

MYANMAR'S LONG ROAD TO GENDER EQUALITY

ISSUES FOR MYANMAR'S
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The Global Justice Center

Myanmar's upcoming Universal Periodic Review ("UPR") provides an ideal venue to question the Government of Myanmar ("Government") regarding its failure to ensure substantive equality for women as required by the Universal Declaration of Human Rights, the UN Charter, and international treaties including CEDAW. Since 2011, Myanmar's "democratization" has neither improved women's status nor dismantled structural barriers preventing women's equality.

Myanmar's failure to ensure women's rights arises from entrenched legacies of inequality that impede genuine reform in all aspects of law. Specifically, **ongoing supremacy of the military, gender inequality embedded in the Constitution and other laws, and the lack of adequate justice mechanisms including an independent judiciary** serve as structural barriers to equality. No Government reforms have addressed these issues. **As a result, women in Myanmar face (1) gender discrimination embedded in law; (2) barriers to access to justice; and (3) exclusion from participation in public and political life.**

➤ Gender Discrimination Embedded in Law

The Government has not adopted a comprehensive legal definition of discrimination against women as required by CEDAW.	The failure to provide a definition of discrimination ultimately hinders the formulation, interpretation, and dissemination of laws and policies impacting the rights of women. In its 2008 Concluding Observations, the CEDAW Committee requested that such a definition be adopted, but to date this recommendation has not been implemented.
Gender-based discrimination pervades many of Myanmar's existing laws which fail to conform to international standards.	Under the Penal Code abortion is illegal even in situations involving rape and incest, unless the woman's life is in danger. Similarly, the Penal Code does not criminalize unwanted sexual touching or sexual harassment outside the context of sexual intercourse, fails to cover modern elements of rape (such as forced non-penile penetration), and only prohibits and punishes marital rape if the woman is less than 14.
Myanmar's new laws continue to sanction and encourage discrimination against women.	In 2015, Myanmar's Parliament adopted a package of four so-called "Laws on the Protection of Race and Religion" which further entrench widespread gender-based discrimination against women, in particular based on ethnicity or religion, in clear violation of CEDAW.

Recommendations

- *Immediately adopt, through Constitutional amendment or anti-discrimination legislation, a legal definition of discrimination against women that is in conformity with CEDAW.*
- *Repeal laws criminalizing abortion and ensure that, at a minimum, any laws restricting abortion include exceptions to save women's lives and preserve women's physical and mental health, as well as exceptions for pregnancies resulting from rape.*
- *Repeal the "Laws on the Protection of Race and Religion," and ensure that any future laws include adequate human rights protections and safeguards against gender discrimination.*

➤ Barriers to Women's Access to Justice

Myanmar's military continues a campaign of sexual violence against ethnic populations with near total impunity.	Article 445 of Myanmar's Constitution guarantees that no proceeding shall be instituted against any member of the Government for official acts and therefore operates as a guarantee of immunity. The Constitution also grants final authority to the Commander-in-Chief over all cases concerning military matters, effectively excluding any civilian oversight over military justice. These problems are compounded by a complete lack of transparency in court-martial proceedings or military law.
Myanmar's legal system still contains: no specific law criminalizing domestic violence; no comprehensive laws to prevent violence against women; and no law allowing victims to obtain restraining orders against abusers.	For years, the Government has pledged to draft an "Anti-Violence against Women Law," but no draft law has been circulated publicly, no broad-based comment has been allowed, and Myanmar's State Report to the CEDAW Committee in February 2015 indicates only that three drafting Committees have been formed with no timetable for progress. This contrasts sharply with expeditious drafting and passage of other laws, including laws that discriminate against women.

Myanmar’s judiciary has not been vetted since the 2011 transition and the Constitution requires a minimum tenure of judicial experience for appointment to certain courts.	Only judges that were on the bench during the former military junta’s authoritarian rule, many of whom were complicit or actively involved in sham arrests and baseless prosecutions of countless political prisoners, are eligible for the highest positions in Myanmar’s judiciary.
Myanmar’s human rights institutions and bodies do not conform to international best practices and are unable to provide effective and adequate remedies for violations of human rights.	The Myanmar Nation Human Rights Commission operates under a limited mandate with insufficient independence from the government, an overly narrow scope of duties, and limited power to resolve complaints in accordance with the Paris Principles. Other government-affiliated organizations cannot be counted upon for independence or objectivity, or to resolve complaints.
Existing laws provide limited, if any, protection against violence against women and promote outmoded gender-based stereotypes.	Women’s integrity and dignity is not protected throughout the investigation or prosecution process. Women must testify against their attackers, and judges may draw an adverse inference against women who choose not to answer questions about their rape. Further, under the Evidence Act, a woman’s previous conduct and sexual character is admissible as evidence.

Recommendations

- *Amend the Constitution to bring the military under civilian oversight and repeal constitutional provisions granting the military impunity for human rights violations, including sexual violence, and permitting military matters to be adjudicated only in courts-martial.*
- *Ensure full transparency with respect to military criminal prosecutions, including prosecutions of military perpetrators of sexual violence.*
- *Enact new legislation guaranteeing comprehensive protection from all forms of violence against women, including emotional, economic, domestic and sexual violence, and 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.*
- *Amend 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, rather than antiquated notions of family and sexual violence, and guarantee justice in the form of criminal punishment, rehabilitation and reparations.*
- *Ensure the independence of the judiciary in the administration of justice and undertake vetting to remove any judges who were complicit in the crimes of the former military junta.*
- *Ensure that the Myanmar National Human Rights Commission operates in accordance with the Paris Principles, enjoys complete independence, and has the ability to resolve complaints and grant remedies.*

➤ Exclusion of Women from Participation in Public and Political Life

Women in Myanmar are largely excluded from participating in the formulation and implementation of public policy, holding public office, and performing public functions at all levels of government.	The Constitution mandates 25% quotas for military representation in both legislative houses. These positions are held almost exclusively by men, resulting from the Myanmar military’s historical exclusion of women. The Constitution, also explicitly provides that certain positions in the Government are suitable for men only. The situation is unlikely to improve after the November 2015 election since only 15% of candidates are women.
There has also been an absence of women’s issues and women’s participation during the ongoing peace-negotiations between ethnic groups and the Myanmar military.	The Government negotiating team has largely excluded women. None of the initial ceasefire agreements between the government and 13 armed ethnic groups made a single reference to women, or acts of violence against them.

Recommendations

- *Repeal discriminatory constitutional provisions, such as Articles 352, 109 and 141, which prevent women’s equal participation in political and public life.*
- *Implement temporary special measures to accelerate elimination of discrimination against women in political and public life, including recruiting, financially assisting, and training women candidates for public office; amending discriminatory electoral procedures; developing campaigns directed at women’s equal participation; and setting numerical goals and quotas for women’s equal representation.*
- *Ensure that women fully, equally, and effectively participate in all stages of peace processes, including in conflict resolution, post-conflict planning and peace building, both as high level mediators and within the composition of all mediator and negotiator teams.*