gender stereotypes, implementation of NSPAW must directly take on Burma's culture of patriarchy, male supremacy, and feminine vulnerability, as well as the pervasive cultural impact of the military.

4.10.4 RECOMMENDATIONS

- Taking into consideration the deep-seeded and ubiquitous nature of antiquated and harmful perceptions of women, the Government must develop more aggressive programs to undermine existing gender stereotypes in social, familial, economic, cultural and political spheres.
- The Government must undertake a comprehensive review of all domestic legislation for gender sensitivity and to ensure no *de jure* or *de facto* promulgation of negative stereotypes, including implications that women are inferior to men, in need of protection, cannot be trusted, or belong solely in the home.
- The Government must remove restrictions on the media, loosen its control over media content and ensure that diverse voices are able to erode traditional perceptions of women in culture within Burma.

Endnotes

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- 2 Comm. on the Elimination of Discrimination against Women, *General Recommendation 19 on Violence against Women*, ¶ 11 (1992).
- 3 The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary 149 (Marsha Freeman, Christine Chinkin, Beate Rudolf, eds., 2012) [hereinafter CEDAW A Commentary].
- 4 Convention on the Elimination of All Forms of Discrimination Against Women, Art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13, 17 [hereinafter CEDAW].
- 5 CEDAW: A Commentary, *supra* note 3, at 154-55, 411.
- 6 S. Cusack & R. Cook, *Stereotyping Women in the Health Sector: Lessons from CEDAW*, 16 Wash. & Lee J. Civil Rts. & Soc. Just. 47, 55 (2009).
- 7 CEDAW: A Commentary, *supra* note 3, at 159 (citing the importance of reading Articles 2(f) and 5 together for women to access their rights) (citations omitted).
- 8 Comm. to End Discrimination against Women, *General Recommendation 21 on Equality in Marriage and Family Relations*, ¶ 13 (1994).
- 9 CEDAW: A Commentary, *supra* note 3, at 147-48.
- 10 *Id.* at 162.
- 11 Comm. to End Discrimination against Women, *General Recommendation 23 on Women in Political and Public Life*, ¶ 12 (1997).
- 12 CEDAW, Art. 16(1)(a)-(h). “A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being.” (CEDAW Comm., General Recommendation 21, *supra* note 8, at ¶ 16.)
- 13 CEDAW Comm., General Recommendation 21, *supra* note 8, at ¶ 14.
- 14 See Oxfam, Trocaire, CARE, ActionAid, *Women and Leadership in Myanmar*, at 29 (Sept. 2013) available at http://ingoforum-myanmar.org/sites/ingoforummyanmar.org/files/report-files/OXFAM_-_Women_Leadership_Full_Report_English.pdf.
- 15 *Id.* at 16, 29; Myanmar National Committee for Women’s Affairs (MNCWA), Status of Myanmar Women, <http://mncwa.tripod.com/mncwa/id8.html> (last visited June 22, 2015) (“The eight area [sic] in Myanmar media gives a positive image of women in her [sic] varied roles as mother, friend and life-partner. Thus the media gives women an equal status [sic] as men.”) See also Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws (Briefing Paper)*, at 5 (Jan. 2013).
- 16 Oxfam *et al.*, *Women and Leadership*, *supra* note 14, at 29; MNCWA: Status of Myanmar Women, *supra* note 15,
- 17 Oxfam *et al.*, *Women and Leadership*, *supra* note 14, at 29.
- 18 Khin Hnin Soe, *Burma’s Sexist School Requirements Hurt Women—and Society*, Sept. 7, 2014, available at <http://www.irrawaddy.org/contributor/burmas-sexist-school-requirements-hurt-women-society.html>; Tharaphi Than, *Women in Modern Burma* 112 (2014); Oxfam *et al.*, *Women and Leadership*, *supra* note 14, at 16-18.
- 19 See Ingrid Jordt, *Women’s Practice of Renunciation in the Age of Sanana Revival*, at 51-52, in *Burma at the Turn of the 21st Century* 42 (Monique Skidmore, ed., 2005); Brenda Belak, *Gathering Strength: Women from Burma on Their Rights* 34-36 (Images Asia, 2002), available at <http://www.ibiblio.org/obl/docs/GSo7.social-roles.pdf>. See also Than Than Nwe, *Gendered Spaces, Women in Burmese Society, Transformations*, 6 *Transformation Journal* 1, 9 (Feb. 2003), available at http://www.transformationsjournal.org/journal/issue_06/pdf/nwe.pdf.
- 20 Jordt, *Women’s Practice of Renunciation*, *supra* note 19, at 42; Belak, *Gathering Strength*, *supra* note 19, at 35 (“Hpon” literally translates to “glory,” “power” or “influence.” (*Id.*)).
- 21 Jordt, *Women’s Practice of Renunciation*, *supra* note 19, at 44, 45. See also Than Than Nwe, *Gendered Spaces*, *supra* note 19, at 9.
- 22 Belak, *Gathering Strength*, *supra* note 19, at 33, 34.
- 23 Jessica Harriden, NIAS, *The Authority of Influence: Women and Power in Burmese History* 26 (2012).
- 24 Burma Lawyer’s Council, *A grim perspective for Burmese of women*, <http://socialwatch.org/node/11603>; see also Uta Klien, *The Contribution of the Military and Military Discourse to the Construction of Masculinity in Society* (1999), available at <http://www.eurowrc.org/13.institutions/3.coe/en-violence-coe/11.en-coe-oct99.htm>.
- 25 Amnesty Int’l & Int’l Commission of Jurists, *Myanmar: Parliament must reject discriminatory “race and religion laws”* (Press Release), at 3 (Mar. 2015); Human Rights Watch (Aruna Kashyap), *The Myanmar Marriage Plot* (Sept. 5, 2013), <http://www.hrw.org/news/2013/09/05/myanmar-marriage-plot> (last visited June 22, 2015).
- 26 Rep. of the Special Rapporteur on the situation of human rights in Myanmar (Yanghee Lee), ¶ 28, U.N. Doc. A/HRC/28/72 (Mar. 9, 2015).
- 27 CEDAW, art. 5(a).
- 28 Freedom Press, *Freedom of the Press 2013: Burma*, http://www.freedomhouse.org/report/freedom-press/2013/burma#.VC7_A_ldU1Z (last visited June 22, 2015); Reporters Without Borders, *World Press Freedom Index 2013*, at 10 (2013).
- 29 1950 Emergency Provisions Act § 5(j), Burma Act 17, 1950 (Mar. 9, 1950); Freedom Press, *Freedom of the Press 2013: Burma*, http://www.freedomhouse.org/report/freedom-press/2013/burma#.VC7_A_ldU1Z (last visited June 22, 2015).
- 30 2004 Electronics Transactions Law § 33(a), State Peace and

Development Council Law No. 5/2004, the 12th Waxing of Kason 1366 M.E. (Apr. 30, 2004); Freedom Press, Freedom of the Press 2013: Burma, http://www.freedomhouse.org/report/freedom-press/2013/burma#.VC7_A_lDUiZ (last visited June 22, 2015).

- 31 See Harriden, *The Authority of Influence*, *supra* note 23 at 252, 253. See also UNFPA, *Report on Situation Analysis of Population and Development, Reproductive Health in Myanmar*, at 168 (July 2010).
- 32 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct. 20-Nov.7, ¶ 20, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008).
- 33 *Id.*
- 34 Myanmar Nat's Committee on Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women ("NSPAW") (2013-2022)*, Myanmar 2013, *The Girl Child*, § 18(b)(3).
- 35 *Id.* at Women and Human Rights, § 15(c)(1).
- 36 *Id.* at Women and Media, § 16.
- 37 *Id.* at Women and Media, § 16(b)(2), *The Girl Child* § 18(b)(4).
- 38 Combined Fourth and Fifth Periodic Report of the Government of Myanmar to CEDAW Committee, ¶ 112 U.N. Doc. CEDAW/C/MMR/4-5 (Jan. 8, 2015).
- 39 *Id.*

4.11 LACK OF PRECISE AND DISAGGREGATED DATA (ARTICLE 18, GENERAL RECOMMENDATION 9)

4.11.1 RELEVANT CEDAW GUIDANCE

In order to assess how effectively States parties are complying with CEDAW mandates, they must submit periodically to the Committee “a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect.”¹ In these reports, States parties must “include specific data and statistics disaggregated by sex.”² States parties must also “make every effort to ensure that their national statistical services responsible for planning national censuses and other social and economic surveys formulate their questionnaires in such a way that data can be disaggregated according to gender, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women in the particular sector in which they are interested.”³

The Committee considers this disaggregated statistical information “absolutely necessary in order to understand the real situation of women” in each State party.⁴ The availability of precise and disaggregated data is recognized as a crucial tool for assessing the extent to which women enjoy the equality guarantees at the heart of CEDAW. But this up-to-date data is also necessary to allow policymakers to develop, implement, and monitor policies and programs that will provide effectively for women’s substantive equality and eliminate discrimination.⁵ Without accurate and current statistical measures, policymakers do not have the tools to provide the types of equality and non-discrimination protections required by CEDAW.

4.11.2 BURMA SPECIFIC CONTEXT

In Burma, reliable data regarding even basic statistical measurements is difficult to come by.⁶ The Government has not routinely collected demographic data; in fact, the basic census undertaken in 2014 was the first in over 30 years.⁷ The Government’s data collection system suffers from a number of short-comings. The data collection authority, the Central Statistical Organization (the “CSO”), is highly decentralized, with the Government relying on data provision at the local and district level.⁸ Moreover, the CSO is under-staffed and therefore cannot provide the type of quality control that would guarantee reliable data nor does it control the release of data, which is dictated by the relevant ministry.⁹

These shortcomings are a result of successive military governments’ failure to prioritize the collection of statistical measures. Previous governments used data as a tool to justify and perpetuate their rule rather than as a method to provide an accurate snapshot of the political, economic and social realities in the country.¹⁰ Moreover, they isolated the country internationally and prohibited access to data and rural areas in order to consolidate total control over information.¹¹ The Government spent a disproportionate amount on the military, drawing funds away from social spending which negatively impacted the collection of data.¹² Therefore, it is unclear if even the authorities inside Burma have ever had an accurate understanding of the current or historical domestic situation.¹³

This data deficit meant that at times useful statistical measures were unavailable due to lack of empiric data from the Government. For example, the Multidimensional Poverty Index to measure deprivations in education, health, and standard of living could not be calculated in certain years.¹⁴ With respect to gender data, UNFPA could not calculate important gender-related indexes due to inadequate gender statistics.¹⁵

The military junta often presented unreliable data that would not seem to bear scrutiny, in part to obfuscate a situation which might present the country in a bad light.¹⁶ For example, it claimed that just days after a devastating cyclone hit Burma in 2008 that over 90% of the population turned out to approve, by a margin of 93%, the 2008 Constitution.¹⁷ The Government has routinely manipulated other statistics to serve its own purposes, such as to cover up corruption.¹⁸

Without consistent access to reliable data, planners cannot make informed decisions - for example about where to locate roads, schools, health facilities and other essential infrastructure - 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.

Burma's inability to provide reliable and disaggregated data on the conditions facing women in the country has been highlighted by international review committees. The 2008 Concluding Observations noted, "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."¹⁹ The Committee requested that Burma "strengthen its system of data collection...to assess trends in the situation of women and of progress towards women's de facto equality, and to allocate sufficient budgetary resources for that purpose"²⁰ as well as to provide disaggregated data "indicating the impact of policy and programmatic measures, obstacles encountered and the results achieved."²¹ In another instance, the 2009 Special Report to the Human Rights Commission of the UN stated, "it is clear that the Government of Myanmar recognizes the existence of various forms of violence against women in Myanmar, but lacks accurate data to define comprehensively the situation across the country."²² Burma's desire to be more fully integrated into the international community will require greater responsiveness in providing the type of data necessary to evaluate Burma's compliance with CEDAW and other international standards.

The transition to a quasi-civilian government and greater cooperation with international organizations has no doubt improved the availability of statistical measures. For example, as mentioned above, perhaps due to international pressure and with international support, the current government has taken steps to gather basic demographic information, in particular by preparing a national census (the first since 1983).²³ 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.²⁴ Preliminary results have been released and indicate a gap between government estimates and on the ground realities; for example, the overall population is 51.4 million, about 10 million fewer than expected.²⁵ The execution and results of the census raise questions about the reliability and seriousness of government efforts to gather statistical information, and highlights the weakness of government data and collection systems.

4.11.3 ANALYSIS OF NSPAW

NSPAW recognizes the importance of collecting precise and disaggregated data, using language similar to that in the 2008 Concluding Observations. For each of the twelve issues NSPAW addresses, it asserts explicitly the need to collect data disaggregated by sex, age, ethnicity, and location.²⁶ Unfortunately, since the Government has neglected to collect this type of data in the past, no institutional mechanism exists for executing these studies. Therefore, important questions relating to how, when and by whom this data will be collected remain unanswered.

In total, NSPAW calls for an ambitious plan to conduct 58 surveys, covering an extraordinary range of issues: five surveys on livelihood opportunities for women;²⁷ five surveys on women's education;²⁸ five surveys on women's health;²⁹ four surveys on violence against women;³⁰ three surveys on women's access to emergency services;³¹ nine surveys on women's economic standing;³² three surveys on women in decision-making roles;³³ three surveys on institutional mechanisms for the advancement of women;³⁴ seven surveys on fulfillment of women's rights;³⁵ five surveys on women's portrayal in the media;³⁶ four surveys on women and the environment;³⁷ and five surveys on the rights of female children.³⁸

Some surveys that NSPAW outlines are a direct response to requests for more detailed information in the 2008 Concluding Observations. For example, NSPAW research to be conducted regarding women's opportunities for livelihood and their economic standing should provide direct responses to many questions posed by the 2008 Concluding Observations.³⁹ On the other hand, NSPAW's surveys will not respond to other Committee requests for data, such as regarding complaints filed with the Myanmar Women's Affairs Federation.⁴⁰ Some of these deficiencies may be met by other surveys, but without a clear plan of execution, it is hard to know how comprehensive each survey will be.

While NSPAW outlines a robust system of data collection, the language used in NSPAW is boilerplate and not specifically tailored to each issue. For example, data regarding women with disabilities will determine only their economic opportunities not the social and cultural barriers they face.⁴¹ Furthermore, the former military regime often made spurious statistical assertions in the past, and it is impossible to know whether the current Government will provide a better overall picture of the situation or be able to convince the military to support the process of data collection (including by guaranteeing access to all areas of the country). Given the problems relating to the census, executing an ambitious plan for 58 separate surveys will require considerable coordination and political will, as well as the establishment of capable institutional mechanisms to gather such a vast array of information. But without proper mechanisms of collection, it will be impossible to have a true picture of the status of women's substantive equality in Burma.

The Government's 2015 periodic report to the Committee is equally underwhelming. The Government includes a considerable amount of statistics and figures purporting to show progress in implementation of CEDAW obligations. However, a substantial portion of those statistics and figures are not disaggregated as to gender-related impacts, nor do they adequately reflect the complexities concerning gender discrimination across lines of ethnicity, geographic location, or socio-economic status.

4.11.4 RECOMMENDATIONS

- The Government must designate or create institutional mechanisms charged with competently and comprehensively carrying out NSPAW's 58 surveys in a transparent, inclusive manner that is in accord with prevailing best practices.
- The Government must both specify in greater detail the issues to it plans to survey pursuant to NSPAW, and, where too narrow, must broaden any given survey's scope to include issues originally overlooked (e.g. social and cultural barriers must be incorporated into the survey on obstacles to women's employment).
- The Government must account for and include follow up surveys, studies and data collection to monitor the ongoing status of women in Burma.

Endnotes

- 1 Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1249 U.N.T.S. 13, Art. 18 (Dec. 18, 1979).
- 2 Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, Annex I, ¶ C.5, U.N. Doc. HRI/GEN/2/Rev. 1/Add.2 (May 5, 2003) [hereinafter CEDAW Reporting Guidelines].
- 3 Comm. on the Elimination of Discrimination against Women, *General Recommendation No. 9*, U.N. Doc. CEDAW/C/GC/9 (1989) [hereinafter CEDAW, *General Recommendation No. 9*].
- 4 CEDAW, *General Recommendation No. 9*, *supra* note 3.
- 5 See, e.g., Fourth World Conference on Women, Sept. 4-15 1995, *Platform for Action: Institutional Mechanisms for the Advancement of Women Diagnosis*, ¶ 206-209, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995) ["Generate and disseminate gender-disaggregated data and information for planning and evaluation Actions to be taken."].
- 6 David I. Steinberg, *Burma: The State of Myanmar* xxxiii (2001); Janell Mills, *Militarism, civil war and women's status: a Burma case study*, in *Women in Asia: Tradition, Modernity and Globalisation* 265, 277 (Louise P. Edwards & Mina Roces, eds., 2000); Kate Henvey, *Putting Citizens First in Fragile and Conflict-Affected Situations: Open Development Missions to Afghanistan and Myanmar*, Int'l Finance Corporation, World Bank Group (Dec. 2013); Tharapi Than, *Women in Modern Burma* 135 (2014). Historically, the limited data available tended to be highly aggregated and the reliability was questionable. (Mya Than, *Myanmar's External Trade: An Overview in the Southeast Asian Context* 3 (1992).)
- 7 Internal Crisis Group, *Counting the Costs: Myanmar's Problematic Census*, Asia Briefing No. 144 (May 15, 2014) [hereinafter *Asia Briefing* (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>.
- 8 OECD, *Development Pathways: Multi-dimensional Review of Myanmar*, vol. 1 54 (2013).
- 9 OECD, *supra* note 8, at 55.
- 10 Sean Turnell, *Finding Dollars and Sense: Burma's Economy in 2010*, in *Finding Dollars, Sense and Legitimacy in Burma* (Susan L. Levenstein, ed., 2011) at 21; Sean Turnell, *Burma's Economy 2008: Current Situation and Prospects for Reform 2* (May 2008), available at http://www.econ.mq.edu.au/Econ_docs/bew/BurmaEconomy2008.pdf.
- 11 William J. Topich & Keith A. Leitich, *The History of Myanmar* 133 (2013); General Accounting Office Report to the Committee on Foreign Affairs, House of Representatives, *International Organizations: Assistance Programs Constrained in Burma*, GAO-07-457 (Apr. 2007); In the context of child soldiers, see Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Rep. on Myanmar, A/68/878-S/2014/339 (May 15, 2014); for restriction of humanitarian aid, see U.S. Dep't of State, Bureau of Democracy, Human Rights, and Labor, 2008 Country Rep. on Human Rights Practices: Burma (Feb. 25, 2009).
- 12 Turnell, *supra* note 10, at 22; Steinberg, *supra* note 6, at 121. The current government has noted that it lacks certain information, for example regarding social practices and cultural norms. See Combined fourth and fifth periodic report of the Government of Myanmar to CEDAW Committee, ¶ 4, CEDAW/C/MMR/4-5, (Jan. 8, 2015) [hereinafter 2015 CEDAW State Report, Myanmar].
- 13 Mills, *supra* note 6, at 277 (2000); 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/>.
- 14 United Nations Development Programme, *Human Development Rep. 2013, The Rise of the South: Human Progress in a Diverse World*, Myanmar, <http://hdr.undp.org/sites/default/files/Country-Profiles/MMR.pdf>.
- 15 UNFPA Myanmar, *Country Profile* (Feb. 26, 2013), http://countryoffice.unfpa.org/myanmar/2009/11/11/1545/country_profile/16 Mills, *supra* note 6, at 277.
- 17 Michael F. Martin, Cong. Research Serv., R41218, *Burma's 2010 Elections: Implications of the New Constitution and Election Laws*, at 3, 4 (2010).
- 18 Steinberg, *supra* note 6, at xxxiii; David I. Steinberg, *Turmoil in Burma* 144 (2006); Turnell, *supra* note 10, at 24-5.
- 19 Concluding Observations on the Second and Third Periodic Reports of Myanmar, 42d Sess., Oct. 20-Nov. 7, ¶ 2, U.N. Doc. CEDAW/C/MMR/CO/3 (Nov. 7, 2008) [hereinafter 2008 CEDAW, *Concluding Observations on Myanmar*]. 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."

- o 2008 CEDAW, *Concluding Observations on Myanmar*, *supra* note 19, at ¶ 49.
- 21 *Id.*
- 22 Special Rapporteur of the Commission of Human Rights, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World*, U.N. Doc. E/CN/4/2002/45 (Jan. 10, 2002) at 29.
- 23 Yangon, *supra* note 7.
- 24 Asia Briefing (2014), *supra* note 7; Paul Mooney, *Ethnic strife blurs Myanmar's first census in 30 years*, Reuters, Aug. 30, 2014; Yangon, *supra* note 7.
- 25 The government's official statistic was based on approximate reproduction rates taken from a basis point provided by the 1983 census. Watson, *supra* note 7; Thomas Spoorenberg, *Provisional Results of the 2014 Census of Myanmar: The Surprise That Wasn't*, 11:1 Asia Population Studies, Oct. 24, 2014, available at <http://www.tandfonline.com/doi/full/10.1080/17441730.2014.972084#tabModule>.
- 26 Myanmar Nat'l Committee for Women's Affairs, *Nat'l Strategic Plan for the Advancement of Women* ("NSPAW") (2012-2022), Myanmar 2013, Women and Livelihoods ¶ 7 remark; Women, Education and Training ¶ 8 remark; Women and Health ¶ 9 remark; Violence Against Women ¶10 remark; Women and Emergencies ¶ 11 remark; Women and the Economy ¶ 12 remark; Women and Decision-Making ¶ 13 remark; Institutional Mechanisms for the Advancement of Women ¶ 14 remark; Women and Human Rights ¶ 15 remark; Women and the Media ¶ 16 remark; Women and the Environment ¶ 17 remark; The Girl Child ¶ 18 remark [hereinafter 2013-2022 NSPAW].
- 27 *Id.* at Women and Livelihoods ¶¶ 7(a)(1)-(5).
- 28 *Id.* at Women, Education and Training ¶¶ 8(a)(1)-(5).
- 29 *Id.* at Women and Health ¶¶ 9(a)(1)-(5).
- 30 *Id.* at Violence Against Women ¶¶ 10(a)(1)-(4).
- 31 *Id.* at Women and Emergencies ¶¶ 11(a)(1)-(3).
- 32 *Id.* at Women and the Economy ¶¶ 12(a)(1)-(9).
- 33 *Id.* at Women and Decision-Making ¶¶ 13(a)(1)-(3).
- 34 *Id.* at Institutional Mechanisms for the Advancement of Women ¶¶ 14(a)(1)-(3).
- 35 *Id.* at Women and Human Rights ¶¶ 15(a)(1)-(7).
- 36 *Id.* at Women and the Media ¶¶ 16(a)(1)-(5).
- 37 *Id.* at Women and the Environment ¶¶ 17(a)(1)-(4).
- 38 *Id.* at The Girl Child ¶¶ 18(a)(1)-(5).
- 39 2008 CEDAW, *Concluding Observations on Myanmar*, *supra* note 19, at ¶ 37; 2013-2022 NSPAW, *supra* note 26 at Women and Livelihoods ¶¶ 7(a)(1)-(5), Women and the Economy ¶¶ 12(a)(1)-(9); 37.
- 40 2008 CEDAW, *Concluding Observations on Myanmar*, *supra* note 19, at ¶ 15.
- 41 2013-2022 NSPAW, *supra* note 26, at ¶¶ Women and Livelihoods 7(a)(5), Women and the Economy ¶¶ 12(a)(5).

5. Recommendations

Adoption of a Legal Definition of Discrimination (Articles 1, 2)

- The Government must immediately adopt a legal definition of discrimination against women that is in conformance with CEDAW, either in the form of an amended constitutional provision or enacted through anti-discrimination legislation.
- The Government must repeal or amend specific provisions of the 2008 Constitution that affirmatively embody legalized discrimination against women as a matter of law, including Article 352, and revise constitutional provisions constituting discrimination in effect, including Articles 109 and 141.
- The Government must ensure that any definition of discrimination in existing laws, including the 2008 Constitution and any existing legislation, reflects the notion of substantive equality by encompassing both discrimination as a matter of law and discrimination in effect, as well as discrimination in the public and private spheres.

Access to Justice (Articles 2, 15, General Recommendations 21, 28)

- The Government must ensure that, in implementing legal measures to eliminate discrimination against women and establish legal protection of the rights of women on an equal basis with men, any laws prohibiting gender discrimination must embody legal or other material consequence for those who violate them, including sanctions for perpetrators of gender discrimination. Moreover, it must ensure the effective legal enforcement of women's entitlement to enjoy rights on an equal basis with men and the availability of legal remedies for women who experience gender-based discrimination.
- The Government must ensure the non-biased and non-discriminatory administration of justice and the actual, practical capacity of women to access courts and tribunals on an equal basis with men. In doing so, the Government must guarantee an independent, impartial, and effective judiciary that is free from not only political influence or interference, but also from prejudices or stereotypical gender notions about the role of women. Specifically, this must include reform of 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. Moreover, the Government must ensure that judges at all levels are adequately trained in women's rights and the provisions of CEDAW, including through training for the judiciary to ensure appropriate sensitization to gender inequality.
- The Government must ensure that any national human rights mechanism, including the MNHRC, is in full compliance with the Paris Principles on the Status of National Institutions for the Promotion and Protection of Human Rights. In particular, the MNHRC must be given adequate funding to provide for its own staff and premises, and members must take office through an official government act specifying their tenure. Moreover, women must enjoy easy access to all MNHRC services for the protection of their rights and the composition of MNHRC members and staff must be gender balanced at all levels.
- The Government must ensure that domestic laws—including traditional, customary, tribal or religious laws—may *never* be used as justification for failures to carry out its CEDAW obligations. The Government must therefore harmonize its civil, religious and customary law to be in conformance with CEDAW.
- The Government must ratify the Optional Protocol to CEDAW, thereby recognizing the competence of the CEDAW Committee to receive and consider complaints from women, as individuals or groups, who complain of gender discrimination.

Participation of Women in Decision-Making (Article 7, General Recommendations 23, 25)

- The Government must increase women's participation in decision making in legislative, judicial, and executive bodies by installing temporary special measures and quotas guaranteeing at least 30% female representation, removing structural legal barriers (including those contained in the 2008 Constitution) executing major improvements to women's access to education, livelihood, and health opportunities, and disassembling paternalistic cultural stereotypes and customary laws.
- The Government must draft new laws and administrative procedures to ensure women's equal participation at the policymaking level, and amend laws that act as structural impediments to women's achievement.
- The Government must guarantee and facilitate broader inclusion, input and incorporation of grassroots and women's organizations in decision-making.

Violence against Women (General Recommendation 19)

- The Government must enact new legislation guaranteeing comprehensive protection from all forms of violence against women, including emotional, economic, domestic and sexual violence (including marital rape), as well as sexual assault and sexual harassment. The new legislation should also provide clear criminal penalties, civil remedies, rehabilitation and reparations in all cases of violence against women.
- The Government must amend its existing laws relating to violence against women, including provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act, to ensure such laws adhere to prevailing international standards, removing antiquated notions of family and sexual violence, and guarantee justice in the form of criminal punishment, victim rehabilitation and reparations.
- The Government must ensure that its laws respect the integrity and dignity of women who have experienced gender-based violence. This must include repealing any procedural and evidentiary provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act that violate the integrity and dignity of women during the investigation and prosecution of cases involving violence against women.
- The Government must combat Burma's culture of victim blaming including by establishing protective measures and support services for victims of violence women and implementation of gender-sensitive training of judicial and law enforcement officers and other public officials in connection with cases of violence against women.

Sexual Violence, Access to Justice, and Political Participation of Women in Conflict and Post-Conflict Settings (General Recommendations 28, 30)

- Sexual Violence in Conflict and Post-Conflict Settings
 - The Government must acknowledge the military's historical and ongoing use of sexual violence in conflict and prohibit sexual violence in conflict, by state and non-state actors, through legislation, policies, protocols and a zero tolerance policy.
 - The Government must adopt gender sensitive investigation procedures and trainings for police, military, and other government personnel.
- Addressing Impunity for Perpetrators of Sexual Violence
 - The Government must amend the 2008 Constitution to dispose of its provisions securing impunity for military personnel who commit sexual violence in conflict, including sections 445 and 343(b).
 - The Government must amend its existing laws relating to violence against women, including provisions of the Penal Code, the Code of Criminal Procedure, and the Evidence Act, to ensure such laws adhere to prevailing international standards, removing antiquated notions of family and sexual violence, and guarantee justice in the form of criminal punishment, victim rehabilitation and reparations.

- The Government must prosecute all perpetrators of sexual violence in conflict, regardless of rank, according to international stands and in accordance with its obligations under UN Security Council Resolutions.
- The Government must undertake a vetting program to ensure that those sitting in government offices, legislature, or judicial appointments were not participants or perpetrators of the military's campaign of sexual violence in conflict.
- Participation of Women in Post-Conflict Transition
 - The Government must ensure women's equal participation at ongoing peace processes, including by the use of quotas and temporary special measures.
 - The Government must incorporate gender issues and women's rights into peace negotiation agendas and on-going processes.
 - The Government must guarantee women's access to justice by guaranteeing there will be no amnesties for gender-based crimes during the conflict.

Women and Health (Article 12, General Recommendation 24)

- The Government must expand NSPAW's goal on women's health to ensuring women's equal access to health care.
- In concert with ensuring women's equal access to health care, the Government must increase funding dedicated to strengthening the national health care system, including in training medical professionals, improving technology, broadening access to facilities and medications, and ensuring private providers administer aid in line with Burma's international obligations.
- The Government must dedicate special attention and resources to reducing the unacceptably high maternal mortality rate, including increasing the number of midwives and facilities capable of handling obstetric emergencies.
- The Government must eliminate barriers to women's access to reproductive health care, including by repealing the Penal Code provision criminalizing abortion, and any other legislative requirements impeding a woman's autonomy over her body and her health.

Women and Education (Article 10)

- The Government must guarantee that women are provided education on *equal* grounds to that of men, including by ensuring men and women attend school at the same rates, ensuring school curricula do not reinforce harmful gender stereotypes, and ensuring women are have access to all levels and types of education.
- The Government must increase investment in education generally, and women's education more specifically, in order to achieve NSPAW's aims.
- The Government must develop and execute practical initiatives that provide detailed accounts of how NSPAW's provisions on women's education will be executed and implemented.

Women and Employment (Article 11, General Recommendations 16, 17)

- The Government must initiate studies, programs, and temporary special measures to better understand and ensure Burma's economic growth, and that the Government's focus thereon does not discriminate against women.
- The Government must develop and execute practical initiatives that provide detailed accounts of how NSPAW's provisions relating to women's employment will be executed and implemented. These should include temporary measures, incorporation of women's unremunerated tasks into Burma's gross domestic product, 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 armed conflict in a way that does not discriminate against women.
- The Government must undertake a review of the 2008 Constitution and other domestic legislation and amend or repeal any provisions that in purpose or effect discriminate against women in the realm of employment.

Women Facing Multiple Forms of Discrimination (Articles 2, 14, General Recommendations 24, 28, 30)

- The Government must undertake a specific and targeted effort at understanding, addressing, and improving the special status and situation of vulnerable women subject to multiple forms of discrimination.
- The Government must provide specific information concerning its efforts to improve the status of rural women and develop, implement and publish logistical information about how its policies will be designed to reach rural women, including by officially defining “rural” to ensure consistent policy promulgation.
- The Government must recognize the varying factors causing multiple discrimination against the country’s ethnic communities, specifically the armed conflict, and the military’s targeting of ethnic women for sexual violence, ethnic women’s exclusion from the peace process, and the complications of internal displacement.
- The Government must end the systematic and institutional discrimination against the Rohingya, must recognize them as an ethnic group, amend Citizenship Law 1982 to bring it into compliance with CEDAW, and ensure their access to health and justice services by permitting unhampered humanitarian access to northern Rakhine State
- The Government must repeal the “Race and Religion” laws.

Eliminating Negative Practices, Stereotypes, and Media Portrayals (Articles 5, 16, General Recommendation 21)

- Taking into consideration the deep-seeded and ubiquitous nature of antiquated and harmful perceptions of women, the Government must develop more aggressive programs to undermine existing gender stereotypes in social, familial, economic, cultural and political spheres.
- The Government must undertake a comprehensive review of all domestic legislation for gender sensitivity and to ensure no *de jure* or *de facto* promulgation of negative stereotypes, including implications that women are inferior to men, in need of protection, cannot be trusted, or belong solely in the home.
- The Government must remove restrictions on the media, loosen its control over media content and ensure that diverse voices are able to erode traditional perceptions of women in Burma’s popular culture.

Lack of Precise and Disaggregated Data (Article 18, General Recommendation 9)

- Given the Government’s history of providing scant and/or very unreliable data, the government must conduct NSPAW’s 58 surveys in a transparent manner that is in accord with prevailing best practices.
- The Government must both specify in greater detail the issues to it plans to survey pursuant to NSPAW, and, where too narrow, must broaden any given survey’s scope to include issues originally overlooked (e.g. social and cultural barriers must be incorporated into the survey on obstacles to women’s employment).
- The Government must designate or create institutional mechanisms charged with competently and comprehensively carrying out NSPAW’s 58 surveys.
- The Government must account for and include follow up surveys, studies and data collection to monitor the ongoing status of women in Burma.

