



PROCEDURAL AND SUBSTANTIVE SUGGESTIONS

*for the Proposed Protection and Prevention
of Violence Against Women Law*



*Women's League of Burma (WLB)
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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

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I. INTRODUCTION

The proposed Protection and Prevention of Violence Against Women (PoVAW) law offers a real opportunity for Burma/Myanmar to combat widespread injustice against women and uphold the numerous commitments the government has made to enshrine and protect the human rights of women and girls. Unfortunately, the drafting process has lacked transparency and been unreasonably protracted, providing little insight as to the direction of the law's development. As a concerned civil society organization, the Women's League of Burma has prepared this briefing paper on the PoVAW law (a) to provide a primer for substantive discussions around the proposed legislation and (b) to call upon the government to truly prioritize the enactment of an effective and comprehensive law on violence against women.

To this end, the document is organized as follows:

Section II discusses violence against women in Burma/Myanmar and the need for effective and comprehensive legislation.

Section III discusses the obligations of the government both at the international and the domestic level to enact such legislation, as well as the numerous other endorsements it has provided.

Section IV discusses procedural deficiencies in the drafting process.

Section V discusses substantive recommendations to ensure the law's clarity and effectiveness, with a particular focus on requirements under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and United Nations (UN) recommendations on legislation on violence against women.¹ Finally,

Section VI discusses our conclusions, including recommendations on ways to improve the drafting process going forward.

1. *UN Women, Handbook for Legislation on Violence Against Women (2012) [hereinafter the "UN Handbook"]*.

II. THE NEED FOR EFFECTIVE LEGISLATION: COMBATting GENDER-BASED VIOLENCE IN BURMA/MYANMAR

Violence against women is a global epidemic. More than a third of women worldwide have experienced physical and/or sexual violence; as many as 38% of women who are murdered are killed by their intimate partners.² Yet, gender-based violence is grossly underreported, with less than 40% of victims seeking help of any sort, and only about 4% turning to police and health services.³

The situation in Burma/Myanmar is no exception. Historically, gender inequality was not acknowledged in the country as a cause of concern. The idea that women and men enjoy equal opportunities has persisted since colonial times,⁴ and the government has even stated in 2011 that “there has never been any suppression or discrimination . . . based on . . . gender throughout Burma/Myanmar history.”⁵ The reality offers a stark contrast to this official stance. We have found violence against women to be a near universal experience in this country, driven by patriarchal attitude, cultural mores as well as failures in current laws and the legal system.⁶ In regions such as Palaung, as many as 90% of women have indicated that they suffered domestic violence.⁷ Moreover,

situations of armed conflict have added significantly to the difficulties since perpetrators in such contexts have committed violence against women with impunity under Burma/Myanmar’s laws.⁸

To match the scale of this problem, the government must enact and prioritize an effective and comprehensive law on gender-based violence. At a practical level, such steps are necessary to avoid the exorbitant costs that violence against women creates for both the victim and the society at large. For example, research has shown that gender-based violence carries a heavy economic toll, particularly in the form of lost earnings and productivity, and that effective countermeasures can be extremely cost-

2. World Bank, *Brief: Violence Against Women and Girls* (Apr. 4, 2018). <http://www.worldbank.org/en/topic/socialdevelopment/brief/violence-against-women-and-girls>.
3. United Nations Economic and Social Affairs, *The World’s Women 2015: Trends and Statistics*, p.159. https://unstats.un.org/unsd/gender/downloads/WorldsWomen2015_chapter6_t.pdf.
4. Gender Equality Network, *Raising the Curtain: Cultural Norms, Social Practices and Gender Equality in Myanmar* (2015), p.8.
5. Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Third and fourth periodic reports of States parties due in 2008 – Myanmar*, para. 74, U.N. Doc. CRC/C/MMR/3-4 (May 17, 2011).
6. Women’s League of Burma, *Shadow Report on Burma for the 64th Session of CEDAW* (2018), at 2 (hereinafter “WLB Shadow Report”); Gender Equality Network, *Shadow Report on Burma for the 64th Sessions of CEDAW* (2016), p.27 (hereinafter “GEN Shadow Report”).
7. Asia Foundation, *Understanding Violence in Southeast Asia* (2016), p.16. <https://asiafoundation.org/wp-content/uploads/2016/10/UnderstandingViolenceinSEAsia.pdf>.
8. WLB Shadow Report, p.19.

efficient.⁹ While the cost of such violence is estimated at around 1.41% to 6.50% of the national GDP for countries around the world—which for some equal the nation's entire annual budget for health and nutrition—the cost of intervention packages including measures such as protection orders were much less expensive. In Lao PDR, for instance, the estimated costs for implementation were 0.25% of the national GDP; in Timor-Leste, 0.31% of the national GDP, which equaled a mere 1.9% of the combined budgets for all ministries responsible for providing the services.¹⁰

Hence a clearly crafted and effective PoVAW law could yield benefits for Burma/Myanmar including regained market potential as women already make up 41% of the total labor force.¹¹

Furthermore, at a fundamental level, an effective and comprehensive law is also an obligation for the government of Burma/Myanmar by virtue of its numerous commitments to advance women's rights, which is explained in detail in the next section.

III. BURMA/MYANMAR'S INTERNATIONAL AND DOMESTIC OBLIGATIONS

The government has obligations at both the international and the domestic level to combat violence against women. At the international level, Burma/Myanmar has ratified CEDAW, the Convention on the Rights of the Child (CRC), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), under which it has a legal duty to act in accordance with its commitments.¹²

Under CEDAW, Burma/Myanmar has pledged to “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.”¹³ This includes adoption of legislation that protects women's rights and prohibits discrimination; modification or abolition of “existing laws, regulations,

customs, and practices which constitute discrimination against women”; and creation of requirements that public authorities and institutions refrain from “engaging in any act or practice of discrimination against women.”¹⁴ The Committee on the Elimination of Discrimination Against Women (“CEDAW Committee”) has strongly emphasized that

9. *Care International, Counting the Cost: The Price Society Pays for Violence Against Women (2018)*, p.13. https://www.care-international.org/files/files/Counting_the_costofViolence.pdf.

10. *Id.*, p.22.

11. *World Bank, Women, Business and the Law 2018*, p.117. <https://openknowledge.worldbank.org/bitstream/handle/10986/29498/9781464812521.pdf>.

12. *Office of the United Nations High Commissioner for Human Rights, Myanmar: Status of Ratifications*. https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=119&Lang=EN.

13. *Convention on the Elimination of Discrimination Against Women*, art. 2.

14. *Id.*

"[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."¹⁵ As a CEDAW signatory, Burma/Myanmar thus has the obligation to pursue all appropriate means to ensure the "practical realization" of eliminating violence against women.¹⁶

Under CRC, Burma/Myanmar has additional obligations to combat violence against girls. Specifically, this includes the duty to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."¹⁷

Per Article 2(2) of the ICESCR, Burma/Myanmar also has the obligation to guarantee all rights enshrined in the treaty without discrimination of any kind, including on grounds of sex.¹⁸ Rights guaranteed under the ICESCR include the right to "just and favourable conditions of work" that ensures "safe and healthy working conditions,"¹⁹ as well as the right to enjoy "the highest attainable standard of physical and mental health."²⁰ Both of these rights are frequently violated with various forms of gender-based violence ranging from sexual harassment to sexual assault.

The requirement under these human rights treaties demands a PoVAW law that explicitly

"[a]cknowledg[e]s that violence against women is a form of discrimination, a manifestation of historically unequal power relations between men and women, and a violation of women's human rights,"²¹ and comprehensively addresses faults and gaps in the law with a guarantee of resources and timeline that would allow for effective execution in the various social spheres where women and girls are targeted.

In fact, in addition to ratifying these treaties, Burma/Myanmar has repeatedly reaffirmed its commitment to combat violence against women at various international fora. In its 2015 report to the CEDAW Committee, for example, the government repeatedly stressed the seriousness of its commitment. Some specific areas of note included the government's reports as to how government personnel are already going through workshops on CEDAW and other awareness-raising workshops, and how there are plans to provide awareness-raising and capacity-building trainings at a nationwide scale for various stakeholders including judges.²²

Another example is the 2004 Declaration on the Elimination of Violence Against Women of the Association of Southeast Asian Nations (ASEAN), which Burma/Myanmar has signed to eliminate violence against women in the ASEAN region. The declaration specifically outlines four areas of concern: "providing services to fulfill the needs of survivors, formulating and taking appropriate responses to offenders and perpetrators, understanding the nature and causes of

15. *General Recommendations Adopted by the Committee on the Elimination of Discrimination Against Women*, General recommendation No. 19 (1992), para. 1.

16. *Convention on the Elimination of Discrimination Against Women*, art. 2(a).

17. *Convention on the Rights of the Child*, art. 19(1).

18. *International Covenant on Economic, Social and Cultural Rights*, art. 2(2).

19. *Id.*, art. 7.

20. *Id.*, art. 12.

21. *UN Handbook*, 3.1.1.

22. *Myanmar State Report to the Committee on the Elimination of Discrimination Against Women*, paras. 25–29, 44–45. U.N. Doc. CEDAW/C/MMR/4-5 (Mar. 2, 2015) [hereinafter "2015 Myanmar State Report to CEDAW"].

violence against women and changing societal attitudes and behaviour.”²³ To address these areas, each signatory is to “take all necessary measures” to “protect and promote the full enjoyment of all human rights and fundamental freedoms in order to allow women and girls to protect themselves against violence” and to “intensify efforts to develop and/or improve existing legislative, educational, social measures and support services aimed at the prevention of violence against women, including adoption and monitoring the implementation of laws, the dissemination of information, active involvement with community-based players, and the training of legal, judicial, enforcement officers, social workers and health personnel.”²⁴

Furthermore, the Beijing Platform for Action, which calls upon all governments to take strategic action in twelve critical areas of concern, including violence against women.²⁵ Of note, the document explicitly addresses the need to end conflict-related violence, recognizing that “prevention of policies of aggression and ethnic cleansing and the resolution of armed conflict, is crucial for the protection of the human rights of women and girl children, as well as for the elimination of all forms of violence against them and of their use as a weapon of war.”²⁶ The government of Burma/Myanmar has endorsed the Beijing Platform for Action by adopting it as one of the key bases for its 2013-2022 National Strategic Plan for the Advancement of Women (NSPAW).

The final example we note is the Universal Periodic Review, a mechanism that the UN

Human Rights Council uses to conduct periodic reviews on the human rights records of UN member states. In the country’s 2015 review, the government accepted various recommendations from other states, including to expressly criminalize marital rape and domestic violence, to prohibit forced or early marriages, to address impunity for all perpetrators for all forms of violence against women, and to continue implementing NSPAW.²⁷

The government of Burma/Myanmar must demonstrate through action, their commitment to end violence against women, which it has reiterated and rededicated itself to time after time. As such, the PoVAW law in its final form needs to embody the promises that the government has made, both through the human rights conventions and other endorsements described above.

Moreover, the government also has obligations at the domestic level. For one, the Constitution explicitly prohibits sex-based discrimination.²⁸ Although the Constitution does not provide a definition of what constitutes discrimination, CEDAW makes it sufficiently clear that such discrimination includes violence against women.

For another, the government has developed NSPAW, the ten-year strategic plan, with the express objective of empowering and enabling all women in Burma/Myanmar “to fully enjoy their rights with the support of the Government of the Republic of the Union of Myanmar.”²⁹ Again, as stated in the objective, this requires the government to create “[e]

23. *ASEAN Declaration on the Elimination of Violence Against Women*, art. 2.

24. *Id.*, art. 6.

25. *Beijing Platform for Action*, art. 44.

26. *Id.*, art. 12.

27. *United Nations Human Rights Council, Universal Periodic Review: Database of Recommendations*. https://www.upr-info.org/database/index.php?limit=0&f_SUR=119&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

28. *Constitution of Myanmar*, art. 348.

29. *National Strategic Plan for the Advancement of Women (2013-2022)*, para. 15.

nabling systems, structures and practices" to advance women's rights.³⁰ For violence against women, the plan sets out awareness-raising activities and special training for relevant stakeholders at multiple levels to improve responses to and prevention of such violence. NSPAW also calls for access to services for everyone in both urban and rural areas, as well as the creation of "one-stop services at national, regional, and local levels" that provide various services for victims.³¹

Despite promises made in NSPAW, however, the government has not supplied adequate means for its implementation. The CEDAW Committee has specifically noted that the National Committee for Women's Affairs,

which coordinates NSPAW implementation, lacks institutional stature, budgetary and human resources, clear cooperation structure between relevant stakeholders, and effective monitoring and assessment.³²

The PoVAW law offers a crucial opportunity for the Burma/Myanmar government to effectively combat violence against women, address concerns and criticisms directed at current efforts to advance women's rights, and make good on commitments that have been made at the international and the domestic level. As such, utmost care is needed to ensure that the law is effective and comprehensive, which is the focus of our recommendations in the following sections.

IV. PROCEDURAL CRITIQUES

The drafting process for the PoVAW law suffers from several clear deficiencies. First, the process has been unreasonably protracted and stalled. The government pledged to develop a comprehensive law on violence against women back in 2011,³³ and the drafting process began in 2013.³⁴ Yet, five years have passed, and the country still have no official news of the law's developments. This is unacceptable, especially given that the Parliament was able to pass in the same period, with a much shorter turnaround, multiple laws that have been heavily criticized for explicitly detracting from

women's rights.³⁵ The so-called "four laws"—the Population Control Law, the Buddhist Women's Special Marriage Law, the Religious Conversion Law, and the Monogamy Law—were passed within just twenty-seven months,³⁶ while women have waited years for the protections they have been promised under the PoVAW law with no insight into what is happening with the bill. Indeed, the CEDAW Committee has specifically flagged the lack of information regarding the timeline of the PoVAW law's adoption as a cause of concern.³⁷

30. *Id.*

31. *Id.*, para. 10.

32. *Committee on the Elimination of Discrimination Against Women, 2016 Concluding Observations, paras. 20–21, U.N. Doc. CEDAW/C/MMR/CO/4-5 (Jul. 25, 2016) [hereinafter "CEDAW 2016 Concluding Observations"]*.

33. *The Burma-Myanmar UPR Forum, 2nd Cycle Universal Periodic Review Myanmar UPR 2015, p.26. https://www.upr-info.org/sites/default/files/general-document/pdf/upr_advocacy_factsheets_-_myanmar2015.pdf*.

34. *WLB Shadow Report, p.19–20*.

35. *CEDAW 2016 Concluding Observations, para. 46*.

36. *Richard Bennett, Myanmar: Scrap 'race and religion laws' that could fuel discrimination and violence, Amnesty International (Mar. 3, 2015). <https://www.amnesty.org/en/latest/news/2015/03/myanmar-race-and-religion-laws/>*.

37. *CEDAW 2016 Concluding Observations, para. 26(d)*.

Second, the drafting process has been severely lacking in transparency. Although the initial draft of the law was drafted in consultation with a few civil society organizations and technical support from the UN, the draft has reportedly been changed and weakened significantly without further consultation with the civil society. To this day, the different drafts remain confidential, but Human Rights Watch has reported that the new draft no longer meets Burma/ Myanmar's human rights commitments and

omits protection for women subjected to domestic violence and marital rape.³⁸ It appears that the Ministry of Social Welfare has made many of these revisions and deletions in response to opposition from various ministries and government offices. The Office of the Attorney General and the Supreme Court also seem to have opposed important provisions of the bill through much of this process.³⁹ Unfortunately, there is little clarity as the government has kept the process out of public scrutiny.

V. SUBSTANTIVE RECOMMENDATIONS

Although the closed process does not allow for analysis on specific provisions included in the most recent draft bill, there are several critical items that must be included in the PoVAW law for the legislation to be effective and comprehensive. In this section, we provide an overview of these substantive recommendations.

A. Consent-Based Definition of Sexual Violence

The internationally accepted definition of sexual assault uses a consent-based standard, under which assault occurs, irrespective of marital status, whenever sexual activity is non-consensual.⁴⁰ The definition of sexual violence should not focus on penetration, but define it as "any act of a sexual nature committed without consent," where the lack of consent is considered the key element of the crime. The law should define consent as

"unequivocal and voluntary agreement" and shift the focus from whether the victim gave consent to whether the accused had taken reasonable steps to ascertain the victim's consent.⁴¹ The definition also should remove any requirement that (1) the act be committed by force or violence, (2) there be proof of penetration, or (3) there be proof of physical resistance by the victim,⁴² all of which are based on antiquated myths about the circumstances in which sexual violence occur.

38. Human Rights Watch, *A Gentleman's Agreement? Women's Participation in Burma's Peace Negotiations and Political Transition*, p.16 (Aug. 25, 2016).

39. Interview with stakeholder.

40. *UN Handbook*, 3.1.1.

41. *Id.*, 3.4.3.1.

42. *Id.*

Furthermore, the law should also criminalize sexual violence within a relationship (“marital rape”) by stipulating that the provisions apply “irrespective of the nature of the relationship between the perpetrator and the complainant.”⁴³

B. Sexual Violence in Conflict and Military Impunity

The law should also address the issues of sexual violence in conflict zones and military impunity. For victims of sexual violence by members of the security forces, the barriers to judicial recourse are multi-fold: formally, the Constitution grants the military complete control over military justice;⁴⁴ informally, the military and other security forces possess significant clout over the political system,⁴⁵ and has often prevented victims from filing complaints through threats or other forms of suppression.⁴⁶ According to reports from multiple organizations, women in conflict-affected areas, especially ethnic minority women, face a heightened risk becoming victims of sexual violence by the military, and often lack sufficient legal and social support.⁴⁷

The solution to military impunity must be two-fold. First, the law has to explicitly state that its prohibition on sexual violence applies to everyone. Second, the law should explicitly allow military

members, including both active-duty and non-active-duty personnel, to be tried in civilian courts for alleged violations of this law, independent of any military proceedings.⁴⁸

C. Broad Definition of Domestic Violence

International best practices recommend using the broadest possible definitions of domestic violence⁴⁹ and the types of relationships⁵⁰ within which such violence may occur. Any definition of domestic violence must be a broad one, in order to adequately account for all the types of violence that women experience in a domestic environment. In fact, the UN Women’s Handbook for Legislation on Violence Against Women recommends that legislation should “[i]nclude a comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence.”⁵¹ Also, the scope of persons protected by the law should not be limited to married cohabiting heterosexual couples, but apply broadly to include non-marital, same sex, and non-cohabiting relationships, as well as members of the same household.⁵² Also, for this law to be effective, it must be geared towards victims and their advocates, providing them with a definitive list of the remedies and services that are to be afforded to victims.⁵³ For ease of use, this section

43. UN Handbook, 3.4.3.1.

44. Constitution of Myanmar, art. 343(b).

45. GEN Shadow Report, p.1.

46. Aileen Thomson, “Civilian Justice Trumps Military Impunity in Myanmar,” *Open Security* (Dec. 11, 2014). <https://www.opendemocracy.net/opensecurity/aileen-thomson/civilian-justice-trumps-military-impunity-in-myanmar>.

47. E.g., GEN Shadow Report, p.18; Myanmar UPR 2015.

48. UN Women, *The Conflict Did Not Bring Us Flowers: The Need for Comprehensive Reparations for Survivors of Conflict-Related Sexual Violence in Kosovo* (2016), p.19. <http://www.unwomen.org/en/digital-library/publications/2016/8/the-conflict-did-not-bring-us-flowers>.

49. UN Handbook, 2.3.

50. *Id.*, 3.4.2.2

51. *Id.*, 3.4.2.1.

52. *Id.*, 3.4.2.2.

53. *Id.*, 3.6.

should include an explicit guarantee of safe shelter and sufficient and timely financial support to survivors, specifying the responsible agencies and offices.⁵⁴

D. Clear and Effective Provisions on Protections Orders

Protection orders are one of the most powerful legal remedies that address violence against women.⁵⁵ Research indicates that protection orders either stop or significantly reduce violence against women in the vast majority of cases.⁵⁶ To maximize the benefits, however, the government must ensure that procedures for application, issuance, and enforcement are accessible and clearly defined. The law should streamline the application process and authorize relevant officials, including police officers, to issue temporary orders on an ex parte basis without a hearing. The law should also require all applications for temporary protection orders to be resolved within 24 hours upon filing.

Also, the draft law contains a provision calling for an investigation of the complaint by police if there is not sufficient evidence from the applicant or the witnesses for the court to determine if a protection order should be granted.⁵⁷ Such investigations take time, causing significant delays in the provision of protection orders and potentially endangering the life and health of

victims. The law should instead state that that no independent evidence—medical, police, or otherwise—should be required for the issuance of a protection order following live testimony or a sworn statement or affidavit from the complainant.⁵⁸

E. Broad Definition of Sexual Harassment

The law should define sexual harassment as any “unwelcome sexually determined behavior.”⁵⁹ It should hold employers automatically liable for harassment committed by an employee unless the employer can affirmatively demonstrate that it reasonably tried to prevent and promptly correct the harassing behavior and that the employee unreasonably failed to comply with such measures.⁶⁰ The law must also ensure that victims are protected from the threat of retaliation. Reporting or complaining of sexual harassment frequently results in retaliation, such as the firing or shaming of the victim. To address this concern, the law should make clear that reporting sexual harassment is a protected activity, and that any retaliation against the person reporting or testifying is prohibited.⁶¹

However, the definition of sexual harassment should not be limited to workplace settings. According to a 2015 study conducted by Gender Equality Network, almost half of the women

54. *Id.*, 3.10.3

55. *Id.*, 3.10.1

56. Logan et al., “The Economic Costs of Partner Violence and the Cost-Benefit of Civil Protective Orders,” *Journal of Interpersonal Violence* 27(6) (2012), p.1138.

57. *Id.*

58. *UN Handbook*, 3.10.7.

59. *Id.*, 3.4.3.2.

60. E.g., *The U.S. Equal Employment Opportunity Commission, Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* (June 18, 1999). <https://www.eeoc.gov/policy/docs/harassment.html>.

61. *Id.*

surveyed experienced one or more forms of non-partner sexual abuse in public spaces.⁶² Women commonly experience unwanted touching on public buses and groping in crowded areas such as pagoda festivals and other public events. Many describe street harassment as “a normal part of life.”⁶³ Thus, in order to provide meaningful recourse to victims, it is crucial for the law to include specific provisions criminalizing harassment in public places other than the workplace, including streets, pagodas, schools, parks, and on public transportation.

F. Protection from Harmful Traditional Practices Targeting Women

The law should include provisions to protect victims from harmful traditional practices that discriminate and perpetuate inequality. The harmful practices that should be addressed include both obviously regressive customs, such as the “inheritance” of widowed women and the forced marriage of survivors of sexual assault to their assailants,⁶⁴ and more subtle and insidious forms of discrimination relating to the distribution of social power (e.g., requiring a woman who flees her

husband's household due to domestic violence to accept the mediation of a male elder).⁶⁵ A law that is truly committed to uprooting misogynist and patriarchal traditions should explicitly state that, where customary and religious laws conflict with the formal justice system, conflicts should be resolved with “respect for the human rights of the survivor and in accordance with gender equality standards.”⁶⁶ Additionally, the law must make clear that cases or issues decided under customary or religious law should not prevent the involved parties from also bringing the cases before a more formal justice system.⁶⁷

G. Provision of Adequate Protection, Support, and Assistance for Victims

Despite the government's contention that various facilities have been established to receive and review complaints of gender-based violence and to provide social services,⁶⁸ victims still struggle to access medical treatment,⁶⁹ mental health services,⁷⁰ police protection,⁷¹ and legal assistance.⁷² In order to ensure timely, comprehensive, and sufficient services to victims, the law must

62. Gender Equality Network, *Behind the Silence: Violence Against Women and their Resilience Myanmar*, 42 (Feb. 2015). http://www.academia.edu/31889322/Behind_the_Silence_Violence_Against_Women_and_their_Resilience_Myanmar_February_2015_Gender_Equality_Network [hereinafter “GEN, Behind the Silence”].

63. *Id.*

64. CEDAW 2016 Concluding Observations, para. 26.

65. GEN, *Behind the Silence*, p.4.

66. UN Handbook, 3.1.5.

67. *Id.*

68. Summary record of the 1407th meeting of the Committee on the Elimination of Discrimination Against Women, para. 30, U.N. Doc. CEDAW/C/SR.1407 (2015); 2015 Myanmar State Report to CEDAW, paras. 19, 39; Replies of Myanmar to the Committee on the Elimination of Discrimination Against Women, para. 10, U.N. Doc. CEDAW/C/MMR/Q/4-5/Add.1 (May 3, 2016).

69. GEN, *Behind the Silence*, p.4; CEDAW Action in Myanmar, Myanmar CSO Shadow Report on Thematic Issues: Violence against Women to 64th Session of UN CEDAW Committee (2016), p.12. http://www.burmapartnership.org/wp-content/uploads/2016/07/INT_CEDAW_NGO_MMR_24232_E.pdf.

70. GEN, *Behind the Silence*, p.4.

71. *Id.*

72. CEDAW 2016 Concluding Observations, para. 18.

establish an integrated response system by:

- (1) establishing minimum standards of availability of support services, including a national 24-7 hotline, one shelter/refugee center with medical services, safe emergency and long-term accommodation, qualified counseling and legal assistance for every 10,000 inhabitants, one rape crisis center for every 200,000 women, and access to health care, including reproductive health care and human immunodeficiency virus (HIV) prophylaxis;
- (2) guaranteeing equal access to support services by urban and rural populations, populations of all ethnic and religious backgrounds, immigrants, and children of victims;
- (3) clarifying the duties of responsible parties;
- (4) expressly allocating government funding to the establishment and operations of the aforementioned support centers; and
- (5) establishing a timeline for the implementation of the integrated response system.

H. Protection of the Rights of Victims in Criminal Adjudication

The law should afford comprehensive procedural protections for victims of gender-based violence. First, the law should explicitly prohibit mediation in all cases of violence against women before or during formal legal proceedings. Mediation reduces the accountability of the offender and assumes that both parties are equally at fault. It can also be abused when the parties have unequal bargaining power. Second, the law should affirm a commitment to timely

and expedited resolution, as delays in court proceedings can prevent the victim from receiving timely restitution, increase the risk of retaliation, and deter future complaints. The establishment of special courts and special proceedings for cases tried under the law would expedite justice and address the specific needs of victims in such cases. Third, the law should aim to minimize the victim's contact with the respondent, as the presence of the respondent will likely have a serious adverse effect on the victim or a witness. To this end, the law should specify that: (1) the victim or witness should not be called to testify more times than necessary; (2) the victim should not be forced to confront the respondent; and (3) courts should provide police escorts, separate waiting areas, and separate entrances and exits to the victim and witnesses, and should arrange staggered arrival and departure times for those testifying in the case.

I. Prohibition of All Forms of Violence against Women

Prohibitions on all forms of violence against women should be included in the law.⁷³ These must include prohibitions on femicide (the killing of women as a sex-based hate crime) and trafficking. Also, it is important for the legislation to recognize the varying contexts in which such gender-based violence can occur. The UN recommends considering not only violence against women in their families, but also violence against women in their communities, violence against women in conflict situations, and violence against women condoned by the State, including violence in police custody and violence committed by security forces.⁷⁴ A comprehensive legal

73. *UN Handbook*, 3.4.1.

74. *Id.*, 3.4.1.

framework addressing gender-based violence should also include guarantees of various sexual and reproductive rights and services to individuals.⁷⁵

J. Recognition of Special Needs of Vulnerable Populations

Recognizing the concerns about marginalized groups and intersectionality of discrimination,⁷⁶ the law must also take into account the specific needs of gender along with sexual orientation and gender identity, sex workers, minors, ethnic and religious minorities, and women with disabilities.⁷⁷ As this proposal is an effort to address gender-based violence, the inclusion of gender-sensitive language as regards the victim may be appropriate.⁷⁸ One concern, however, is that, because this legislation is gendered, certain vulnerable populations may not be protected by the law. Parliament may want to consider revising the bill to allow for more gender-neutral terms and inclusive language to protect other marginalized groups including but not limited to sexual minorities.

K. Clear Plan for Implementation and Training of Relevant Stakeholders

There should be a clear timeline for the bill's implementation, accompanied by a comprehensive policy framework and a coordinated approach to implementation.⁷⁹ Also, it is essential that the law include

provisions that ensure that the government establishes an accountability framework for those ministries and agencies responsible for implementing the law by forming either a working committee or an independent body whose specific purpose is the monitoring and assessment. This monitoring should be conducted in collaboration with different government departments, non-governmental organizations, intergovernmental organizations, and victims' groups. The law should also impose an obligation on the relevant bodies to prevent the misappropriation of funds and to take disciplinary measures accordingly.

The effectiveness of the law will depend on the ability of relevant stakeholders to understand the legislation and to implement it in an appropriate and gender-sensitive manner,⁸⁰ which will require education and training. The law should specifically require training for all actors in the system, including judges, lawyers, court clerks, victim services advocates, operators for the 24-hour hotline, healthcare professionals, journalists and media personnel, and all relevant committee members at the central and regional levels. Training sessions should be conducted regularly and should include "institutionalized gender-sensitivity training and capacity-building on violence against women for public officials,"⁸¹ which are found to be effective when they are incorporated into official curricula.⁸²

75. *Id.*, 3.6.1.

76. See generally *GEN Shadow Report*.

77. *UN Handbook*, 3.1.5.

78. *Id.*

79. E.g., *id.*, 3.2.1, 3.2.7.

80. *Id.*

81. *Id.*, 3.2.3.

82. *Id.*

VI. CONCLUSION

Despite the prevalence of violence against women in this country and the numerous commitments the government has made to remedy the situation, progress on the PoVAW law has been slow and unsatisfactory. However, we believe the current state of affairs also presents a great opportunity for change—especially through increased collaboration between the government and the civil society, which has much to contribute in making the final legislation as effective as possible.

The government should open up the process to be more transparent and democratic. For one, to address the unreasonable delay that has occurred, it should promptly provide more information regarding the timeframe of the PoVAW law's adoption, and make all efforts to ensure timely and effective implementation once the law is enacted. For another, to ensure that the law does not overlook critical issues and groups, all drafts of the bill—including records of all changes—should be freely accessible to everyone, providing opportunities for notice and comment by the general public. In particular, drafters should allow for detailed input from civil society organizations and maximize on their expertise, with special attention given to groups that focus on the rights of women and gender minorities including Women's League of Burma, Gender Equality Network, Colors Rainbow, and the Women's Organizations Network of Burma/Myanmar.

As an umbrella organization for 13 women's groups of different ethnic, religious, and cultural backgrounds, we the Women's League of Burma have long worked in ethnic areas and areas along Burma/Myanmar's borders and have significant expertise and data on violence against women in this country. We have held numerous awareness-raising workshops and open dialogues about violence against women, which have brought together 3,000 to 4,000 men and women every year to discuss the issue and how to end the cycle of violence in their communities. In many areas, our discussions were the first chance for community members to discuss the issue of domestic violence publicly. We have also offered various practical assistance to victims in areas that experience a severe lack of resources and assistance despite

high levels of violence. Moreover, we have also regularly collected survivor's stories and data on violence against women, and published multiple reports based on careful assessments. We are confident that the extensive information and insight we have gained over the years will help strengthen the bill greatly by providing precious insight into the realities of violence against women in this country and by bringing up the practical challenges and needs faced in different communities.

Our partner organizations listed above also have significant experiences to share on the rights of women and gender minorities. Gender Equality Network is a diverse network of over 130 organizations, which represent the interests of multiple stakeholders including marginalized populations and work together to bring about gender equality in Burma/Myanmar. Since its establishment in 2008, Gender Equality Network has coordinated numerous advocacy campaigns, research, and capacity building projects, drawing from the expertise of its the diverse membership base. Colors Rainbow is Burma/Myanmar's leading lesbian, gay, bisexual, and transgender (LGBT) rights organization, working to end discrimination against LGBT people through raising awareness, education, and legal reform. Colors Rainbow has employed multifaceted programs that consist of trainings, discussions, community events, lobbying, and production of media resources. The Women's Organizations Network of Myanmar is a network of 30 organizations working towards peace, justice, and equality for women and men by engaging with key stakeholders at all levels. The group has organized awareness-raising workshops, community discussions, and advocacy campaigns, operating in a number of conflict and post-conflict areas across Burma/Myanmar.

This is just a glimpse into the many civil society organizations in this country that are able and eager to contribute in the drafting process. Increased collaboration with the civil society will not only help create a PoVAW law that most effectively counters the destructive effects of violence against women and meets Burma/Myanmar's international and domestic obligations to uphold women's rights, but also allow our country to advance democratic principles. The government should recognize and seize this opportunity, and carry Burma/Myanmar forward on a path towards greater equality in the society.

Increased collaboration with the civil society will not only help create a PoVAW law that most effectively counters the destructive effects of violence against women and meets Burma/Myanmar's international and domestic obligations to uphold women's rights, but also allow our country to advance democratic principles.





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