

Analyzing the Principles of
GENDER EQUALITY
Adopted by Union Peace Conference



Women's League of Burma (WLB)
October 2018

Foreword

The Government of the Republic of the Union of Myanmar have signed state level, union level and nationwide ceasefire agreement with respective Ethnic Armed Organizations and they are now holding Union Peace Conference- with the aim of ending seventy year long civil war and establishing a Federal Democratic Union which guarantee equality and the right to self-determination.

However, although it has already been three years since the Union Peace Conference was initially held at the end of 2015, the inclusion of all ethnic armed groups in the conference has not been fully implemented. Furthermore, there are still ongoing armed clashes between the Tatmadaw and the ethnic armed organizations, both the NCA signatories and non-signatories.

Nonetheless, in the last Union Peace Conference-21st Century Panglong held on 11-16 July 2018, out of the five sectors, namely, political; social; economics; security and, land and natural resources; the principle of gender equality was discussed as one of the federal principles for political sectors. Four points principles on gender equality was agreed and adopted by as part of the Union Accord, part 2.

The inclusion of gender equality as one of the basic principles of political sector to discuss in Union Peace Conference is an enormous change and a welcomed progress not only for the women, but also for the entire country. However, due to the lack of understanding and expertise in the field and the absence of serious interest and commitments, the four principles adopted in the dialogue are still far from perfect.

Therefore, we, the Women League of Burma, reviewed each principle and published this paper, providing better recommendations to contribute to building a Federal Democratic Union.

Furthermore, with this paper we would like to acknowledge Amo Ah Mudo, who co-founded the Women's League of Burma and who championed gender equality till her last breath, and Janet Benshoof, the president of Global Justice Centre for her relentless support to the work of the Women's League of Burma.

Acknowledgements

We, the Women League (Burma), are indebted to all the representatives from the government, the Tadmaw, Ethnic Armed Organizations, political parties and their special invitees, as well as technical support team from respective groups, participants from WLB's member organizations and all the observers who have shared and discussed their experiences and reflections of the third session of the Union Peace Conference-21st Century Panglong.

We are also grateful to our policy advisors, policy board members, representatives of our member organizations and secretariat office staff for sharing experiences and reflections in the Review and Analysis Workshop on the Gender Equality Principles Adopted by UPC. We also recognize Naw May Oo, the policy adviser of the Salween Institute of Public Policy, for facilitating the workshop.

We want to acknowledge Professor Dr. Susan H. Williams from the Center for Constitutional Democracy, Mauer School of Law, Indiana University, for leading and providing technical inputs in the review workshop, and making this paper possible.

Finally, we want to acknowledge Joint Peace Fund (JPF) for the publication of this paper.

Women's League of Burma

EXECUTIVE SUMMARY

The Union Peace Conference-21st Century Panglong (UPC), third session held in July of 2018 adopted four principles on gender equality, which were ratified by the Pyidaungsu Hluttaw. This paper argues that these principles are insufficient as a basis for the development of democracy, federalism, and gender equality in our country. The conclusions we draw are:

1. The participation of women in decision-making roles in the peace process is crucial both to the development of adequate gender equality principles and to the success of the process as a whole.
2. Principles on gender equality must adopt a broad, outcome-oriented model of equality, which will be necessary to address the structural inequalities that affect women in our country. A non-discrimination principle is necessary, but not sufficient for gender equality.
3. Positive or affirmative action is necessary to create gender equality. This positive action should take the form of a quota that will guarantee women's participation in all sectors, both in the current peace process and in the government of Myanmar generally. Mere encouragement is not sufficient: a guarantee is needed.
4. Gender equality is necessary to create real democracy in our country: without gender equality, there will be no democracy.
5. Gender equality is necessary to create real federalism in our country; without gender equality, federalism will not function well.

INTRODUCTION

The Union Peace Conference-21st Century Panglong (UPC), third session held in July of 2018 adopted four principles on gender equality, which were ratified by the Pyidaungsu Hluttaw in July.¹ This paper will explore the meaning of these principles, analyze their limitations, and suggest alternatives that would better promote gender equality in our country. The WLB congratulates the UPC for taking up the important issue of gender equality: it is crucial to consider gender in order to build a sustainable peace and a true federal democratic union. Global experience has shown that women's participation in the peace process is one of the best ways to assure a more stable peace.² And, of course, UNSCR 1325 requires such participation in all conflict resolution processes.³ Unfortunately, however, the process that gave rise to the recent principles lacked sufficient participation by women.⁴ Perhaps as a result, the principles adopted suffer from certain limitations that make them inadequate as a basis for building gender equality in the future. This paper will discuss the shortcomings of the process and the specific problems with each principle and then will explore some of the more general background issues that should shape the drafting of more effective equality principles.

1. See *14 Points Signed as Part II of Union Accord, The Global New Light of Myanmar* (July 17, 2018).
2. See MARIE O'REILLY ET AL., *REIMAGINING PEACEMAKING: WOMEN'S ROLES IN PEACE PROCESSES* (International Peace Institute, 2015) (relying on statistical data to support the claim that women groups' influence over peace processes increases the chances of reaching a peace deal and of that deal being actually implemented, as well as lasting longer).
3. S.C. Res. 1325 ¶ 1 (Oct. 31, 2000), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>.
4. With a female representation of only seventeen percent, women accounted for 120 out of the 700 delegates at the third UPC, forty of them being lawmakers or government officials, eight being members of the Tatmadaw, twenty-eight representing the political parties, thirty-one coming from the EAOs, and thirteen acting as civilian representatives. See Nyein Nyein, *Women Playing Larger Role at This Year's Peace Conference*, *IRRAWADDY* (Jul. 15, 2018), <https://www.irrawaddy.com/news/burma/women-playing-larger-role-years-peace-conference.html>. Female underrepresentation has been even more severe on the UPDJC, where, at least as of 2017, only eight out of seventy-five members were women. ROSLYN WARREN ET AL., *WOMEN'S PEACEBUILDING STRATEGIES AMIDST CONFLICT: LESSONS FROM MYANMAR AND UKRAINE 20* (Georgetown Institute for Women, Peace and Security, 2018), <https://giwps.georgetown.edu/wp-content/uploads/2017/01/Womens-Peacebuilding-Strategies-Amidst-Conflict-1.pdf>.

PROCESS ISSUES

There were several problems with the process that gave rise to these principles on gender equality. The subject of gender equality was chosen by default: it was not because the participants believed it was inherently important, but because all of the subjects they considered more important were too controversial to be discussed at this point.⁵ In other words, it was precisely because most of the participants did not consider gender equality truly important that they decided to talk about it at the UPC. The WLB wishes to recognize the contribution of the small number of men at the UPC who did care about the gender equality principles and worked to make them more inclusive. It is the real commitment of men like these that is the hope for the future of our country. But the majority of the participants plainly did not consider gender equality a priority. This attitude shaped the conversation and the outcome in significant ways.

First, the lack of real interest in the subject led to the hijacking of the conversation: much of the time was spent arguing about issues other than gender equality (for example, the question whether to make reference to the name of the country as the Republic of the Union of Myanmar).⁶ Because most of the participants did not think of gender equality as important, they tried to use this conversation to promote their views on other issues that they cared about more. As a result, an important opportunity to discuss the different approaches to equality and the different ways of implementing them was lost. As this paper will explain, however, a conversation about the meanings or models of equality is crucial to the success of any effort to promote equality in our country (ethnic equality as well as gender equality).

Second, the fact that most of the participants did not see gender equality as an important issue meant that they were willing to give away even those negotiating points on which they had some success. For example, there was, at one point, agreement to a required quota that would guarantee women's 30% participation, but this was abandoned in the final draft of the principles. The final

5. See Nyein Nyein, *Key Federal Issues to be Left Off the Agenda at Third UPC Session, The Irrawaddy* (June 20, 2018) at <https://www.irrawaddy.com/news/burma/key-federal-issues-to-be-left-off-agenda-at-third-upc-session.html>

6. All descriptions of the events and negotiations at the UPC in this paper are based on the observations of participants who were present at the time. For a public description confirming these observations, see Ye Mon, *Controversy, Progress at the Third Panglong Conference, FRONTIER MYANMAR* (Jul. 25, 2018), <https://frontiermyanmar.net/en/controversy-progress-at-the-third-panglong-conference> (emphasizing the focus on the name of the country as one of the most contentious issues during the conference, and noting as well the agreement to remove the hard requirement of a thirty-percent quota in an effort to appease the military and move the process forward).

language merely “encourages” that level of participation. This loss was incurred in order to close the negotiations; keeping the stronger language would have required holding the issue open for a later UPC.⁷ It is always necessary for negotiators to prioritize and compromise and trades are not inherently bad. But closing an issue with a bad result is not a success for the peace process. And if the negotiators do not care much about a particular issue, then it is likely to be traded away, even sometimes for no real gain. That is what happened here.

Finally, the process was flawed because very few women participated in decision-making roles. Many of the stakeholder groups did bring women experts to the UPC to speak about their group’s proposals. These experts were talented and dedicated women, most of whom argued forcefully for stronger versions of the principles. But, as expert advisors, these women had no role in the final decision-making process. In that process, there were only a small number of women and the important decisions were made by men. As UNSCR 1325 makes clear, it is crucial that there be a significant number of women, with real power over the decisions, in these processes.

To improve the process in the future, the WLB calls on the leaders of the peace process to:



INCLUDE WOMEN

Future peace negotiations should include at least 30% women in positions where they can affect the outcome. Technical advisors are very important and should continue to be used, but it is also necessary to have women among the negotiating teams with a voice in the decisions.



EDUCATE THEMSELVES

The negotiators need to learn more about gender equality so that they will understand its importance as a goal in the peace process. A later section of this memo will address this issue in more detail. The negotiators also need to increase their bargaining skills: they should never give something away to the other parties without getting something they value more in exchange.

This flawed process resulted in problematic principles. The next section of the paper will briefly describe the central problems with each of the principles that were finally approved.

7. *Id.*

ANALYSIS OF THE PRINCIPLES

Principle #1:

In establishing a Union based on democracy and a federal system, no citizen of the Republic of the Union of Myanmar may be discriminated against based on gender difference and policy must be established for equality.

This first principle suffers from a series of problems.

- **Persons, not Citizens:** First, the principle creates a right against gender discrimination only for citizens, not for all persons. In other words, as written, this principle would allow the government to discriminate against women who are non-citizens on the basis of their gender. For example, the government could give non-citizen men a benefit (e.g. offer them identity cards) and refuse to give the same benefit to non-citizen women. There is no question that the government can distinguish citizens from non-citizens for certain purposes (e.g. only citizens can vote.) But this principle says that the government can distinguish female non-citizens from male non-citizens and there is no reason to allow that: the government should have to treat all non-citizens alike, whether they are men or women.
- **Intersectional discrimination:** Second, the principle does not recognize the possibility of intersectional discrimination. Some women are discriminated against, not only because of their gender, but because of the combination of gender and ethnicity or gender and religion. In prohibiting discrimination, it is important to take account of other types of equality (such as ethnic or religious equality) in order to prevent intersectional discrimination.
- **Gender-related discrimination:** Third, the principle does not explicitly include forms of gender-related discrimination, for example, pregnancy and marital status. Women who are discriminated against because they are married women or pregnant women are still being discriminated against because of their gender. This becomes clear if we recognize that a man who is married or is expecting a child would not be discriminated against in the same way. So, a gender equality principle must include explicit protection against gender-related discrimination (such as marriage or pregnancy) as well.
- **Equality of outcome (substantive equality):** Fourth, the first principle does not guarantee equality of outcome, it only protects against discrimination. This is a limited understanding of gender equality. Even non-discriminatory laws and policies can lead to the subordination of women under conditions of structural inequality. In other words, if men and women start out unequal, then applying a

neutral rule to them can sometimes make that inequality even worse. Women need the government to adopt policies that will actually promote greater equality, by addressing the underlying structures that restrict women's opportunities, not just to avoid discrimination.

- **Positive or affirmative action:** Fifth, the principle does not authorize the government to take positive or affirmative action to address underlying inequalities. In order to get equality of outcome, positive

action is necessary. The government needs to do something about the conditions that hold women back. This positive action can take the form of quotas, as will be discussed later. It can also take the form of social programs to give women the support they need to break into non-traditional roles, for example, publicly supported child care to help women work outside the home or micro-finance to help them start businesses. The first principle does not address this issue at all.

Principle #2:

A minimum of 30 percent involvement of women in every sector is to be encouraged.

This principle is extremely weak and is likely to be completely ineffective.

- **Specific sectors:** The language of "every sector" is broad, but much too vague. It is important to specify the most crucial areas in which women need to participate. For example, the principle should say that it applies to the legislative, executive and judicial branches of government and to all levels (union, state or region, and local) and should name specific sectors such as economic, political, and social.
- **Encouraged by whom?:** The principle fails to create a responsibility on any particular

actor (the government, the Hluttaw, or even the Union in general) to carry out the encouragement. It is completely silent about who is supposed to encourage whom and how. It is less an actual government policy and more just the expression of hope for women's participation.

- **Required, not encouraged:** The principle is too weak because it does not require 30% participation, but merely encourages it. We have already seen that weak promises of participation for women do not result in actual participation. The NCA included a 30% goal for women as well,⁸ but there have never been 30% women

8. *Although the NCA explicitly requires only a "reasonable number/ratio" of women in the political dialogue (see The Nationwide Ceasefire Agreement Between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations art. 23, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf), the minutes of the agreement clarify that "a reasonable number/ ratio means that all parties will strive for inclusion of 30 per cent of women representatives in the political dialogue."* CARLA SILBERT, *THE NATIONWIDE CEASEFIRE AGREEMENT IN MYANMAR: A GENDER EQUALITY AND WOMEN'S RIGHTS ANALYSIS 40* (UN Women, 2016), <http://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/02/mn-nca.pdf?la=en&vs=3331>.

participating in the peace process.⁹ The only effective mechanism for women's participation is an enforceable quota that requires a certain percentage of women.

- **Positive action:** As with the first principle, it is necessary for government to take positive action to achieve 30 % participation by women in all sectors. The current principle, however, includes no reference to positive action.

Principle #3:

In establishing a Union based on democracy and federal system, the Republic of the Union of Myanmar is to establish and implement policies that prevent gender-based violence.

Unlike the first two, this principle has some real strengths. But it could be improved as well.

- **Strengths:** This principle is stronger than the first two in several ways.

1. It requires the government to "establish and implement", not just to encourage policies against gender-based violence. This creates a positive obligation on the government to do something concrete.
2. It names the entity responsible for meeting this obligation: the Republic of the Union of Myanmar. It would be better if the principle placed the obligation more clearly on both the Union government and the State and Regional governments.
3. It focuses on prevention and not on punishment, which is a great strength. Punishment does not help women who have already been victimized. Prevention is necessary to actually protect women from violence.
4. Another great strength of the principle is that it creates no exception for conflict zones. Much of the violence against women takes place as part of the on-going conflicts in our country.¹⁰ Any effort to prevent such violence must address these contexts. The principle could be improved by making it explicit that the policies to be adopted and implemented should apply to conflict zones as well.

9. See *Moving from Discrimination to Inclusion: Gender Equality Perspectives on the Political Dialogue Themes, Alliance for Gender Inclusion in the Peace Process (February 2017) Moving from Discrimination to Inclusion*, at https://progressivevoicemyanmar.org/wp-content/uploads/2017/03/agipp-policy_brief2mockup-07-web-1.pdf, at 5 ("7% of invitees to the first UPC being women, women comprised an estimated 13% of the overall participants at the second conference. Ethnic Armed Organisations (EAOs) had the highest rate of women's participation, with 36 women delegates out of a total of 175 (20.5%"); *id.* ("Until October of 2015, the Union Peacemaking Working Committee (UPWC) was largely dominated by men, with only two women out of 52 members participating, and the Union Peacemaking Central Committee was composed of all men.")

10. See *United Nations Security Council, Report of Secretary-General: Conflict Related Sexual Violence (2015)* at ¶¶ 41, 42 (providing a general account of sexual violence throughout conflict zones in Myanmar); Katya Cengel, "Rape is a Weapon in Burma's Kachin State, but the Women of Kachin Are Fighting Back," *Time Magazine* (Feb. 11, 2014) available at <http://time.com/6429/burma-rape-in-kachin/> (last accessed Aug. 30, 2018).

■ Improvements:

1. Make clear that the obligation to establish policies against gender-based violence applies **to all levels of government:** Union, State and Regional, and local.
2. Make clear and explicit that this obligation includes the application of such policies to **conflict zones.**
3. The principle should create a **positive right** to be free from gender-based violence. Casting this as a positive right, and not merely as a policy goal, will create a duty on government to adopt these policies. It will also mean that women can go to court and sue to demand changes in policies that fail to protect them from this violence.

Principle #4:

Increase the capability of women to support gender equality.

This principle is insulting and misleading. It suggests that the cause of women's inequality lies in women's lack of capacity and that it is up to women to fix it. This causal claim is patently untrue, in our country and in the world in general. In the U.S., for example, women are over 50% of college graduates and almost half of the paid workforce, but still less than 25% of the national legislature.¹¹ In this country, women have more advanced degrees than men, but are still only 10% in the Pyidaungsu Hluttaw.¹² The number of women needed to fill half the positions in the legislature and government ministries is small and it is clear that there are enough qualified women in the country to hold those

positions. The problem is not the lack of qualified women. The problem is cultural barriers that keep women out of these positions. And that cultural problem is not women's responsibility to fix: all people, women and men, must be part of the solution in helping to build cultural change. Suggesting that women should do this work alone is simply an example of blaming the victim. There is no way to improve this principle as it presently stands; it should be eliminated.

If the negotiators in the peace process would like a principle that addresses the underlying causes of gender inequality, they should adopt a principle directed toward the cultural

11. *For women as majority of college graduates, United States Census Bureau, "American Fact Finder: Educational Attainment" (2016) available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_5YR_S1501&src=pt. For women as 46% of the labor force, World Bank, Labor Force, female (% of total labor force) (November 2017) available at <https://data.worldbank.org/indicator/SL.TLF.TOTL.FE.ZS?locations=US>. For the percentage of women in Congress, see *Women in the U.S. Congress 2018*, Center for American Women and Politics at <http://www.cawp.rutgers.edu/women-us-congress-2018>*

12. *For rates of women's education in Myanmar, which are higher than men's at both the secondary and tertiary levels, see UNESCO Country Report on Myanmar at <http://uis.unesco.org/en/country/mm>. For rates of women's participation in politics in Myanmar, see Shwe Shwe Sein Latt, Kim N. B. Ninh, Mi Ki Kyaw Myint and Susan Lee, *Women's Political Participation in Myanmar: Experiences of Women Parliamentarians 2011-2016*, Asia Foundation (April 2017), at ii at https://asiafoundation.org/wp-content/uploads/2017/05/Womens-Political-Participation-in-Myanmar-MP-Experiences_report-1.pdf*

barriers, rather than one focused on women's capacity. For example, they could have adopted a **principle calling for public education to increase men and women's understanding of the meaning and importance of gender equality and**

the cultural barriers to its achievement. That sort of principle would direct attention to the actual causes of the problem and would place the responsibility for solutions on both men and women.

UNDERLYING MISUNDERSTANDINGS

The participants in the UPC approved these flawed principles because they did not have a clear understanding of the meaning of gender equality or a strong appreciation for its importance to the peace process. This lack of appreciation arises from three underlying misunderstandings. This section will outline those misunderstandings and offer arguments to correct them.

Misunderstanding #1:

Many of the participants in the peace process care about federalism and democracy, but they do not believe that gender equality is important to the achievement of those goals.

Response #1: Gender equality is necessary to democracy.

1. Democratic legitimacy: Without equal representation for women, the government will (and should) lack democratic legitimacy. Many of the participants in the peace process understand this principle when it applies to ethnic groups: if there were an ethnic group that was 52% of the population and only 10% of the legislature, they would see that as a failure of democracy. A legislature with such dramatic

underrepresentation for such a substantial group cannot possibly accurately represent the people. But that is exactly the situation of women in this country.

2. Better policy choices: Better representation for women will lead to better policy decisions by government. Data from around the world has indicated that women tend to be less corrupt than men and tend to prioritize the needs of children.¹³ Because women often

13. For the relationship between women and corruption, see Frédéric Boehm, *Are Men and Women Equally Corrupt?*, Chr. Michelsen Institute (2015) (synthesizing research on women and corruption, finding that the causal mechanism is not well understood, the correlation between advancing women's equality and reducing corruption is sound) available at <https://www.cmi.no/publications/5851-are-men-and-women-equally-corrupt>. For women prioritizing the needs of children, see, e.g., Swiss et al., *Does Critical Mass Matter? Women's Political Representation and Child Health in Developing Countries*, 91 *SOCIAL FORCES* 531 (2012); Laurenz Ennser-Jedenastik, *How Women's Political Representation Affects Spending on Family Benefits*, 46 *J. SOC. POL'Y* 563 (2017).

occupy different spaces in society, they have different experiences and perspectives.¹⁴ As a result, women have knowledge that is necessary to make good choices about policies. Having women in policy making positions means that decision makers will have the knowledge and priorities necessary to make policy choices that will improve conditions for the country as a whole. And, indeed, global data suggests that as the status of women increases (in terms of economic and political participation), the welfare of the country as a whole increases.¹⁵

3. More effective government:

Women tend to be more cooperative and willing to work together for the benefit of the whole.¹⁶ As a result, they are less likely to get caught up in power struggles over personal status and more likely to look for compromises that allow things to move forward. These characteristics may make women more effective in a political setting where cooperation is required to achieve progress.¹⁷

In short, without gender equality, democracy will not succeed in reaching its goals. The government will lack democratic legitimacy; it will lack the information that it needs to make good policy choices; and it will be likely to be less effective. As a result, if the negotiators in the peace process are seeking to promote democracy, they must promote gender equality, too.

14. For the relationship between women and corruption, see Frédéric Boehm, *Are Men and Women Equally Corrupt?*, Chr. Michelsen Institute (2015) (synthesizing research on women and corruption, finding that the causal mechanism is not well understood, the correlation between advancing women's equality and reducing corruption is sound) available at <https://www.cmi.no/publications/5851-are-men-and-women-equally-corrupt>. For women prioritizing the needs of children, see, e.g., Swiss et al., *Does Critical Mass Matter? Women's Political Representation and Child Health in Developing Countries*, 91 *SOCIAL FORCES* 531 (2012); Laurenz Ennsner-Jedenastik, *How Women's Political Representation Affects Spending on Family Benefits*, 46 *J. SOC. POL'Y* 563 (2017).

15. See, e.g. Carol Bacchi, *Women, Policy and Politics: The Construction of Policy Problems* (1999) (detailing how women's perspectives alter the analysis of policies across a range of policy areas).

16. *World Development Report 2012: Gender Equality and Development Outline* (World Bank) at ii ("Gender equality and women's empowerment help to promote universal primary education (MDG2), reduce under-five mortality (MDG4), improve maternal mortality (MDG5), and reduce the likelihood of contracting HIV/AIDS (MDG6)") at <http://documents.worldbank.org/curated/en/986861468149953206/pdf/576270WDR0SecM1e0only1910BOX353773B.pdf>.

17. See generally Sally Helgesen, *The Female Advantage: Women's Ways of Leadership* (1990)

Response #2: Gender equality is necessary to make federalism work.

1. Accessible government:

Federalism is about moving power closer to the people, but without gender equality, this goal will fail for half the populations of the states. If women cannot participate equally in the state/region and local governments, then moving power down to these levels will not have brought their government closer to them. And that means that federalism will have failed to reach half of the people living in our country.

2. Need for more people in

government: Strengthening state and local governments will create a need for more people to serve in those levels of government. Our country will need women's talents and work even more than it does now. Without gender equality, the country will be robbed of the abilities of half the population at a time when its need for talented and committed public servants is increasing.

- ### 3. Better policy choices:
- Like the Union government, state/region and local governments will need women's knowledge to make good policy. You cannot leave half of the people out of a decision making process and expect to hear everything you need to know in order to make a good decision. Shifting power to these levels of government will help no one if they fail to make good choices. Including women in the decision making process is necessary for them to make good choices.

As a result, without gender equality, federalism will not succeed in reaching its goals. So, if the participants in the peace process want to create a functioning federal system, they must promote greater gender equality as part of it.

Misunderstanding #2:

Many of the participants in the peace process think that equality means not discriminating; they don't understand about the goal of equality of outcome and the role of positive action in achieving it.

Response: Gender equality cannot be achieved simply by preventing discrimination; instead, we must use a substantive approach that seeks equality of outcome and that includes positive government action to achieve it.

Preventing discrimination is an important goal. And in some cases, it may be sufficient to lead to gender equality. For example, the current rules in universities in Myanmar that require women to get a higher score than men in order to study certain subjects are a clear case of gender discrimination.¹⁸ Eliminating those rules would be a sufficient solution. But in many cases, simply using a neutral rule – a rule that does not discriminate against anyone -- will not be enough to end inequality. When people are suffering from social structures that restrict them, they may continue to be disadvantaged even when the rules are neutral. For example, imagine that an employer adopts a rule saying that employees will be fired if they miss work more than twice. This rule is gender neutral, but it will have a gendered impact. Because women are more likely to be responsible for the care of children,

they are more likely to miss work when a child is sick and cannot go to school. This is particularly true if there are few child care options for working women. So, this rule, even though it is neutral, will contribute to women's continuing unequal access to paid work.

The same sort of problem exists for ethnic equality where there is a long history of discrimination against certain groups. For example, if a minority group has had poor schools in the past, then it is likely that members of that group will not score as well on university entrance exams. As a result, a neutral rule requiring a certain score for admission to university will continue to perpetuate the inequality of that group. The point here is that when people suffer from unfair disadvantages to start with, simply banning discrimination will not be enough to create equality. Instead, we need a model of equality that focuses on the unfair background structures and that requires equality of outcome to redress them.¹⁹

This model is sometimes called "substantive equality," because it requires an equal outcome, not just an equal process. And this sort of equality will often require the

18. See Cindy Simon Rosenthal, *Gender Styles in State Legislative Committees: Raising Their Voices in Resolving Conflict*, 21 *Women and Politics* 21 (2000).

19. See Samantha Michaels, *Suu Kyi Criticizes Gender Bias at Burma Universities*, *The Irrawaddy* (Dec. 6, 2013) at <https://www.irrawaddy.com/news/burma/suu-kyi-criticizes-gender-bias-burma-universities.htm> See *Looking Through Gender Lenses: Position Paper on Gender Equality, WLB*, at http://www.womenofburma.org/Statement&Release/genderpaper_english.pdf

government to take positive action to address the underlying unfair structure. This might mean fixing the unequal schools in minority areas, or providing public support for child care. Those are, of course, very expensive programs, so they might need to be long term goals. In the meantime, the government can help create greater equality of outcome by adopting policies that counteract the effect of the underlying unfairness (e.g. a quota for university admission for a certain percentage of students from each area of the country) or requiring rules that have a more equal effect (e.g. an

employment rule that allows all employees to miss work a greater number of times if they are doing it to care for children.) Such policies – including quotas – are not unfair discrimination against the other groups (e.g. ethnic majorities or men). Instead, they are simply a way to even the playing field by eliminating the unfair advantages those groups have enjoyed in the past. This is a substantive, or outcome-oriented, vision of equality. And this model is necessary to achieve ethnic and religious equality in our country, as well as gender equality.

Misunderstanding #3:

Many of the participants don't understand how gender quotas work and therefore believe that they are impractical for many institutions.

Response: Quotas can be designed to work in any type of institution: the crucial thing is to create a quota that fits the particular context. A quota will work if it is designed to fit the specific institution it will serve.

Many people think a quota is reserved seats in a legislature or other body. This is one form of quota, but quotas can take many other forms as well. Any mechanism designed to guarantee a certain level of participation for a particular group is a quota. Depending on the nature of the institution involved (a legislature, an executive body, the judiciary, etc.) different sorts of quotas are possible

and necessary. The most important thing is to choose a form of quota that works well with the rules and purposes of the institution.²⁰

So, for example, in a legislature chosen through a Proportional Representation electoral system based on party lists, the simplest and most effective quota is a requirement for a certain percentage of women's names spaced evenly though each list. In a legislature chosen through a Single Member Plurality electoral system (one seat in each district, the person who gets the most votes wins), there are several different possibilities for quotas. For example, for the Pyithu Hluttaw, it would be possible to:

- (1) create additional reserved seats for

20. For a discussion of how to match quotas to different electoral systems, see Stina Laserud and Rina Taphorn, *Designing for Equality: Best-fit, medium-fit and non-favourable combinations of electoral systems and gender quotas*, International IDEA Publication at <https://www.idea.int/publications/catalogue/designing-equality-best-fit-medium-fit-and-non-favourable-combinations>

women elected separately; or (2) create a system where the seats reserved for women rotate among the electoral districts over three electoral cycles; or (3) create larger districts, each of which has one seat for a man and one for a woman. For the Amyotha Hluttaw, the simplest quota would be to reserve 4 seats for women out of the 12 for each state or region. The military seats raise a complication, but there are several ways to deal with them as well.

The point is that no one form of quota will work for everything, but there is a form of quota that will work for

anything. Countries that have adopted quotas that fit their electoral systems have succeeded in increasing the numbers of women in their legislatures.²¹ The negotiators need to educate themselves about the different forms of quotas and how they work in order to understand their options. They should not reject the possibility of quotas as a whole just because the only quota they know about won't work for a particular institution. The WLB stands ready to help with this process of education and with designing a functional quota for each government institution.

21. For example, after adopting an effective 30% quota, Argentina now has 38.9% women in its lower house. See Quota Project, International IDEA at <https://www.idea.int/data-tools/data/gender-quotas/country-view/51/35>. Rwanda (with a 30% quota for PR lists plus some reserved seats), has 61.3%, see id. at <https://www.idea.int/data-tools/data/gender-quotas/country-view/255/35>. And Pakistan (with a 17% quota) has 20% women, see id. at <https://www.idea.int/data-tools/data/gender-quotas/country-view/241/35>.

Conclusions:

The last UPC took an important step by explicitly addressing gender equality as part of the negotiations in the peace process. But the principles adopted are inadequate. The negotiators should revisit the issue of gender equality at a later session. In order to produce better principles -- principles that will meet the needs of our country for democracy, federalism, and gender equality -- several changes are necessary:

1. Women must be full participants in decision-making roles in the peace process. Their participation is crucial both to the development of adequate gender equality principles and to the success of the process as a whole.
2. The principles on gender equality must adopt a broad, outcome-oriented model of equality, which can address the structural inequalities that affect women in Myanmar. A non-discrimination principle is necessary, but not sufficient for gender equality.
3. The principles must explicitly endorse positive or affirmative action to create gender equality. This positive action should take the form of a required quota that will guarantee women's participation in all sectors, both in the current peace process and in the government of Myanmar generally. Mere encouragement is not sufficient: a guarantee is needed.
4. The leaders of the peace process must educate themselves about the ways in which gender equality is necessary to create real democracy in Myanmar: without gender equality, there will be no democracy. The principles must reflect this understanding.
5. The leaders of the peace process must educate themselves about the ways in which gender equality is necessary to create real federalism in Myanmar; without gender equality, federalism will not function well. The principles must reflect this understanding.



The WLB looks forward to working with all parties to the peace process to improve the principles on gender equality. Together, we can create a strong foundation for the future of Myanmar.





Women's League of Burma

The Women's League of Burma (WLB) is an umbrella organisation comprising 13 women's organisations of different ethnic backgrounds from Burma. WLB was founded on 9th December, 1999. Its mission is to work for women's empowerment and advancement of the status of women, for the increased participation of women in all spheres of society in the democracy movement, and in peace and national reconciliation processes through capacity-building, advocacy, research and documentation.

Aims

- To work for the empowerment and advancement of the status of women
- To work for the rights of women and gender equality
- To work for the elimination of all forms of discrimination and violence against women
- To work for the increased participation of women at every level of decision-making in every sphere of society
- To participate effectively in the movement for peace, democracy and national reconciliation

MEMBERS OF WOMEN'S LEAGUE OF BURMA



မြန်မာ့အမျိုးသမီး သမဂ္ဂ
Burmese Women's Union (BWU)



ကရင်နီအမျိုးသမီး အစည်းအရုံး
Karenni National Women's Organization (KNWO)



ကချင်အမျိုးသမီး အစည်းအရုံး ထိုင်းနိုင်ငံ
Kachin Women's Association Thailand (KWAT)



ကူကီးအမျိုးသမီးဆိုင်ရာ လူ့အခွင့်အရေး အစည်းအရုံး
Kuki Women's Human Rights Organization



ကရင်အမျိုးသမီး အစည်းအရုံး
Karen Women's Organization (KWO)



ကယန်းအမျိုးသမီး အစည်းအရုံး
Kayan Women's Organization (KyWO)



လားဟူအမျိုးသမီး အစည်းအရုံး
Lahu Women's Organization (LWO)



ပအိုဝ်းအမျိုးသမီး သမဂ္ဂ
Pa-O Women's Union (PWU)



ရခိုင်အမျိုးသမီးများ အစည်းအရုံး
Rakhaing Women's Union (RWU)



ရှမ်းအမျိုးသမီးရေးရာ ဆက်သွယ်လှုပ်ရှားဆောင်ရွက်ရေးအသင်း
Shan Women's Action Network (SWAN)



တအာင်းအမျိုးသမီး အဖွဲ့အစည်း
Ta'ang Women's Organization (TWO)



ထားဝယ်အမျိုးသမီး သမဂ္ဂ
Tavoyan Women's Union (TWU)



တရားမျှတရေးအတွက် အမျိုးသမီးအဖွဲ့အစည်း
Women for Justice (WJ)



www.womenofburma.org