

## Myanmar

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

Marriage in Myanmar is governed by a plurilegal system, including customary, religious and civil laws, such as the Buddhist Women's Special Marriage and Succession Act 1954, the Islamic Marriage Act, the Christian Marriage Act, and the Hindu Customary Law (CEDAW, 2015). The application of these Acts on marriage varies depending on the religious faith of the spouses (CEDAW, 2015).

Customary law, particularly on family issues, varies greatly in the States and regions of the Union of Myanmar and no comprehensive research has been conducted in all (7) states and (7) regions on which regulations of customary law are being applied where (UNICEF, 2014).

In 2015, the government adopted the Myanmar Buddhist Women's Special Marriage Law, which regulates marriage between Buddhist women and non-Buddhist men. Under this law, the husband must respect his wife's practice of Buddhism and allow their children to freely practice the religion (Pyithu Hluttaw, 2015).

Customary law emphasizes consent by both parties as the most important element of valid marriage (CEDAW, 2015). The law recognizes customary marriages, religious marriages and cohabitation – with the intent to marry – as sufficient for couples to legally be considered husband and wife (CEDAW, 2015; Pyithu Hluttaw, 2015).

Forced marriage is prohibited by law and defined as marriage as a result of “seduction, inducement, coercion, undue influence” or marriage where one or both of the parties is of unsound mind (Pyithu Hluttaw, 2015).

In 2015, the government passed the Law on the Practice of Monogamy, which states that marriage between a man and a woman – irrespective of the parties' religion or custom – shall be legitimate only if it is monogamous (Pyithu Hluttaw, 2015b). Under this law, married parties are considered to commit matrimonial crime if they enter into marriage with another person or commit matrimonial crime (Pyithu Hluttaw, 2015b). Prior to the law, polygamy was legal under Myanmar customary law, though generally uncommon. The law was enacted in part to protect women from being co-wives and to prevent crimes arising from the polygamous acts of men.

The practice of dowry or “bride price,” requiring men to offer a cash payment to the parents of his spouse, continues to be practiced in many areas of Myanmar, including the Chin and Rakine states (UNICEF, 2014; Mawi, 2015). Upon divorce, depending on the circumstances, the bride price sometimes has to be paid back to the husband - for instance if the couple has remained childless (Mawi, 2015).

## **b) Child marriage**

Myanmar's customary law sets the legal age of marriage for women at 20 years, with women younger than 20 requiring permission from a parent or guardian (CEDAW, 2015). However, the legal age of marriage for both men and women varies by religious law: in the case of Buddhist marriages, it is 18 for men and 20 for women, while in the case of Christian marriages it is 21 for both men and women (IPU and WHO, 2016). With consent from a parent or guardian, Buddhist boys and girls are allowed to marry as young as age 14 (IPU and WHO, 2016).

The minimum age of marriage for any woman regardless of religion is to be defined and included in the Child Law (1993), which is presently being amended (CEDAW, 2015). There are no reports of legal provisions to support the enforcement of a minimum age for marriage, nor of measures to combat child marriage.

## **c) Household responsibilities**

There are no legal restrictions on the rights of women to be recognized as heads of household and to choose where to live (World Bank, 2016). Although men and women share equal rights to be the legal guardians of their children during marriage, fathers are typically perceived as the head of the household, holding parental authority, and having the duty to provide for their wives and children. Women often bear primary responsibility for unpaid care work in addition to their paid jobs, including child-rearing, and caring for their parents and their husband's parents (CEDAW, 2007; Asian Development Bank, 2016).

## **d) Divorce**

Women and men can divorce with mutual consent, but a husband cannot divorce his wife on his own and without a reason (CEDAW, 2007). In the event of divorce, the mother is given priority for guardianship of young children (CEDAW, 2007). Custody of boys is commonly awarded to the father, while girls and very young children, regardless of sex, are usually placed in their mother's care (UNICEF, 2012).

The distribution of matrimonial property during marriage and following divorce differs according to respective religions, customs and traditions (CEDAW, 2015). In practice, this leaves women vulnerable to losing land and property since religious customary laws frequently provide men with greater economic and decision-making power than women (Asian Development Bank, 2016).

Following the 2015 adoption of the Myanmar Buddhist Women's Special Marriage Law, if a non-Buddhist man chooses to divorce his Buddhist wife, she receives guardianship of all children, is entitled to compensation and retains ownership of any shared property (Pyithu Hluttaw, 2015).

## **e) Inheritance**

Men and women in Myanmar have equal rights to inheritance. Under customary law, a son and a daughter enjoy equal inheritance rights without gender discrimination, and widows and widowers equally stand to inherit the estate of the deceased (CEDAW, 2015).

In practice, however, it is difficult for women to defend their rights to inheritance upon divorce or death of their husband (Asian Development Bank, 2016). Religious customary laws that govern

matters of succession, inheritance, and marriage often do not provide women with equal access to, or control over, land and other forms of property since they assign greater economic and decision-making power to men in domestic affairs (Asian Development Bank, 2016).

The practice of widow inheritance, a custom dictating that a man's widow should be cared for by her brother-in-law, continues to be prevalent (Asian Development Bank, 2016). This custom has been criticised for objectifying women as property to be inherited, rather than beneficiaries capable of inheriting from the estate of their husbands (Asian Development Bank, 2016).

In the Chin and Shan states, inheritance laws benefit men and discriminate against women: upon the death of the father, property is transferred in a patrilineal manner to the oldest son, who succeeds his father as the head of household (UNICEF, 2014). The inheriting son will bear the responsibility to take care of the property of his parents, leaving the daughter outside of the line of succession (UNICEF, 2014).

## **2. Restricted Physical integrity**

### **a) Violence against women**

Myanmar is a member of the ASEAN Commission on Protection and Promotion of the Rights of Women and Children and the ASEAN Committee on Women. The government has also expressed a commitment to improving the situation of women within international policy frameworks such as the Millennium Declaration, the Beijing Declaration and Platform for Action (BPfA), and the International Conference on Population and Development (ICPD) (Myanmar NCWA, 2013).

In 2013, the Government launched the first National Strategic Plan for the Advancement of Women (2012-2021), which includes a commitment to the development of norms and policies to address gender-based and domestic violence (Myanmar NCWA, 2013). However, there is no information yet on concrete steps taken under the plan (GJC, 2015).

### **b) Domestic violence**

There are no specific laws on domestic violence, although Myanmar's Customary Law and the Penal Code allow for prosecuting cases of discrimination and violence against women under the laws that address assault and intentional infliction of injury (GEN, 2013). Since 2012, an Anti-Domestic Violence Law is being drafted by the Ministry of Social Welfare, Relief and Resettlement and in collaboration with the Gender Equality Network (GEN) in accordance with the objectives of the National Strategic Plan for the Advancement of Women (Minoletti, 2014).

### **c) Rape**

Rape is prohibited under the Penal Code and defined as sexual intercourse with a woman either without her consent, against her will, with consent obtained by fear or threat of injury or death, with consent obtained through deception, or if the woman is younger than 14 (Myanmar, 1860, Art. 375 – 376). Spousal rape is not considered a crime unless the wife is under 14 (Myanmar, 1860, Art. 375). The Penal Code currently does not specify civil remedies, rehabilitation measures or reparations for rape survivors, nor does it repeal discriminatory practices such as perpetrators escaping punishment if they marry their victims (Myanmar, 1860; GEN, 2013).

Reports suggest that in practice, definitions of rape vary by jurisdiction, with some focusing on penetration and others defining a wider range of sexual acts as rape (GEN, 2013). If women choose to go through the prosecution process, they must testify against their attackers and their previous conduct and sexual character is admissible as evidence (GJC, 2015).

#### **d) Sexual harassment**

The Penal Code prohibits sexual harassment and imposes fines of up to one year of imprisonment (Myanmar, 1860). Sexual harassment is defined as insulting or outraging a woman's modesty – a definition that has been criticized by NGOs for being imprecise and placing undue blame on the victim (GEN, 2013; GJC, 2015). The Penal Code does not specify provisions that take into account the location of the sexual harassment (Myanmar, 1860). The legal definition of sexual harassment does not include penalties for sexual harassment in the workplace including physical, mental, and verbal forms of harassment (GEN, 2013).

#### **e) Female genital mutilation**

There is no legislation related to female genital mutilation in Myanmar. There are no reports of FGM practiced in the country (U.S. Dept. of State, 2016).

#### **f) Abortion**

Under the Penal Code, abortion on demand is illegal, with any person found to be performing an abortion subject to up to three years of imprisonment (Myanmar, 1960, Art. 312). A woman inducing her own abortion is equally subject to imprisonment. A pregnancy may be legally terminated if it threaten the life of the pregnant woman.

### ***More***

Trafficking within and from Myanmar is reported to be a significant problem. Women and girls, particularly from ethnic minority groups, are trafficked to China and Thailand. Young women and girls are at the highest risk of trafficking for sexual exploitation (US State Department, 2013). In 2005, the government introduced the Anti Trafficking in Persons Law which imposes sentences up to 10 years on those found guilty of trafficking women and/or children (Myanmar, 2005).

## **3. Restricted Access to productive and financial resources**

### **a) Secure access to land and assets**

Women have equal rights as men to own, use and make decisions regarding land (Myanmar, 2016). The National Land Use Policy, enacted by the government in 2016, explicitly lays out equality between men and women regarding land tenure (Myanmar, 2016). The law provides both married and unmarried women with the rights to hold individual or joint landholder rights, make decisions regarding land use, and inherit land rights following the death of a spouse or a divorce (Myanmar, 2016).

Women also have equal rights as men to acquire, administer and dispose of non-land assets, such as property (CEDAW, 2007). In marriage, women jointly own the property accumulated during the

period of marriage together with their spouses. The Married Women's Property Act protects the right of a married woman to contract a policy of insurance to ensure her separate ownership of property as well as the enjoyment of benefits thereof as if she was not married (CEDAW, 2007).

In practice, NGOs report that religious and customary laws frequently do not provide women with equal access to or control over land, and provide men with greater economic and decision-making power in domestic affairs (ADB, 2016). Consequently, the husband is typically the decision-maker regarding management of family property or land and upon divorce women often leave the marital home to their former husbands (ADB, 2016). NGOs also criticize the National Land Use Policy for not containing measures that would facilitate greater equality in land tenure, such as funding for legal literacy campaigns or guaranteed seats for female members on the National Land Use Council and other bodies governing land management (Nawati, 2016).

### **b) Secure access to formal financial resources**

Women and men have equal access to financial services: there is no prohibition by law against women accessing economic resources and they do not require the signature of their husband or male guardian to open a bank account or borrow credit (CEDAW, 2015). The Myanmar National Committee for Women's Affairs (MNCWA) also carries out a number of micro credit schemes to alleviate poverty and advance income generation for women.

However, non-governmental women's rights organisations report that women are financially disadvantaged, as the schemes charge them with interests on the loans at the same rates as the moneylenders, and the individuals running the schemes profit from the interest. Further, women who are unable to pay are threatened with arrest (WBL, 2008; WBL, 2016).

### **c) Workplace rights**

Myanmar has not ratified any International Labour Organization conventions regarding maternity protection, discrimination or equal remuneration.

Myanmar's 2008 Constitution mandates that women and men enjoy equal opportunities in the labour market and prohibits discrimination on the basis of sex, except in the case of positions "suitable for men only" (Myanmar, 2008, Art. 348). These positions include, for instance, work in the mining and petroleum sector. The Constitution and the Minimum Wage Law also mandate equal remuneration for work of equal value (Myanmar, 2008, Art. 349). The law mandates both paid maternity and paternity leave: up to 14 weeks for women, and up to 15 days for men, paid for by the government (Myanmar, 2012).

Complaint mechanism centres are tasked with inspecting and supervising the implementation of the above laws (CEDAW, 2015). The law does not mandate specific penalties for companies that discriminate against women in their hiring process, nor does it require companies to report sex-disaggregated wage information.

NGO reports indicate that in Myanmar society, women face a range of cultural barriers to their participation in the workplace. Gender roles, particularly in sex-segregated communities, prevent women from employment in paid work and restrict women's ability to engage in the public sphere

(ADB, 2016). Women are more likely to be hired for part-time work or in occupations deemed appropriate for them, such as teaching or nursing, often accompanied by lower wages (ADB, 2016; GEN, 2013).

## 4. Restricted Civil liberties

### a) Citizenship rights

While women and men have equal access to acquiring, retaining and conferring their nationality under Myanmar's 2008 Constitution (Art. 345 – 355), women's citizenship rights are subjected to practical and customary constraints (CEDAW, 2015). Women's freedom of movement is disproportionately curtailed by the threat of violence, particularly from the military. Men and women of the Muslim Rohingya ethnicity are not considered to be citizens and face a number of restrictions, many of which affect women, including on the number of children allowed, access to higher education and requirements for marriage permissions (GEN, 2013).

Women are able to apply for government-issued identification cards and to acquire them for their children, but they are automatically listed as "dependent" even if they are employed (WLB, 2016). Identification cards for children must bear the signature of the father, rather than the mother's (WLB, 2016). According to NGO reports, women in rural areas often lack the finances and mobility to acquire identification cards, which negatively impacts their ability to work and to register their children's births (GEN, 2013).

### b) Voting

The Constitution guarantees women's rights to run for public office and to vote (Myanmar, 2008). However, the government has not acted on the CEDAW recommendation to implement measures that ensure that women understand their right to vote and how to properly exercise it.

### c) Political voice

The Constitution guarantees the rights for all citizens to elect and be elected to the *Pyithu Hluttaw*, the *Amyotha Hluttaw*, and the regional or State *Hluttaw*. Women's political participation is restricted, and there is a marked disparity between the number of women and men in government. There is no quota for women at either the national or sub-national levels (WLB, 2016). The Constitution reserves 25% of legislature seats and key ministerial positions for members of the military (Myanmar, 2008).

NGOs report that cultural attitudes and discriminatory practices hinder women's ability to hold formal public office (ADB, 2016; UNICEF, 2014). Women are seen to lack the leadership and necessary skills to hold public office, and are rarely socialised into leadership roles by their families (ADB, 2016). In the Chin state, discriminatory attitudes and unequal social systems are at the root of a lack of female representation in local governance (UNICEF, 2014).

### d) Access to justice

As per the Constitution, every citizen of Myanmar enjoys equal access to justice, including the right to testify in court and to sue (Myanmar, 2008, Art. 21). However, NGO reporting indicates that

procedural rules and legal frameworks insufficiently take account of the particular interests of girls and women. For instance, in sexual assault and rape trials, women may be compelled to testify – including by the accused - and are not granted legal protections from retaliation following the trial (GEN, 2013).

Particularly at the local and village levels, women may not be able to secure adequate justice. In local courts and dispute resolution mechanisms, a female victim's family, rather than the woman herself, typically receives compensation or other forms of settlement (WBL, 2016). In divorce cases, men are generally granted requests for divorce while women may be denied (WBL, 2016).

NGOs report that women's human rights defenders are not protected from threats nor harassment during legal proceeding, and instead are often harassed by policy, military and security forces – particularly when they try to bring cases against the military (WBL, 2016).

Asian Development Bank, UNDP, UNFPA and UN Women (2016), Gender Equality and Women's Rights in Myanmar: A Situation Analysis, Mandaluyong City, Philippines, available at: <https://www.adb.org/sites/default/files/institutional-document/209596/gender-equality-womens-rights-myanmar.pdf>, accessed May 2017.

CEDAW (United Nations Committee on the Elimination of Discrimination against Women) (2007), Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Myanmar, Combined Second and Third Periodic Reports of States Parties, CEDAW/C/MMR/3, CEDAW, New York, NY.

CEDAW (United Nations Committee on the Elimination of Discrimination against Women) (2015), Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Myanmar, Combined fourth and fifth periodic reports of States parties due in 2014, CEDAW/C/MMR/3, CEDAW, New York, NY.

GEN (Gender Equality Network) (2013), Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws, Briefing Paper: Background, Legal Analysis and Case Studies from Thailand, Cambodia and Vietnam, available at: [http://www.burmalibrary.org/docs20/Myanmar\\_Law+CEDAW-en-red.pdf](http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf), accessed May 2017.

GJC (Global Justice Center) (2015), Myanmar's Long Road to Gender Equality, available at: <http://www.globaljusticecenter.net/documents/UPR.2Pager.pdf>, accessed May 2017.

IPU (Inter-Parliamentary Union) and WHO (World Health Organization) (2016), Child, Early and Forced Marriage Legislation in 37 Asia-Pacific Countries, available at: [http://www.who.int/reproductivehealth/publications/gender\\_rights/cefm-asia-pacific/en/](http://www.who.int/reproductivehealth/publications/gender_rights/cefm-asia-pacific/en/), accessed May 2017.

Mawi, Flora Bawi Nei (2015), The Bride Price Negotiation Among Chin Women In Myanmar, University Academic Service Centre (UNISERV), Chiang Mai University, Thailand, available at: [http://www.burmalibrary.org/docs21/Society%20and%20Culture/Flora-Bawi-Nei-Mawi-2015-The\\_Bride\\_Price\\_Negotiation\\_Among\\_Chin\\_Women\\_in\\_Myanmar.pdf](http://www.burmalibrary.org/docs21/Society%20and%20Culture/Flora-Bawi-Nei-Mawi-2015-The_Bride_Price_Negotiation_Among_Chin_Women_in_Myanmar.pdf), accessed June 2017

Minoletti, P. (2014), Women's Participation in the Subnational Governance of Myanmar, Myanmar Development Resource Institute's Centre for Economic and Social Development (MDRI-CESD)/ The Asia Foundation, Subnational Governance in Myanmar Discussion Paper Series, Discussion paper No. 3, June 2014.

Myanmar NCWA (National Committee for Women's Affairs) (2013), National Strategic Plan for the Advancement of Women (2013-2022), available at: <http://myanmar.unfpa.org/en/publications/national-strategic-plan-advancement-women-2013-2022#sthash.1wHg40Cj.dpuf>, accessed May 2017.



Myanmar (The Republic of the Union of Myanmar) (1860), *The Penal Code (INDIA ACT XLV. 1860)*, available at: [http://www.burmalibrary.org/docs6/MYANMAR\\_PENAL\\_CODE-corr.1.pdf](http://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf), accessed May 2017.

Myanmar (The Republic of the Union of Myanmar) (2005), *Anti Trafficking in Persons Law*, available at: <https://www.hsph.harvard.edu/population/trafficking/myanmar.traf.05.pdf>, accessed May 2017.

Myanmar (The Republic of the Union of Myanmar) (2008), *Constitution of the Republic of Myanmar*, available at: [http://www.burmalibrary.org/docs5/Myanmar\\_Constitution-2008-en.pdf](http://www.burmalibrary.org/docs5/Myanmar_Constitution-2008-en.pdf), accessed May 2017.

Myanmar (The Republic of the Union of Myanmar) (2012), *The Social Security Law*, available at: <http://www.icnl.org/research/library/files/Myanmar/socsec.pdf>, accessed May 2017

Myanmar (The Republic of the Union of Myanmar) (2016), *National Land Use Policy*, available at: <http://extwprlegs1.fao.org/docs/pdf/mya152783.pdf>, accessed May 2017

Nawati (2016), *Gendered Aspects of Land Rights in Myanmar*, available at: <https://namati.org/wp-content/uploads/2016/03/Namati-Gender-policy-brief-FINAL-1.pdf>, accessed May 2017

Pyithu Hluttaw (House of Representatives) (2015), *Buddhist Women Special Marriage Law (Pyidaungsu Hluttaw Law No. 50/2015)*, available at: [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=103620&p\\_country=MMR&p\\_coun t=116&p\\_classification=01.03&p\\_classcount=5](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103620&p_country=MMR&p_coun t=116&p_classification=01.03&p_classcount=5), accessed May 2017.

Pyithu Hluttaw (House of Representatives) (2015b), *Law on the Practice of Monogamy (Pyidaungsu Hluttaw Law No. 54/2015)*, available at: [http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=103620&p\\_country=MMR&p\\_coun t=116&p\\_classification=01.03&p\\_classcount=5](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=103620&p_country=MMR&p_coun t=116&p_classification=01.03&p_classcount=5), accessed May 2017.

UNICEF (United Nations Children's Fund) (2012), *Situation Analysis of Children in Myanmar*, available at: [https://www.unicef.org/eapro/Myanmar\\_Situation\\_Analysis.pdf](https://www.unicef.org/eapro/Myanmar_Situation_Analysis.pdf), accessed May 2017.

UNICEF (United Nations Children's Fund) (2014), *Child Focused Local Social Plan: A policy document supporting Chin State's Comprehensive 5-year Development Plan and Annual Planning 2016 – 2021*, available at: [https://www.unicef.org/myanmar/5\\_Chin\\_State\\_Local\\_Social\\_Plan\\_Vol\\_I\\_English.pdf](https://www.unicef.org/myanmar/5_Chin_State_Local_Social_Plan_Vol_I_English.pdf), accessed May 2017.

US Department of State (2013) 'Trafficking in Persons Report 2013' Department of State, Bureau of Democracy, Human Rights and Labor, Washington DC, available at: <http://www.state.gov/documents/organization/210737.pdf>, accessed May 2017.

WLB (Women's League of Burma) (2016), *Shadow Report on Burma for the 64<sup>th</sup> Session of the Committee on the Elimination of Discrimination Against Women*, available at: [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MMR/INT\\_CEDAW\\_NGO\\_MM R\\_24233\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MMR/INT_CEDAW_NGO_MM R_24233_E.pdf), accessed May 2017.