



**MYANMAR: BRIEFING TO THE UN
COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST
WOMEN**

64TH SESSION, 4-22 JULY 2016

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INTRODUCTION

In July 2016, the UN Committee on the Elimination of Discrimination against Women (the Committee) will examine Myanmar's combined fourth and fifth periodic report at its 64th session.¹ This examination provides an opportunity to review Myanmar's progress since its last review in 2008 towards implementing in law and practice the provisions of the UN Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

Since a quasi-civilian government came to power in 2011, Myanmar has embarked on a number of political, economic and social reforms. However, despite these reforms, Amnesty International is concerned that women and girls continue to face barriers to the full exercise of their human rights in law, policy and practice.

In this briefing Amnesty International highlights four areas of concern: 1) restrictions on the rights to freedom of expression, association and peaceful assembly, which includes the situation of women human rights defenders (WHRDs); 2) the enactment of four discriminatory laws aimed at "protecting race and religion"; 3) the situation of Rohingya women and girls in Rakhine State; and 4) the lack of access to justice, truth and reparation for human rights abuses against women and girls in areas of armed conflict. Please note, however, that the concerns listed here are not exhaustive.

In this submission, Amnesty International also assess progress made by Myanmar on implementing the Convention and sets out ways in which the government could better comply with its obligations under the Convention. The following documentation draws on Amnesty International's ongoing research, which involves regular contact with local and international non-governmental organizations; and interviews with victims of human rights violations and abuses and their families, lawyers, and government officials. It also relies on daily media monitoring and extensive reading of academic and other credible publications.

WOMEN HUMAN RIGHTS DEFENDERS AND FREEDOMS OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY (ARTICLE 7)

Myanmar has witnessed important changes with regard to freedoms of expression, association and peaceful assembly since its last review in 2008. These include the relaxation of some restrictions on peaceful protests; the release of hundreds of prisoners of conscience and other political prisoners; and the abolition of pre-publication censorship. However, despite this progress the authorities continue to restrict these rights. Women rights defenders (WHRDs) continue to face threats and harassment as a result of their work. Amnesty International had previously highlighted concerns regarding the situation of WHRDs in our submission to the Pre-Sessional Working Group;² and we welcome the Committee's inclusion of these concerns in its list of issues.³ The information below updates and expands on these concerns.

POLITICAL ARRESTS AND IMPRISONMENT

Amnesty International continues to document the arrest and detention of human rights defenders and peaceful protesters in Myanmar, including women activists,⁴ and activists advocating for women's rights in general. Two years ago eight activists – six women and two men – were arrested for protesting against impunity for sexual violence in Chin State, and were subsequently found guilty of protesting without permission under Article 18 of the Peaceful Assembly and Peaceful Procession Act and each fined 30,000

¹ *Combined fourth and fifth periodic reports of States parties due in 2014: Myanmar*, UN Doc: CEDAW/C/MMR/4-5, 25 February 2016 (*Myanmar Combined fourth and fifth periodic reports*).

² See Amnesty International, *64th Pre-sessional Working Group: The Republic of the Union of Myanmar: Information on 'Race and religion protection' laws and WHRDs*, Ref: IGO IOR 40/2015.215, 29 September 2015.

³ *List of issues and questions in relation to the combined fourth and fifth periodic reports of Myanmar*, UN Doc: CEDAW/C/MMR/Q/4-5, 27 November 2015, para. 6 (*List of issues*).

⁴ See for example, the cases of Phyo Phyo Aung and Naw Ohn Hla in Amnesty International, *Going back to the old ways: A new generation of prisoners of conscience in Myanmar* (Index: ASA 16/2457/2016), 8 October 2016.

kyat (approximately US\$30).⁵ According to reliable sources, the activists were told that if they were unable or unwilling to pay the fine, they would each be imprisoned for a period of one month.⁶

Since the beginning of 2014, hundreds of people have been investigated, arrested, charged, arbitrarily detained or imprisoned in politically motivated cases.⁷ The ongoing use of repressive, vague and broadly worded laws⁸ not in compliance with international human rights law and standards has facilitated such political arrests. In some instances, Amnesty International received reports of Myanmar state security forces using sexually abusive language and threats of sexual violence when arresting women protesters.⁹

A committee established in 2013 and reconstituted in 2015¹⁰ to resolve the cases of political arrests and imprisonment has been largely ineffective, hampered by a lack of independence, transparency, and a clear mandate and adequate resources to fulfil its functions. As far as Amnesty international is aware, to date, only one woman was appointed to the 28-member Committee when it was reconstituted. There was also no requirement that Committee members have specific gender knowledge and expertise, despite the fact that many women have suffered both directly and indirectly as a result of political imprisonment.¹¹

SITUATION OF FORMER PRISONERS OF CONSCIENCE AND OTHER POLITICAL DETAINEES

While hundreds of prisoners of conscience and political prisoners have been released from jail, many women and men continue to face significant problems after their release. This includes social stigma owing to their status as former prisoners; difficulty in finding education and employment; and administrative obstacles such as obtaining passports. Lack of access to livelihood opportunities, including employment, keeps many in a situation of poverty.¹²

Many former prisoners were also subjected to torture and other ill-treatment by state officials in detention. Example of such treatment include being shackled in their cells; deprived of light; held in stress positions for protracted periods of time; and denied medicine, food, exercise, and water for washing. Some female political prisoners reported being subjected to sexual violence while in prison, including rape, sexual assault, threats of rape, and sexual harassment.¹³ However to date there has been little accountability for such acts, and state officials continue to benefit from impunity.¹⁴

In addition, there are no official government programmes providing medical and psychological health services or treatment to former prisoners of conscience; nor material support and assistance in finding education and employment opportunities for them and their families.

While women have suffered directly as victims of politically motivated detention, they have also suffered indirectly because of their status as a relative of detained male activists. In Myanmar society, men are usually the primary breadwinners and families are reliant on them to generate an income. Women, particularly those with children, are disproportionately impacted when male relatives are detained, and subjected to social stigma and surveillance as a result of their relatives' political activities.¹⁵

THREATS AND HARASSMENT AGAINST WOMEN HUMAN RIGHTS DEFENDERS

Risks to human rights defenders, including WHRDs, are not limited to the threat of arrest and imprisonment. In this regard Amnesty International's research confirms ongoing intimidation and harassment by the state security forces and local authorities. WHRDs and journalists have reported being followed; sexually harassed;

⁵ See Amnesty International, *Activists facing jail for peaceful protest*, (Index: ASA 16/015/2015), 18 July 2014.

⁶ E-mail correspondence with Amnesty International, July 2014.

⁷ Amnesty International, *New expression meets old repression: Ending the cycle of political arrest and imprisonment in Myanmar* (Index: ASA 16/3430/2016), 24 March 2016 (Amnesty International, *New expression meets old repression*).

⁸ Some of the problematic laws include: the 2012 Peaceful Assembly and Peaceful Procession Act; provisions of the Penal Code – Sections 143, 145, 147 (unlawful assemblies), 295(a) (insulting religious feelings), 499/500 (criminal defamation) and 505(b) (incitement) – the 2013 Telecommunications Act, the 1908 Unlawful Associations Act, and the 1923 Official Secrets Act.

⁹ Amnesty International interviews, Yangon, June and July 2015.

¹⁰ The Committee for Scrutinizing Remaining Prisoners of Conscience became the Prisoners of Conscience Affairs Committee on 5 January 2015, President Office Notification No. 18/2015).

¹¹ See Amnesty International and Human Rights Watch, *Joint Open letter on the establishment of the Prisoners of Conscience Affairs Committee* (Index: ASA 16/0007/2015), 6 February 2015.

¹² See Assistance Association for Political Prisoners (Burma) (AAPP-B), *"After release I had to restart my life from the beginning" The Experiences of Ex-political Prisoners in Burma and Challenges to Reintegration*, 25 May 2016.

¹³ See Burmese Women's Union & Assistance Association for Political Prisoners (Burma), *Women political prisoners in Burma*, Joint Report, September 2014; and Asia Justice and Rights (AJAR), *Opening the Box: Women's Experiences of War, Peace, and Impunity in Myanmar*, September 2015.

¹⁴ See section: Justice, truth and reparation for human rights violations against women, pp. 12-13.

¹⁵ See Amnesty International, *New expression meets old repression*, pp. 25-26.

having their photo taken when attending events and meetings; late night inspections of their homes and offices by police and officials from the General Administration Department; and harassment of their family members, colleagues or friends.¹⁶

Shortly after a joint civil society statement opposing the discriminatory “protecting race and religion laws” was published in 2014.¹⁷ Several activists, most of them WHRDs who had signed the statement, received abusive text and social media messages. Some of the messages were sexually abusive and threatening. One female activist received anonymous death threats. The messages arrived after a hard-line monk had posted a Facebook message about “those whores working on human rights”, describing them as “national traitors” who “needed to be taught a lesson”.¹⁸

The UN Special Rapporteur on the situation of human rights in Myanmar has also expressed concern about the situation of WHRDs, noting that they are “particularly vulnerable to sexual harassment and intimidation”.¹⁹ The Special Rapporteur herself has been subjected to deeply offensive and sexist comments, which were made by the same hard-line monk at the end of her visit to Myanmar in January 2015.²⁰ The authorities did not condemn these comments.

Amnesty International’s research indicates that WHRDs often do not report threats against them to the authorities. In most cases this is because they do not believe that the police will investigate and take action, or because the threats come from the authorities themselves and making a complaint could expose them to greater risk.

Women have an important role to play in shaping Myanmar’s future. The authorities should ensure that women’s rights, needs and voices are included in decision and policy-making efforts at all levels. However, women’s ability to do this will be severely limited as long as they remain at risk of criminalization, threats, and harassment.

Amnesty International recommends that the Myanmar government:

- Immediately and unconditionally release all those detained simply for the peaceful exercise of their human rights, and drop charges pending against those who are facing imprisonment solely for the peaceful exercise of these rights. The authorities should also expunge the criminal records of all those convicted simply on the basis of the peaceful exercise of their rights;
- Repeal or substantively review and amend all laws that violate the rights to freedom of expression, peaceful assembly and association. Ensure that these and other laws comply with international human rights law and standards;
- Re-launch the Prisoner of Conscience Affairs Committee or establish a new Committee, with a mandate to review the cases of all those charged or deprived of their liberty simply for the peaceful exercise of their human rights, with a view to securing their release and having the charges against them dropped. Ensure the effective participation of women in the Committee and take effective measures to guarantee the Committee’s ability to operate independently, effectively and transparently;
- Ensure that human rights defenders, in particular WHRDs, are able to carry out their work free from harassment, discrimination, and the threat of criminalization, so that they can conduct their important work without fear of reprisal; and
- Take immediate steps to provide rehabilitation, including gender-sensitive medical, psychological, and mental health services and treatment, to prisoners of conscience and other political prisoners. Ensure that economic and educational support to former prisoners of conscience and other political prisoners and their families is implemented. Such programmes should be designed in full consultation with former prisoners of conscience and political prisoners, their representatives and family members.

¹⁶ See also AAPP-B and Burma Partnership, *How to defend the defenders? A report on human rights defenders in Burma and appropriate protection mechanisms*, July 2015, p. 44.

¹⁷ See section: The four “race and religion” laws, pp. 7-9.

¹⁸ Amnesty International interviews, Yangon, July 2015. See also MacGregor, Fiona, “Myanmar: women’s fight against verbal taboo symbolises wider rights battle”, *The Guardian*, 2 November 2015, available at: <http://www.theguardian.com/global-development/2015/nov/02/myanmar-womens-fight-against-verbal-taboo-symbolises-wider-rights-battle>.

¹⁹ *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Yanghee Lee, UN Doc: A/70/412, 6 October 2015, para. 28.

²⁰ Nyein Nyein and San Yamin Aung, “Nationalist Monk Criticized After Inflammatory Speech”, *The Irrawaddy*, 19 January 2015, available at: <http://www.irrawaddy.com/burma/nationalist-monk-criticized-inflammatory-speech.html>.

THE FOUR “RACE AND RELIGION” LAWS (ARTICLES 2, 5(A), 12, AND 16)

Amnesty International is extremely concerned about the adoption of a package of laws aimed at “protecting race and religion”. The four laws – the Buddhist Women’s Special Marriage Law, the Population Control Healthcare Law, the Religious Conversion Law, and the Monogamy Law – were first introduced to Parliament in December 2014, following increasing pressure from nationalist groups, and were adopted between May and August 2015. We have previously highlighted concerns about these laws in our submission to the Pre-Sessional Working Group.²¹ We welcome the Committee’s inclusion of such concerns in its list of issues.²²

While we note the Myanmar government’s response to the Committee’s questions, we do not believe that they adequately address concerns that the laws discriminate on multiple grounds, including gender, religion and marital status.²³ Moreover they are incompatible with Myanmar’s obligations under the Convention. We also note that during its second UPR in March 2016, Myanmar rejected all recommendations to review or repeal these four laws.²⁴

THE BUDDHIST WOMEN’S SPECIAL MARRIAGE LAW

According to the Myanmar government, the Buddhist Women’s Special Marriage Law is designed to “prevent and penalize forced conversion for Myanmar Buddhist women”. The government’s response goes on to state: “A woman is given rights to marriage, family life and chooses a spouse without any discrimination as stated in CEDAW Article 16.1.”²⁵

In reality, this law discriminates on both religious and gender grounds. It exclusively regulates the marriage of Buddhist women to men from another religion. The notion that the law would protect Buddhist women from being forced to convert is itself based on discriminatory stereotypes that Buddhist women are “vulnerable” and that non-Buddhist men will attempt to convert them. In this regard, Article 35 of the law, which describes non-Buddhist men who “forsake” their Buddhist wives and “behave cruelly and cause mental harm” to them, also relies on discriminatory stereotypes that non-Buddhist men are more likely to abandon their wives and abuse them. Such assertions echo discriminatory views shared by some hard-line groups in Myanmar, in particular against Muslims.

Amnesty International acknowledges that several provisions in the law facilitate the enjoyment of human rights – for example those which ensure that the wife is able to practice her religion freely, allowing all children born of the marriage to freely practice the religion of their choice, and preventing the husband from forcefully converting the wife to his religious faith. However, non-Buddhist women are excluded from this protection, as are men in general. These provisions are therefore clearly discriminatory and in contravention of Myanmar’s obligations under the Convention.

In addition to being discriminatory, the law appears to grant courts the power to force a cohabiting couple to marry against their will (Article 27(f)), in violation of Article 16(1)(b) of the Convention. Under Article 27(a), this could be done on the basis of information received from a relative of the woman, in violation of the right not to be subjected to arbitrary interference with one’s privacy. Moreover, provisions relating to custody of the children (Articles 25(b), 32(b) 34(a)(iii) and 34(b)(bb)) do not place the interests of the child as the primary consideration. Instead, the law automatically grants a Buddhist woman married to a non-Buddhist man guardianship of all children in the event they should divorce.

THE POPULATION CONTROL HEALTHCARE LAW

The Population Control Healthcare Law is described in its preamble as being aimed at “effectively implementing population control healthcare activities” with a view to “improving living standards while

²¹ See Amnesty International, *64th Pre-sessional Working Group: The Republic of the Union of Myanmar: Information on ‘Race and religion protection’ laws and WHRDs*, Ref: IGO IOR 40/2015.215, 29 September 2015.

²² *List of issues*, paras. 1, 16, and 19.

²³ *List of issues and questions in relation to the combined fourth and fifth periodic reports of Myanmar, Addendum: Replies of Myanmar to the list of issues*, UN Doc: CEDAW/C/MMR/Q/4-5/Add.1, 3 May 2016, para 4, (*Replies of Myanmar to the list of issues*).

²⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Myanmar*, A/HRC/31/13, 20 November 2015, recommendations 145.13 (Turkey), 145.15 (Denmark), 145.16 (Uruguay), 145.17 (Italy), 145.18 (Czech Republic), 145.19 (Canada), 145.20 (Germany), 145.21 (Australia).

²⁵ *Replies of Myanmar to the list of issues*, para 4 (b).

alleviating poverty in the country; ensuring sufficient quality healthcare; and developing maternal and child health”. This is also asserted in the government’s response to the list of issues.²⁶ While many of these aims are to be welcomed, the law lacks essential safeguards against violations of sexual and reproductive rights – in particular the rights guaranteed under Article 16(e) of the Convention to freely choose whether or not to have children and the number and spacing of births – and freedom from all forms of discrimination against women, prohibited under the Convention.

Instead the law focuses on “population control healthcare activities” or “organizing” married couples to practice birth spacing. These are excessively vague terms and could open the way for discriminatory, coercive or otherwise abusive application of the law.

It is also unclear whether and how the practice of “birth spacing” – defined in Article 2(c) of the Population Control Healthcare Law as “the practice of having at least a 36-month interval between one child birth and another for a married woman” – would be enforced. Despite the absence of any penalties in the law, it lacks essential safeguards to protect women who have children more frequently than 36-month intervals. In addition, the law does not include an explicit prohibition on coercion to use contraception, coerced abortion or forced sterilization.

Furthermore, there is no explicit clause guaranteeing the law is implemented without any discrimination as required under Articles 1 and 12(1) of the Convention. As it stands, the law could be interpreted to target specific communities identified on a discriminatory basis. In addition, the law appears to exclude unmarried women and men from access to “healthcare knowledge and counselling” and “education [...] to practice birth spacing and improving maternal and child health” (Article 13), which would constitute discrimination on the grounds of marital status, in violation of Article 16 of the Convention.

We further note that no provisions are made that the composition of the Regional, State, and Township bodies established to implement the law will ensure gender parity, which is particularly important given that the issues involved mostly impact on the health of women, or that they will include adequate representation of minorities and local communities.

THE RELIGIOUS CONVERSION LAW

The Religious Conversion Law aims to establish a system by which individuals who want to officially change religion must apply to a state-governed body, which will review their application and decide whether to approve it and issue a certificate of conversion. While we note the Myanmar government’s assertion that “there is no restriction for those who wish to convert their religion from one to another, and registration of such conversion is voluntary”,²⁷ the fact remains that a person’s religion is a private matter of individual conscience and it is not the concern of the state even when individuals choose to convert to a different religion or to leave religion altogether. If, as the Myanmar government claims, the purpose of the law “is only to prevent forced conversion and it penalizes those who force someone to convert his/her belief against the will”, this would more effectively be achieved through specific legislation relating to forced conversions.²⁸ Ultimately, in attempting to regulate religious conversion, the Religious Conversion Law grants inappropriate and unnecessary powers to the state. It not only risks violating the right to freedom of thought, conscience and religion, but also the right to privacy.

THE MONOGAMY LAW

According to the Myanmar government, the purpose of the Monogamy Law is “self-explanatory” as it “encourages married couples to practice monogamy system [sic]”.²⁹ However, given that Myanmar already has laws relating to marriage and that polygamy is defined and criminalized in the Penal Code (Section 494), Amnesty International is unclear as to the purpose of the Monogamy Law. In addition, the law introduces provisions that prohibit women or men who are already married from “cohabiting” with each other. The penalty for breaching such a provision, however, is unclear. Extramarital cohabitation and/or consensual sexual relations must not be criminalized, as it could constitute an arbitrary interference with one’s privacy and family as protected under Article 16 of the Convention.

²⁶ *Replies of Myanmar to the list of issues*, para 4 (d).

²⁷ *Replies of Myanmar to the list of issues*, para 4 (a).

²⁸ *Replies of Myanmar to the list of issues*, para 4 (a).

²⁹ *Replies of Myanmar to the list of issues*, para 4 (c).

Amnesty International recommends that the Myanmar government:

- Amend the Population Healthcare Control Law to ensure it complies with international human rights law and standards, and in particular, include strong safeguards against discriminatory application of its provisions;
- Immediately repeal the Buddhist Women's Special Marriage Law and the Religious Conversion Law;
- Repeal the Monogamy Law and instead, ensure that provisions in the Penal Code which criminalize polygamy are in strict compliance with international human rights law and standards; and
- Ensure that no new laws are enacted that discriminate, or have a discriminatory effect, on gender grounds, or any other grounds prohibited in the Convention and under other international human rights law.

THE SITUATION OF ROHINGYA WOMEN AND GIRLS (ARTICLES 2, 9, 10, 12, 15(4), AND 16)

The situation of the Rohingya has significantly deteriorated since Myanmar's last review, in particular after waves of violence swept Rakhine State in 2012.³⁰ Almost four years later, an estimated 120,000 individuals – mostly Rohingya – remain displaced across Rakhine state.³¹ Most live in squalid conditions in internally displaced person (IDP) camps and unofficial temporary shelters, where they do not have sustained access to adequate food, medical care, sanitation facilities, and other essential humanitarian assistance. At the same time across Rakhine State, Rohingya who live outside IDP camps continue to experience abuses of their rights by both state and non-state actors.

Access to Rakhine State for international actors, including humanitarian organizations, international non-governmental organizations, journalists and others, is severely restricted, making human rights reporting about the situation there extremely difficult. Moreover, the restrictions imposed on the Rohingya community mean it is very difficult for Rohingya in Myanmar to come together, either as individual activists or as part of civil society organizations, to advocate for their rights.

While the information included below specifically relates to Rohingya women and girls, Rohingya men and boys are also affected by many of the discriminatory restrictions, policies and practices described. However, Rohingya women and girls experience discrimination on multiple fronts, including their gender, ethnicity, religion, socio-economic status, and educational background. They are subject to human rights abuses from a range of actors, including the state, local and national non-state actors and members of their own communities and families.

DENIAL OF THE RIGHT TO A NATIONALITY AND WIDER EXCLUSION

In its 2008 Concluding Observations, the Committee recommended the Myanmar government grant citizenship to the Muslim population of Rakhine State and review and repeal or else amend the 1982 Citizenship Act.³²

The Myanmar government has, to date, failed to implement these recommendations: The 1982 Citizenship Act remains in effect, without amendment, and the overwhelming majority of Rohingyas do not have any form of citizenship. While we note that in January 2015 the Myanmar government began the process “to verify the status of Bengalis³³ in Rakhine State”,³⁴ this process is deeply problematic as it uses the discriminatory 1982 Citizenship Act as a basis for assessing, and therefore verifying, a person's citizenship status. In February 2015, the President announced the revocation of all temporary registration certificates (also known as “white cards”), which left many Rohingya without any form of accepted identity document.

³⁰ For more information about the events of 2012, see Human Rights Watch, “*The Government Could Have Stopped This*”: Sectarian Violence and Ensuing Abuses in Burma's Arakan State, 1 August 2012 and Human Rights Watch, “*All You Can Do Is Pray*”: Crimes Against Humanity and Ethnic Cleansing of Rohingya Muslims in Burma's Arakan State, 22 April 2013.

³¹ UN Office of the Coordination of Humanitarian Affairs (OCHA), *Myanmar: Humanitarian Bulletin, Issue 8, January - March 2016*, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_Myanmar_Humanitarian%20Bulletin_January-March2016.pdf.

³² *Concluding observations of the Committee on the Elimination of Discrimination against Women: Myanmar*, UN Doc. CEDAW/C/MMR/CO/3, 7 November 2008, paras. 31 and 33.

³³ A term often used to refer to the Rohingya to imply that they are actually migrants from Bangladesh.

³⁴ *Replies of Myanmar to the list of issues*, para. 65.

While recently some Rohingya have received new “cards for national verification”, it is unclear what rights these cards afford.

In the meantime, the Myanmar authorities have taken a series of measures which further entrench the exclusion of the Rohingya. In March 2014, the government effectively excluded the majority of the Rohingya from Myanmar’s first national census since 1983 by backtracking on a promise to allow them to self-identify in the census forms.³⁵ Enumerators were apparently instructed not to write down the word “Rohingya”, and with, and a large and intimidating security presence in Rohingya communities during the count, the move led to most of them not being included in the count.³⁶

Most Rohingya women and men were also barred from voting in the November general election, despite having been allowed to vote in previous general elections. The move followed a Constitutional Tribunal ruling in May 2015 that it was unconstitutional for “white card” to be given voting rights.³⁷ Rohingya women and men who applied to contest the 2015 elections as candidates were also disqualified, either on the basis of their citizenship status or the status of their parents.³⁸ Myanmar’s authorities have consistently refused to even recognize the term Rohingya – a position reiterated most recently in Myanmar’s response to the list of issues.³⁹ During its Universal Periodic Review, Myanmar rejected all 27 recommendations relating to the human rights and humanitarian situation of the Rohingya.⁴⁰

RESTRICTIONS ON THE ROHINGYA POPULATION IN NORTHERN RAKHINE STATE

In its 2008 Concluding Observations, the Committee expressed “deep concern” about the multiple forms of discrimination and restrictions endured by Muslim women and girls in northern Rakhine State and recommended that the Myanmar government “urgently eliminate all forms of violence and discrimination” against them, in particular by alleviating restrictions on movement and by lifting orders concerning marriage authorization and restriction on pregnancies.⁴¹ However Amnesty International’s research confirms that the Myanmar authorities have failed to implement these recommendations.

In northern Rakhine State, Rohingya women and men are required to apply for permission to travel between villages and townships. The process is cumbersome and overly bureaucratic. In addition to submitting the necessary paperwork (a letter from their village administrator, two passport photos, and a completed permission form (known as “Form 4”), Rohingya women and men must also pay fees to local administration and immigration authorities, and may also be arbitrarily extorted for money by Border Guard Police (BGP) officers as they pass through various checkpoints in the region. Rohingya women told Amnesty International that BGP officers sometimes forced them to take off their headscarves/ veils at checkpoints, which some women considered to be deliberate attempts to humiliate them and denigrate their religion.⁴²

Restrictions on their movement severely impacts Rohingya women and girls’ ability to practice their religion, and access education, healthcare and other services. In particular women’s access to emergency obstetric care is seriously hampered. Amnesty International’s research indicates that authorities do not permit Rohingya to travel outside of northern Rakhine State unless there is a serious medical emergency. Even in such a case they must still obtain the necessary permission before they can travel. The Special Rapporteur on the situation of human rights in Myanmar has recently raised concern about cases of preventable deaths due to lack of access to emergency treatment.⁴³

³⁵ UNFPA Concerned about Decision Not to Allow Census Respondents to Self-Identify as Rohingya, 1 April 2014, available at: http://countryoffice.unfpa.org/myanmar/2014/04/01/9376/statement_unfpa_concerned_about_decision_not_to_allow_census_respondents_to_self_identify_as_rohingya/.

³⁶ International Crisis Group (ICG), *Counting the Costs: Myanmar’s Problematic Census*, Crisis Group Asia Briefing N°144, 15 May 2014.

³⁷ Sandar Lwin, “Tribunal rules white-card voting rights unconstitutional”, *The Myanmar Times*, 12 May 2015, available at: <http://www.mmtimes.com/index.php/national-news/14399-tribunal-rules-white-card-voting-rights-unconstitutional.html>.

³⁸ See Carter Center, *Carter Center Issues Statement on Candidate Scrutiny Process and Campaign Environment in Myanmar*, 25 September 2015, available at: <http://www.cartercenter.org/news/pr/myanmar-092515-pre-election.html>.

³⁹ *Replies of Myanmar to the list of issues*, para. 65.

⁴⁰ *Human Rights Council, Report of the Working Group on the Universal Periodic Review – Myanmar*, A/HRC/31/13, 20 November 2015, recommendations 145.8. (Guatemala); 145.27 (Saudi Arabia); 145.30 (Slovenia); 145.39-145.53 (Sudan, Luxembourg, Pakistan, Sudan, Senegal, Costa Rica, Argentina, Libya, Oman, Belgium, Malaysia, Djibouti, Egypt, Luxembourg, Saudi Arabia), 145.55-145.56 (Iceland, Saudi Arabia), 145.60-145.66 (Malaysia, Saudi Arabia, Australia, Netherlands, United Kingdom of Great Britain and Northern Ireland, Sweden, United States of America).

⁴¹ *Concluding observations of the Committee on the Elimination of Discrimination against Women Myanmar*, UN Doc. CEDAW/C/MMR/CO/3, 7 November 2008, paras. 42 and 43.

⁴² Amnesty International interviews in northern Rakhine State, March 2016.

⁴³ *Report of the Special Rapporteur on the situation of human rights in Myanmar*, Yanghee Lee, UN Doc: A/HRC/31/71, 18 March 2016, para. 40.

Despite the Myanmar government's assertion that "[t]here is no policy restricting marriage and pregnancy of women in Myanmar, including in Northern Rakhine State",⁴⁴ Rohingya couples in northern Rakhine State must still apply for specific permission from the local administration before they can marry. Amnesty International's research also indicates that Rohingya are still required to sign a document agreeing to limit the number of children they would have to no more than two, in clear violation of Article 16 of the Convention. It is unclear to what extent this policy is enforced in practice; however, there are concerns it still leads some women to seek unsafe and clandestine abortions. Moreover, the policy raises further concerns about discriminatory implementation of the Population Healthcare Control Law, raised above.

REGIONAL IMPACTS AND UNCERTAIN WAY FORWARD

The continuing exclusion of the Rohingya, coupled with pervasive discrimination and restrictions, have pushed growing numbers of people to flee Myanmar in recent years. The UN Refugee Agency (UNHCR) estimates that 33,600 people fled via the Bay of Bengal in 2015, with women and girls – virtually all of them Rohingya – making up about 15% of all passengers that year.⁴⁵ Amnesty International has documented human rights abuses during these boat journeys, including killings and beatings while being held for ransom, while there are also concerns that Rohingya women and girls may be trafficked into forced marriages.⁴⁶

The situation in Rakhine State remains fragile, and it is unclear how the new government intends to address the situation of the Rohingya and alleviate their suffering. We note reference in the state report to a "Peace and Development Plan of Rakhine State", apparently aimed at preventing recurrence of communal violence in Rakhine State.⁴⁷ However, Amnesty International remains concerned that the government did not adequately respond to the Committee's requests for more information about this initiative.⁴⁸ We are also concerned that details of the plan have not been made publicly available, and that not all communities in Rakhine State – including the Rohingya – have been consulted in its development and design. We note that a draft Rakhine State Action Plan, leaked in October 2014, was deeply problematic, for example, the suggestion of UNHCR involvement in third-country resettlement of those who do not qualify as citizens.⁴⁹ There were also concerns that it could further marginalize and segregate the Rohingya.⁵⁰ It is also unclear whether the plan referred to in the state response to the list of issues is the same document.

Amnesty International recommends that the Myanmar government:

- Revoke all local orders and policies which place arbitrary and discriminatory restrictions on Rohingya, in particular restrictions on their freedom of movement;
- Ensure that all women and girls in Rakhine State – including internally displaced women and girls – are able to freely and safely access healthcare, in particular emergency obstetric and other sexual and reproductive healthcare – without discrimination on any grounds;
- Ensure the Rohingya have equal access to citizenship rights based on objective criteria that comply with the principle of non-discrimination, including by amending the 1982 Citizenship Act, and ensure that this principle is implemented in practice;
- Ensure free and unimpeded access to Rakhine State by humanitarian actors, international human rights organizations, journalists and other credible international observers;
- Take effective measures to ensure openness and transparency in addressing the situation in Rakhine State, including by making the "Peace and Development Plan of Rakhine State" publicly available. Ensure that plans to address the situation in Rakhine State are developed with the involvement of

⁴⁴ Myanmar Combined fourth and fifth periodic reports, para. 162.

⁴⁵ UNHCR, *Mixed maritime movements in South East Asia in 2015*, p. 17.

⁴⁶ See Amnesty International, *Deadly journeys: The refugee and trafficking crisis in Southeast Asia* (Index: ASA 21/2574/2015), 21 October 2015; and Buckley, Chris and Barry, Ellen, "Rohingya Women Flee Violence Only to Be Sold Into Marriage", *The New York Times*, 2 August 2015, available at: http://www.nytimes.com/2015/08/03/world/asia/rohingya-women-flee-violence-only-to-be-sold-into-marriage.html?_r=0.

⁴⁷ Myanmar Combined fourth and fifth periodic reports, para. 163.

⁴⁸ *List of issues*, para. 17 and *Replies of Myanmar to the list of issues*, para. 114.

⁴⁹ A UNHCR spokesperson later ruled out this possibility, confirming that these individuals would not be "recognized refugees who have fled persecution and conflict across international borders". See *Reuters*, "Rohingya could face detention under Myanmar draft plan", 27 September 2014, available at: <http://www.reuters.com/article/us-myanmar-rohingya-exclusive-idUSKCN0HM09520140927>.

⁵⁰ See Human Rights Watch, *Burma: Government Plan Would Segregate Rohingya*, 3 October 2014, available at: <https://www.hrw.org/news/2014/10/03/burma-government-plan-would-segregate-rohingya>.

Rohingya women and girls, and non-governmental organizations that represent and/or work with them, and include specific measures designed to eliminate discrimination against them; and

- Ratify and effectively implement international human rights treaties, in particular the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

JUSTICE, TRUTH AND REPARATION FOR HUMAN RIGHTS VIOLATIONS AGAINST WOMEN (GENERAL RECOMMENDATION 30)

HUMAN RIGHTS VIOLATIONS AGAINST WOMEN AND GIRLS IN CONFLICT-AFFECTED AREAS

Women and girls from Myanmar continue to suffer the effects of over six decades of non-international armed conflicts. Despite the signing of a Nationwide Ceasefire Agreement between the government and eight armed ethnic organizations in October 2015,⁵¹ active conflicts continue in many parts of the country.

Human rights violations in areas of armed conflict, including rape and other crimes of sexual violence committed by military officials against women and girls, have been consistently documented by human rights organizations working on Myanmar.⁵² Such organizations and others have reported on these abuses in conflict-affected ethnic nationality areas against ethnic nationality women and girls. Yet the culture of silence that surrounds sexual and gender-based violence means that many cases remain underreported because of feelings of shame, social stigma, gender stereotypes and the low status of women in society; possible re-traumatization and re-victimization; or a combination of all of these factors. Many women and girls have not been provided with the medical, psychological, sexual and reproductive, and mental health services or treatment they need, either during the armed conflicts or after the conflicts have ended.⁵³

In addition, women and girls not only suffered directly as victims of human rights violations, but also indirectly as family members of those who were killed and disappeared. Many have been forced to assume the role of economic provider and primary caregiver for the family. This has had long lasting consequences for women and their families, for example in terms of access to education and healthcare.⁵⁴ The already poor situation facing women and girls in conflict-affected areas is further exacerbated by the lack of international organizations and agencies, which are unable to operate freely in these areas, either because of government imposed restrictions, restrictions imposed by ethnic armed organizations or other security related concerns.

Despite the obvious and wide-ranging impacts of conflict on women and girls, their voices have largely been excluded from the peace process and there are still very few women in leadership positions among the organizations involved.⁵⁵ Women's activists and civil society organizations have consistently complained about the exclusion of women's voices from formal decision and policy-making.⁵⁶ Without their greater

⁵¹ Of the fifteen armed ethnic organizations invited to sign the Nationwide Ceasefire Agreement, only eight chose to do so. The authorities' decision to exclude some armed ethnic groups from the accord meant that the seven other groups invited to sign – including all those in active conflict with the Army – chose not to do so.

⁵² See for example Shan Women's Action Network & Shan Human Rights Foundation, *License to Rape: The Burma military regime's use of sexual violence in the ongoing war in Shan State*, July 2002; Karen Women's Organization (KWO), *Shattering Silences: Karen Women speak out about the Burmese Military Regime's use of Rape as a Strategy of War in Karen State*, April 2004; Women's League of Burma (WLB), *If they had hope, they would speak: The ongoing use of state-sponsored sexual violence in Burma's ethnic communities*, November 2014; WLB, *Same Impunity, Same Patterns*, January 2014; and Ta'ang Women's Organization (TWO), *Trained to Torture: Systematic war crimes by the Burma Army in Ta'ang areas of northern Shan State* (March 2011-March 2016), June 2016.

⁵³ Tang, Alisa, "Women in Myanmar conflict zones face rape, lack healthcare – UN", *Thomson Reuters Foundation*, 22 December 2015, available at: <http://news.trust.org/item/20151222164019-t149n/>.

⁵⁴ See for example Palaung Women's Organisation (PWO), *The Burden of War: Women bear the burden of displacement*, 5 November 2012; and KWO, *Walking among Sharp Knives: The unsung courage of Karen women village chiefs in conflict areas of Eastern Burma*, February 2010.

⁵⁵ See Thin Lei Win, "Where are the women in Myanmar's peace process?", *Myanmar Now*, 31 December 2015, available at: <http://www.myanmar-now.org/news/?id=39992fb7-e466-4d26-9eac-1d08c44299b5>; and Transnational Institute (TNI), *No Women, No Peace: Gender Equality, Conflict and Peace in Myanmar*, 13 January 2016.

⁵⁶ Cherry Thein, "Anger as women kept 'in the kitchen' during peace process", *The Myanmar Times*, 23 September 2015, available at: <http://www.mmtimes.com/index.php/national-news/16630-anger-as-women-kept-in-the-kitchen-during-peace-process.html>.

representation, participation and input, it is difficult to see how women and girls' rights and needs will be adequately addressed in efforts towards conflict resolution, peacekeeping, and peace-building.

LACK OF ACCOUNTABILITY

There remains a persistent culture of impunity for human rights violations committed by the Myanmar security forces, and most perpetrators of past and current human rights violations, including crimes under international law, have not been brought to justice.

The lack of an institutional and legislative framework that is fully consistent with international law and standards contributes to the failure to address impunity for past and ongoing human rights violations in Myanmar. State officials, including security force personnel, are protected from prosecution for human rights violations and crimes under international law committed while the country was under military rule by Article 445 of Myanmar's 2008 Constitution. The Constitution further entrenches impunity by establishing military control over its own judicial processes. When adjudicating military justice, the decision of the Commander-in-Chief of the Defence Services is "final and conclusive" (Article 343(b)). While Amnesty International notes that some cases of military abuse, including allegations of rape, have been transferred to civilian courts, the reality is that military personnel are rarely held to account for crimes they have committed.

When victims of human rights violations, their families, and representatives do try lodge formal complaints with the authorities, they may be subjected to harassment, intimidation, and surveillance. When Shayam Brang Shawng, an ethnic Kachin man, complained to the authorities about the death of his 14-year old daughter, Ja Seng Ing, who eyewitnesses report was shot dead by Myanmar army soldiers, he was himself charged and found guilty of making "false allegations" against the Myanmar Army and ordered to pay a fine. To date, there has not been any independent investigation into Ja Seng Ing's death.⁵⁷ In another example, when activists called for an independent investigation into allegations that Myanmar army soldiers had raped and killed two female Kachin teachers in January 2015, the army released a statement threatening to "take action" against anyone who wrote about the Army's suspected involvement in the killings.⁵⁸ Many activists and journalists understood the statement as a threat of arrest.

Amnesty International recommends that the Myanmar government:

- Investigate all crimes alleged to have been committed by Myanmar security forces and prosecute, whenever there is sufficient admissible evidence, those suspected of the crimes before independent, civilian courts which meet international standards of fairness and which do not impose the death penalty. Ensure that the justice system sensitively investigates such cases, ensuring confidentiality and safety for victims; prosecutes all cases of sexual violence; and has the full capacity and resources to promptly, impartially and effectively do so;
- Review and repeal or else amend all laws which codify immunity for prosecution for human rights violations and crimes under international law, to bring them in line with international law;
- Develop and implement a programme guaranteeing access to health care, psychological assistance and other support for all women and girl victims of sexual violence in conflict and beyond. Ensure the programme is developed with the involvement of the survivors and non-governmental organizations that represent and/or work with them and that it includes measures designed to eliminate the stigma and discrimination experienced by survivors of sexual violence and gender stereotypes that underlie violence against women.

⁵⁷ See for example *Joint Open Letter on the prosecution of Shayam Brang Shawng* by Amnesty International, Fortify Rights, the Harvard Law School International Human Rights Clinic, Human Rights Watch, the International Commission of Jurists and Physicians for Human Rights (Index: ASA 16/030/2014), 18 December 2014.

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