

## **DECLARATION OF GENDER EQUALITY NETWORK**

### **UPR PRE-SESSION ON MYANMAR, JANUARY 2021**

#### **1 Presentation of the Organisation**

The Gender Equality Network (“GEN”) is an active inter-agency network that aims to facilitate the development and implementation of enabling systems, structures and practices for the advancement of women, gender equality and the realization of women's rights in Myanmar. Based in Yangon, GEN is comprised of over 100 national and international non-government organizations, civil society organizations, networks, and technical resource persons.

#### **2 National consultations for the drafting of the national report (if any)**

The GEN submission was prepared by the GEN Coordination Unit and approved by GEN’s Steering Committee a member-elected body of 11 members who represent GEN’s different member categories.

#### **3 Plan of the Statement**

The statement addresses the following issues: (i) The Government must amend the Constitution to enshrine the principle of substantive equality as a fundamental human right and eliminate both direct and indirect discrimination; and (2) The Government must pass a comprehensive Violence Against Women Law that meets or exceeds international standards.

#### **4 Statement**

##### **I. The Government Must Amend the Constitution to Enshrine the Principle of Substantive Equality as a Fundamental Human Right and Eliminate Both Direct and Indirect Discrimination**

###### **A. Follow-up to the second review**

Progress on women’s rights and gender equality in Myanmar has been slow since Myanmar’s 2<sup>nd</sup> cycle Universal Periodic Review (“UPR”) in 2015. Women continue to face many obstacles to full gender equality, in part as a result of decades of military rule and embedded societal patriarchy.<sup>1</sup> This gender inequality is reflected in and perpetuated by major limitations in Myanmar’s legal system, including the Constitution of the Republic of the Union of Myanmar (the “Constitution”). At present no Constitutional provision guarantees women’s reproductive rights and existing laws infringe on fundamental reproductive freedoms.

Further, the Constitution should define and prohibit both direct and indirect discrimination, following CEDAW guidelines. These definitions should refer to the international law principles in CEDAW and

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<sup>1</sup> Gender Equality Network, *Behind the Silence: Violence Against Women and their Resilience* (Nov. 14, 2014).

state explicitly that cultural and traditional practices and laws cannot be used to justify either direct or indirect discrimination against women.<sup>2</sup>

Additionally, Article 352 of the Constitution states that “nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.” This directly and formally legalizes discrimination against women and perpetuates negative and limiting stereotypes about women in violation of CEDAW.

Other Constitutional provisions indirectly discriminate against women, reinforcing gender inequality and contributing to women’s low participation in decision-making and public office. Articles 109, 141 and 161 each mandate a specific quota of representatives directly appointed by the Defence Services and Article 59(d) requires the President and Vice- President to be well-acquainted with defence matters. Since women have traditionally served only as medical or administrative support in the military, these articles constitute indirect discrimination against women.<sup>3</sup> Moreover, recent efforts to increase the number of women in the military exacerbate the problem. Guidance issued in 2013 establishes different standards for women military recruits, such as a prohibition on marriage and a requirement of a secondary degree from “respected universities.” Men are not required to meet these standards.

## **B. New developments since the second review**

The Government has conducted two Constitutional review processes since 2008; one in 2013 and another in 2019-2020. The most recent review process was fraught with controversy and lack of consensus. Of the over 3000 potential amendments submitted, only 114 were ultimately voted on by Parliament and only four minor amendments received the required number of votes for adoption. The 114 amendments considered were mostly related to democratic governance issues, and none addressed the gender-related fundamental human rights issues highlighted in this statement.<sup>4</sup> Thus, the Government does not seem to have the requisite political will to ensure that Myanmar’s Constitution provides sufficient gender equality and non-discrimination guarantees.

## **C. Recommendations**

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<sup>2</sup> CEDAW, *supra* note 3, at Art. 5; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Erturk, A/HRC/4/34 (Jan. 17, 2007).

<sup>3</sup> Bird, MieMie Winn, *Integration of Women and Gender Perspectives into the Myanmar Armed Forces to Improve Civil-Military Relations in Myanmar* (Nov.-Dec. 2019) available at: <https://www.armyupress.army.mil/Journals/Military-Review/English-Edition-Archives/November-December-2019/Byrd-Myanmar-Gender-Armed-Forces/>

<sup>4</sup> Zulueta-Fulscher, Kimana, IDEA, *Looking Back at Myanmar’s Constitutional Amendment Process*, (Apr. 8, 2020) available at: <https://www.idea.int/news-media/news/looking-back-myanmar-constitution-amendment-process>; see also Heugas, Annabelle, Konrad-Adenauer Stiftung, *Myanmar’s Constitutional Amendment Process in 2020* (Jun. 2, 2020) available at: <https://www.kas.de/en/web/myanmar/laenderberichte/detail/-/content/myanmars-verfassungsaenderungsprozess-im-jahr-2020>; Aung, Sam Yamin, THE IRRAWADDY, *Myanmar Parliament Indefinitely Postpones Referendum on Charter Amendments* (May 21, 2020) available at: <https://www.irrawaddy.com/news/burma/myanmar-parliament-indefinitely-postpones-referendum-on-charter-amendments.html>.

In order to ensure that the equality guarantees in the Constitution encompass a substantive understanding of equality, and function to eliminate gender stereotypes and discrimination, we recommend:

- To include CEDAW-compliant definitions of gender equality and substantive equality in the Constitution;
- To amend the Constitution to define and explicitly prohibit direct and indirect gender discrimination;
- To repeal or amend Constitutional provisions that directly or indirectly discriminate against women, including provisions that require a military background to hold certain offices;
- To add a Constitutional provision to ensure women’s reproductive rights;
- To amend the Constitution to reserve, at a minimum, one third of all seats in regional and national parliaments for women;
- To recognize in the Constitution that temporary special measures may be adopted to accelerate women’s enjoyment of equality;
- To amend the Constitution to specifically incorporate international instruments to which Myanmar is a party, such as CEDAW;
- To conduct a thorough review of existing laws to ensure that they are gender transformative, comply with international equality mandates and do not directly or indirectly discriminate against women; and
- To review existing legal mechanisms to ensure that judicial or administrative review is a viable option for rights violations.

## **II. The Government Must Pass a Comprehensive Violence Against Women Law That Meets or Exceeds International Standards**

### **A. Follow-up to the second review**

The Government of Myanmar (“Government”) accepted a total of 170 recommendations as part of its 2<sup>nd</sup> cycle UPR. Of these, multiple recommendations urged Myanmar to promote gender equality, eliminate discrimination against women, including by adopting a CEDAW-compliant legal definition of discrimination, and take effective measures to combat violence against women.<sup>5</sup>

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<sup>5</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Myanmar, A/HRC/31/13 (Dec. 23, 2015), specifically: 143.57-Adopt a legal definition of discrimination against women according to the Convention on the Elimination of All Forms of Discrimination against Women CEDAW (Austria); 143.55-Promote gender equality in all aspects of life and combat violence against women (Cyprus); 143.66-Enact and enforce legislation that guarantees comprehensive protection from all forms of violence against women, and that addresses impunity for all perpetrators (Sweden);143.67-Take positive action to ensure protection of women against sexual violence and their access to legal mechanisms without discrimination (Namibia); 143.68-Develop a legal framework to prevent and combat violence against women and domestic violence (Serbia); 143.69-Address in legislation all forms of gender-based violence, both within as well as outside of marriage (Spain); 143.70-Take effective measures to prevent and combat marital rape and domestic violence, including the express criminalization of these practices (Portugal); 143.71-Strengthen policies to combat all forms of violence and discrimination against women and girls, including by criminalizing marital rape and prohibiting forced and early marriages (Paraguay); 143.77-Ensure impartial and effective investigation of violence perpetrated against women and violence perpetrated against children, and ensure

Myanmar's so-called "Race and Religion Laws" interfere with these rights by denying women reproductive and marital decision-making.<sup>6</sup> Women have a fundamental right to control and make decisions about their bodies throughout their life cycle, including the right to decide on a method of contraception or whether to terminate a pregnancy, and when and whom to marry. These rights should be enshrined in foundational legal documents and contradictory laws should be repealed.

International guidance is clear that states must adopt CEDAW-compliant definitions of core gender equality concepts in foundational documents.<sup>7</sup> During its 2<sup>nd</sup> Cycle UPR in 2015, the Government accepted a recommendation to adopt a legal definition of discrimination against women that is in accordance with CEDAW.<sup>8</sup> The CEDAW Committee, which interprets and monitors implementation of CEDAW, also has recommended that the Government adopt a comprehensive definition of discrimination in line with CEDAW.<sup>9</sup> Nevertheless, the Government has yet to fulfil these recommendations.

The Government needs to fulfil its commitments to ensure that women enjoy substantive equality in Myanmar. International standards recommend that laws not only state that men and women are equal, but take into account the prevailing social, economic, political and other conditions that prevent women from experiencing equal outcomes as men. According to CEDAW, women are entitled to equal outcomes as men, even if that means that women are treated differently, through adoption of temporary special measures or otherwise.

## **B. New developments since the second review**

After six years of a protracted drafting process, the Government finally submitted a draft PoVAW law to Parliament in January 2020; While the law submitted to Parliament is the result of multiple drafts over six years of negotiations, women's groups were afforded only limited input into the final version. As a result, the draft law does not comply fully with international standards to adequately protect women. If the PoVAW law were to be passed as currently drafted, it would truly miss the mark as it falls far short of providing the protections required under international law, does not fulfill the Government's due diligence obligations and does not adequately incorporate civil society concerns.

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reparations for victims and the right to a fair trial, including legal aid, for both the victim and the accused (Finland); 143.80-Combat impunity (Senegal); 144.46-Review the provisions in its penal code which contain punitive measures against women who have undergone illegal abortions (Norway); 144.72-Implement the National Action Plan for the Advancement of Women by: amending legislation to include sexual violence in conflict within the Preventing Sexual Violence Law, removing military impunity for human rights violations — including sexual violence, and appointing a Gender Advisor within the President's Office (United Kingdom of Great Britain and Northern Ireland); 145.24-Undertake the appropriate measures to prevent and combat domestic violence and sexual violence committed by military personnel and police officers against young girls and adolescents (Albania).

<sup>6</sup> Georgetown Institute for Women Peace and Security, *Protection for Whom? Violations of International Law in Myanmar's New Race and Religion Protection Laws* (2015) available at: <https://giwps.georgetown.edu/resource/protection-for-whom-violations-of-international-law-in-myanmars-new-race-and-religion-protection-laws/>.

<sup>7</sup> CEDAW, *supra* note 3, at Art. 2(a).

<sup>8</sup> Recommendation 143.57 (Austria), *supra* note 3.

<sup>9</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Myanmar* (July 2016), U.N. Doc CEDAW/C/MMR/CO/4-5 at 15(d).

Many of the draft law's shortcomings are significant, but highlighted here are three major issues: first, the law fails to adopt definitions for core concepts that provide maximum protection for women and meet international standards; second, the penalties do not correspond to the level of seriousness of the offense, often leading to weak and ineffective punishment for crimes, and extenuating factors for penalties are not comprehensive; and third, implementation provisions are insufficient to ensure full and adequate protections for every type of victim.

Another main area of concern is the insufficiency of implementation, resource and funding measures.<sup>10</sup> The law must specify in detail how the law will be implemented, including providing for the establishment of a committee dedicated to implementation. It must enumerate how committee members will be chosen, identify who will lead implementation efforts and include women in all implementation processes and mechanisms. Importantly, the Government must adequately budget for and resource the law and all implementation efforts, since ensuring adequate funding, support and other resources for implementation will be crucial to the success of the law.

Finally, the law should ensure that no group is discriminated against in the application of the law. Currently, there are no protections from discrimination based on sexual orientation or disability, groups which should be protected from discrimination in the law.

### **C. Recommendations**

In order to ensure that women and girls from all vulnerable groups are protected from violence in accordance with international standards, we recommend:

- To amend the draft PoVAW law to reflect international best practices, including by revising problematic definitions and ensuring commensurate and adequate penalties for crimes;
- To allow, accept and incorporate civil society and public comments on the draft PoVAW law;
- To ensure that sufficient implementation mechanisms are in place and allot adequate funding and resources so that the PoVAW law effectively protects women from violence;
- To ensure that the principles of non-discrimination against all gender, religious, ethnic and other groups underpins the PoVAW law;
- To expand the scope of the PoVAW law to cover violence in all contexts, including conflict settings; and
- To ensure that the PoVAW law provides effective, accessible and sufficient legal remedy for all victims, including minors, the disabled and transgender and ethnic women, regardless of the status, wealth or military status of the perpetrator.

## **5 COVID-19 impact on Women's Rights and Gender Equality in Myanmar**

The Covid-19 pandemic hit Myanmar quite late in March 2020 during which the number of infected persons was rather low at around 200 cases with 6 deaths. However, in the second wave that started in mid-August 2020, with local transmission in Sittwe, Rakhine state. As of 14 October, cases increased rapidly to over 31,325 with 732 reported deaths<sup>11</sup>. The Government of Myanmar uses a containment strategy that requires contact tracing and placing the Covid-19 positive patients

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<sup>10</sup> PoVAW Law, *supra* note 21, at 3.t.0

<sup>11</sup> <https://mohs.gov.mm/Main/content/publication/2019-ncov>

and all contacts in quarantine facilities. Efforts of the Government to respond to Covid-19 pandemic is well recognised and appreciated, however, this strategy has caused some unexpected rights abuses, for example, positive lactating mothers separated from their infants while being quarantined, young children left at home unattended while the parents are taken to quarantine centres and in some cases, both men and women and girls having to share common sleeping quarters, bathrooms and toilets especially in community-based quarantine centres.

Additionally, women, girls, LGBT, persons with disabilities and other socially discriminated groups are the hidden victims of this pandemic. In addition to the exposure to the risk of infection, preventive measures taken by the Government to control the transmission enforced stay-at-home strategy and forced many workplaces, factories and businesses to close resulting in loss of income for many households across the country. These are added stressors for the already vulnerable population with no steady income during the pandemic. These measures also resulted in increased rate of domestic violence, as reported by many helplines and hotlines, that there are three-folds increase in domestic violence. To alleviate the hardship faced by the majority of the population, the Government started a stimulus programme of providing some cash, however, many socially discriminated groups did not have equal access to such opportunities and had even been denied access to receiving emergency response kits.