

MYANMAR

1. Discriminatory family code

In 2007, the government reported that marriage was governed under multiple laws including the Myanmar Buddhist Woman Special Marriage and Succession Act 1954, the Islamic Marriage Act, the Christian Marriage Act, and the Hindu Customary Law (the official name of the Special Marriage Act is “Miscellaneous Marriage Act” since 1872¹). It is important to note that the application of these Law Acts on marriage depends on the religion of both spouses.²

In 1999, the government reported that the **legal age of marriage** for women and men was 20 without the consent of parents.³ However, the Buddhist Women Special Marriage and Succession Act provides that a non- Buddhist man who has reached puberty can marry a woman of 14 or older with the consent of her parents.⁴ The law states that all marriages shall be based on mutual consent, and officially recognises cohabitation – with the intent to marry – as sufficient for couples to legally be considered husband and wife.⁵

The Multiple Cluster Indicator Survey data shows that 7% of girls between 15 and 19 years of age were married, divorced or widowed in 2010, compared to 11% in 1991.⁶ In 1973, 22% of girls aged between 15 and 19 were married, divorced or widowed, which indicates that societal acceptance of **early marriage** has declined in recent decades.⁷ The United National Fund for Population Activities (UNFPA) reports that only 1.9% of women had their first birth before age 15 and slightly over 25% had their first birth before age 20.⁸ The average age at first marriage is 21 years.⁹ Marriage age is usually set between 18 and 22 years in the rural areas and 20 to 30 years in urban areas.¹⁰

With regards to **parental authority**, fathers are perceived as the head of the household and have the duty of providing for their wives and children.¹¹ In practice, women bear primary responsibility for child-rearing, as well as caring for her parents and her husband’s parents.¹²

¹ Aye Kyaw (1991), p.60

² Aye Kyaw (1991)

³ CEDAW (1999)

⁴ CEDAW (2007), p.24

⁵ CEDAW (2007), p.16

⁶ UNFPA (2010)

⁷ UN (2012)

⁸ UNFPA (2010), p.43

⁹ UNFPA (1020), p.14

¹⁰ Pistor, N. (2014), Chin State Project.

¹¹ MAAF (n.d.), p.5

¹² CEDAW (2007), p.17

In the event of **divorce**, it is common that custody of boys is awarded to the father and of girls to the mother, but the children may be consulted in the decision-making process. Very young children, regardless of sex, are usually placed in their mother's care.¹³ There is no data available for the consultation of children in the decision-making processes in case of divorce of the parents.

The Government reported in 2007 that according to customary law, men and women are granted equal rights to **inheritance**, and claimed that there is no discrimination between men and women, husbands and wives, widows and widowers, sons and daughters, or grandsons and granddaughters.¹⁴ However, women's NGOs report that discriminatory inheritance practices persist. For example, an example is provided of the Palaung traditions from the rural areas of Shan State that if a man dies, his property goes to his male relatives rather than his wife. In the event of divorce, a woman loses all jointly held property.¹⁵

In the Chin State and Shan State, inheritance laws are clearly benefiting men and discriminating women. The succession right of property in case of the death of the father (who is the head of household) is being transferred in a patrilineal way from the father to his oldest son; and in some areas, such as in the Chin State, to the youngest son for various traditional reasons. Daughters remain entirely outside of the succession line.¹⁶ Notably, the inheriting son will bear the responsibility to take care of the property of his parents and the persons living in the same household and also pay the dowry for his brothers.^{17, 18}

More

The practice of **dowry**, which requires men to propose to the spouse's parents and pay a dowry after agreement, is practiced in many areas in Myanmar. Traditionally, the dowry consists in presenting cattle but is increasingly being replaced by cash payment.¹⁹

Also, "**parcel practice**" was encountered in the Chin State but supposedly also in other States and Regions, especially the border areas. Through this marriage practice, young brides are sent to other countries to marry Chin men living abroad. The purpose of this practice is to improve the income situation of the spouses and to be able to send remittances back home to the remaining relatives. In many cases the spouses do not know each other before the marriage and many marriages are arranged by their relatives. In some cases, mostly of very poor women and households, women were forced to marry Burmese men living abroad and move to other countries.²⁰

¹³ CEDAW (1999), p.21

¹⁴ CEDAW (2007), p.17

¹⁵ Women's League of Burma (2008), p.21

¹⁶ Pa Thang Khan Dal (2013),

¹⁷ Pistor, N. (2014), Chin State Project

¹⁸ Pistor, N. (2013)

¹⁹ Pistor, N. (2014), Chin State Project. p.16ff

²⁰ Pistor, N. (2014) Chin State Project

Polygamy is permitted under Myanmar customary law, but is socially frowned upon and generally unpopular.²¹ The Myanmar Women's Affairs Federation (MWAFF) points out that in polygamous unions, the law stipulates that the second wife must be given an equal social status with the first wife.²² In 2008, the United Nations Committee on Discrimination against Women (CEDAW) expressed concern that polygamy was not prohibited in Myanmar.²³ However, polygamy is generally uncommon, although there might be regional deviations from this norm, especially in areas with high Muslim population, like in Rakhine State.²⁴

Since 2013, a draft law to ban interfaith marriage has sparked controversial discussions in Myanmar. The law was supported of a (solely male) convention of 1,500 senior monks in Yangon, which would require a Buddhist woman to get permission from her family and the local authorities before marrying a man of a different religion.²⁵

Government reports are often not coherent with reports of civil society organizations. Especially, the Shadow report on CEDAW compiled by Women's League of Burma (WLB) provides data in contrast with the information provided by the government's machinery responsible for compiling the official CEDAW reports. It should be mentioned that customary law varies greatly in the States and Regions of the Union of Myanmar and that no research has been conducted in all (7) states and (7) regions on which regulations of customary law are being applied in the field of family law or family issues.²⁶

In terms of **divorce rights** for women, in many rural areas, divorce is possible for both spouses and can be realised simply through negotiation between the spouses. Often a local mediator will be asked to support the negotiations. For the divorce to be effectuated, the woman has to move out of the household, usually back to her parents' house. While marriage procedure will be officially registered and documented with a formal marriage certificate, there is often no formal divorce certificate being issued. Some people face difficulties to re-marry, especially after moving to other countries if they cannot bespeak of a formal divorce certificate. Depending on various circumstances, in some cases the dowry has to be paid back to the husband, e.g. if the couple has remained childless.^{27, 28}

2. Restricted physical integrity

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 violence. However there is no information yet on concrete steps taken under the plan.²⁹

²¹ MWAFF (n.d.)

²² MWAFF (n.d.), p.5

²³ CEDAW (2008), p.13

²⁴ Pistor, N. (2013),

²⁵ Democratic Voice of Burma, (2013)

²⁶ Pistor N. (2014), Chin State Project

²⁷ Pistor, N. (2014), Chin State Project

²⁸ Pistor, N. (2013)

²⁹ The Irrawaddy (2013), 7 October 2013

There are no specific laws prohibiting **domestic violence**, although there are laws related to committing bodily harm against another person.³⁰ There is no prevalence data on spousal violence; however the United Nations Committee on Discrimination against Women (CEDAW) expressed its concern in 2008 over “widespread domestic violence and sexual violence, including rape”.³¹ Since 2012, an Anti-Domestic Violence Law is being drafted by the Ministry of Social Welfare, Relief and Resettlement and in collaboration with GEN (Gender Equality Network); the law is drafted in accordance with the objectives of the National Strategic Plan for the Advancement of Women.³²

One national survey from 2005 found that 69% of those surveyed had experienced one or more incidents of domestic violence by their intimate partners in the past 12 months. Despite these high prevalence rates, the same survey found that 93% of the victims surveyed did not seek any formal actions following the violence.³³

The rates of domestic violence are higher for women and girls from ethnic minorities. One local women’s NGO reported that 9 out of 10 Palaung women, an ethnic group living mainly in rural areas of northern Shan State, have experienced or seen physical violence within families. For 62% of respondents, this occurs on a daily basis. The survey also found that only a quarter of respondents knows about human rights and women’s rights, while three quarters believe domestic violence is “a purely domestic affair which should be solved within the home.”³⁴

In theory **rape** is prohibited under the Penal Code.³⁵ If the victim is under the age of 14, sexual intercourse is considered rape with or without consent. Spousal rape is not a crime unless the wife is under 14.³⁶ However, sexual violence against women is reported to be one of the most pressing human rights violations in Myanmar. Although there is no official prevalence data, non-government organisations report that women suffer high levels of violence committed by family members, the community and particularly by the state.³⁷ Women’s experiences of violence have been exacerbated by armed conflict and displacement.³⁸

Violence at the hands of the State actors is reported to be a chronic problem, particularly in ethnic areas. In 2009, one women’s organisation documented more than 4,000 cases of rape, killings, torture, and forced labour in more than 190 villages by government troops from more than 40 government army battalions. Young women and girls are particularly vulnerable to violence.³⁹ According to UNICEF Myanmar, 150 cases of rape of women and girls were reported in Yangon in 2004-2005, half of whom were younger than 15 years of age.⁴⁰ It is reported that

³⁰ US Department of State

³¹ CEDAW (2008), p.6

³² Minoletti, P. (2014), p.18

³³ Nilar Kyu et al. (2005)

³⁴ Palaung Women’s Organisation (2011)

³⁵ CEDAW (2008a), p.5

³⁶ US State Department (2013)

³⁷ Women of Burma (2008), p.3

³⁸ CEDAW (2008b), p.6

³⁹ Women’s League of Burma (2008), p.75

⁴⁰ Ni Hla, New (2006)

rape is used in a systematic, widespread and structural way as a military strategy to humiliate and intimidate rebels and opposition groups, the majority of which are ethnic minority women.⁴¹ Women's organisations report that women are systematically raped on a daily basis when they are used as forced labour, when taken as guides for the military, when carrying out daily chores such as collecting vegetables for cooking, when looking after cattle in their fields, gathering firewood or bamboo shoots outside their village, or walking to markets and nearby villages. There are a number of reports of women being killed after rape.⁴² Rape reports were published by ethnic women in Burma including the Shan, Mon, Karen, Palaung, and Chin, as well as by Refugees International: they document sexual and other forms of violence against women systematically perpetrated by the junta and even identify perpetrators, give relevant dates and the battalion numbers of the rapists.⁴³ Yet, despite the evidence, the failure of the Government to hold State agents accountable has led to what the UN Special Rapporteur has called a "culture of impunity" for gender-based violence.⁴⁴ Further, the Constitution of Burma enacted in 2008 includes a provision that provides amnesty for all members of the regime for all crimes, which leaves women without proper access to justice in the event they experience violence at the hands of the military regime.⁴⁵ The Women's League of Burma reported in 2014 that the military in Myanmar is still using rape as a weapon of war, with more than 100 women and girls raped by the army since a 2010 election brought about a nominally civilian government that has pursued rapprochement with the West.⁴⁶ A case of inter-racial rape was also one of the sources of the recent conflict in Rakhine state in early 2013.⁴⁷

The Penal Code prohibits **sexual harassment** and imposes fines or up to one year's imprisonment.⁴⁸ However, NGOs report that sexual harassment in public spaces is a common issue; and that feelings of guilt, shame and the fear that people will look down on them and gossip about them prevented reporting.⁴⁹

Female genital mutilation (FGM) is reportedly not practiced in Myanmar. There is no data available and no research being undertaken yet on this issue.

More

Trafficking within and from Myanmar is reported to be a significant problem in Myanmar. 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.⁵⁰ In 2013 the US State Department's Trafficking in Person's Report found that the Government of Burma does not fully comply with the minimum standards for the elimination of trafficking. The report

⁴¹ Women's League of Burma (2008), p.75

⁴² Women's League of Burma (2008), p.75

⁴³ WLB shadow report

⁴⁴ CEDAW (2007), p.50

⁴⁵ Global Justice Centre (2008)

⁴⁶ Women's League of Burma (2014)

⁴⁷ Democratic Voice of Burma (2012)

⁴⁸ US Department of State (2013)

⁴⁹ Women of Burma (2008), p.69

⁵⁰ US State Department (2013b)

claimed that victim protection efforts remained inadequate; and that the lack of specialized services and rehabilitation efforts, as well as weak local-level coordination between police and social welfare officials, undermined its ability to successfully prosecute and punish trafficking offenders.⁵¹

Limitations on women's reproductive rights also infringe upon women's physical integrity in Myanmar. **Abortion** is only legal to save a woman's life.⁵² Any person performing an abortion in other circumstances is subject to up to three years' imprisonment and/or payment of a fine.⁵³ The latest survey by the UNICEF and the Department of Health in 2005 found that Myanmar's maternal mortality ratio is persistently high at 316 per 100,000 live births. Nearly 10% of all maternal deaths are abortion-related.⁵⁴ Another government survey found that the proportion of married women who use modern contraceptive methods has increased from 32% in 2001 to 38% in 2007. In urban areas, 49% of married women use modern contraception, compared to only 34% of rural women. Modern **contraceptives** such as the birth control pill are also more widely available and easier to access in urban areas. The survey also found that 18% of married women had an unmet need for contraception for either preventing or spacing births while a 2010 Survey found that 205% of women had an unmet need for family planning.⁵⁵

3. Son bias

The male-to-female **sex ratio** at birth is 1.06 and in the working age population (15-64) it is 1.04.⁵⁶

There is no evidence to suggest that Myanmar is a country of concern in relation to **missing women**.

More

UNICEF data on primary school enrolments does not indicate son preference in access to primary education, although slightly more males than females attend secondary education.⁵⁷ There is no sex-disaggregated data on child labour, but as noted in the previous section, girls are particularly vulnerable to trafficking for sexual exploitation and sexual violence.

Traditionally, the oldest daughter has the responsibility to stay at home and take care of the household, parents getting older, and younger siblings. Often, the oldest daughter drops out from school at an early age in order to serve the family needs.^{58 59}

⁵¹ US State Department (2013b)

⁵² UNDESA (2013)

⁵³ United Nations Population Division (2013)

⁵⁴ UNFPA (2010), p.3

⁵⁵ UNFPA (2010), p.67; OECD (2014), Gender, Institutions and Development Database, <http://stats.oecd.org>

⁵⁶ CIA (2014)

⁵⁷ UNICEF (n.d.)

⁵⁸ Pistor, N. (2014), Chin State Project

⁵⁹ Pistor, N. (2013)

4. Restricted resources and assets

There is a lack of data on the law regarding women's **access to land**; however land could be considered property and subject to the legal provisions described below. There is also no data on women's land ownership. There are reports that women are victims of confiscation of land by the regime for military bases and income-generation projects.⁶⁰

Confiscations of land or any other kind of land loss commonly affect both spouses as well as any person living in the same household. Although there is no accurate data on female and male ownership, data suggests that there are far more men possessing a formal land title than women.⁶¹

The processes of land registration and land ownership are often long and tedious since in most areas there is no documented cadaster system (which would be the basis for clarifying the status of ownership of any land plot).^{62, 63}

Women also have equal rights as men to acquire, administer and dispose of **non-land assets**, such as property.⁶⁴ In marriage, women jointly own the property accumulated during the period of marriage together with their spouses. The Government reported that the Married Women's Property Act protects the rights of married women contract and insure property.⁶⁵ However, in practice NGOs report that under customary traditions, the husband typically makes decisions about selling family property, and upon divorce women often leave the marital home to their former husbands.⁶⁶

According to Union Law, women and men enjoy equal rights to acquire, administer and sell their property according to the legal framework. The status of marriage automatically results in joint property ownership of such property accumulated during the marriage period of the spouses. The Married Women's Protection Act further protects women's property rights by explicitly stating 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.⁶⁷

The Government reports that women and men have equal **access to financial services**, including legal rights to apply for bank loans and engage in other types of contracts.⁶⁸ It also reports that there are a number of micro credit schemes: for example, the 2006 scheme specifically targeted women by providing temporary loans of MMK 72.4 million (USD 11 million) to a total of 8,608 women.⁶⁹ However, non-government women's organisations report that women have complained that they are financially exploited, as the schemes charge women interest on the

⁶⁰ United Nations Human Rights Council (2010a), para 65

⁶¹ Pistor, N. (2014), Chin State Project

⁶² Pistor, N. (2014), Chin State Project

⁶³ Pistor, N. (2013),

⁶⁴ CEDAW (1999), p.21

⁶⁵ CEDAW (1999), p.19

⁶⁶ Women of Burma (2008), p.21

⁶⁷ CEDAW (1999), p. 19.

⁶⁸ CEDAW (1999), p.19

⁶⁹ CEDAW (2007), p.44

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.⁷⁰ There is no data on women's access to institutional loans or bank accounts.

5. Restricted civil liberties

Civil liberties are quite restricted for all citizens in Myanmar.⁷¹ Freedom of movement and **access to public space** for women is very limited. As noted in the physical integrity section, women's freedom of movement is disproportionately curtailed by the threat of violence, particularly from the military. The Government also hinders or restricts international travel for young women under the age of 25, partly to address the problem of human trafficking.⁷² According to the US Department of State, the government also controls the movement of all Muslim *Rohingyas* (men and women), who are not considered to be citizens.⁷³

Women's movements and organisations are severely restricted in Myanmar. In 2008, the United Nations Committee on Discrimination against Women (CEDAW) expressed concern that women's civil society organisations experience constraints in being able to advocate or openly comment on government policy. The registration process can be lengthy and difficult to follow, in particular for smaller NGOs. In addition, 4-monthly reports have to be submitted to the Government by every registered organization as officials might randomly visit and check on the organization.⁷⁴

Additionally, women's rights defenders have faced serious reprisals for their actions, and NGOs have documented numerous cases of activists that have been arrested following their attempts to seek justice for sexual violence committed by State actors.⁷⁵ However, in 2013 a new Law on Civil Society Organizations was enacted.⁷⁶ Since then, NGOs and CSOs have the possibility to be formally registered. Many NGOs and especially women's NGOs and CSOs are currently in the process of transferring back from their exile to Myanmar.

Women's **political participation** is restricted. The Constitution reserves 25% of seats in the legislature as well as key ministerial positions to the all-male military.⁷⁷ Women remain significantly under-represented in political life as there is no **quota** for women at the national or sub-national levels. Women hold 6% of parliamentary seats.⁷⁸

The prominent female pro-democracy leader, Aung San Suu Kyi, had various restrictions placed on her activities since the late 1980s. She was released in 2010 following the elections.⁷⁹ Aung San Suu Kyi is currently the leader of the opposition movement and is striving to run for

⁷⁰ Women's League of Burma (2008), pp.25-26

⁷¹ US Department of State (2013)

⁷² US Department of State (2013)

⁷³ US Department of State (2013)

⁷⁴ Local Resource Centre (2012)

⁷⁵ Women's League of Burma (2008), p.73

⁷⁶ The Irrawaddy (2013), 21 October 2013

⁷⁷ Global Justice Centre (2012), p.1

⁷⁸ OECD (2014), *Gender, Institutions and Development Database*, <http://stats.oecd.org>

⁷⁹ BBC (n.d)

candidate for the upcoming general elections in 2015. In order for her to be elected president of the Union of Myanmar, Article 59 (f) of the Constitution of 2008 would have to be amended as the provision prohibits any person who “he himself, one of the parents, the spouse, one of the legitimate children or their spouses [...] owe(s) allegiance to a foreign power [...]” from becoming president. Since Aung San Suu Kyi’s legitimate children have British citizenship, this provision would ban her from becoming president. A constitutional amendment or the drafting of a new constitution are currently being discussed in Parliament.^{80, 81}

More

In terms of workplace rights, the Government reports that women and men have equal opportunities without discrimination in employment under the Law Defining the Fundamental Rights and Responsibilities of Workers. This includes the right to equal pay between women and men. The Government reports that women have paid **maternity** benefits under the Leaves and Holidays Act and the Social Security Act, of either three months starting from the first day of the leave or six weeks from the date of delivery.⁸² However there is no evidence of the successful implementation of these laws.

⁸⁰ Government of Myanmar (2008)

⁸¹ James, H.(2005)

⁸² CEDAW (2006), p.15

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