

CONTESTED SPACES DURING TRANSITION: REGIME CHANGE IN MYANMAR AND ITS IMPLICATIONS FOR WOMEN

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ABSTRACT

This article examines recent political and legal developments in Myanmar to promote and protect Buddhism and their implications for women. Myanmar is currently undergoing political regime change. While periods of transition often present an opportunity to contest stereotypical gender roles and discriminatory cultural practices, a rise in Buddhist ethno-nationalism risks undermining women's "spaces" in society. Drawing on qualitative research interviews with members of civil society and other actors in Yangon, this article discusses the accelerated development of laws on the protection of race and religion alongside the parallel development of Myanmar's first law specifically addressing violence against women, to explore how women's legal and social status is susceptible to contestation during Myanmar's current political transition.

TABLE OF CONTENTS

INTRODUCTION.....	76
I. WOMEN'S SOCIAL AND LEGAL STATUS: THE CEDAW AND MYANMAR	
LAWS	80
II. INSTITUTIONAL MECHANISMS FOR THE ADVANCEMENT OF WOMEN.....	88
III. REGIME CHANGE IN MYANMAR AND ITS IMPLICATIONS FOR WOMEN	90
A. The Political Shift.....	91
B. Legal and Political Reforms	92
C. The Call for Greater Participation of Women in Decision-Making Roles.....	94
IV. RISING BUDDHIST ETHNO-NATIONALISM: THE ENACTMENT OF THE PROTECTION OF RACE AND RELIGION LAWS.....	95
A. The Population Control Law	96
B. The Buddhist Women's Special Marriage Law	97
C. The Monogamy Law	100
D. The Religious Conversion Law	100
E. Social Consequences of the Protection of Race and Religion	

Laws	101
V. DEVELOPING THE NATIONAL LAW ON PREVENTION OF VIOLENCE AGAINST WOMEN IN MYANMAR	102
VI. CONTESTED “SPACES” DURING TRANSITION—WOMEN AND REGIME CHANGE	105
CONCLUSION	107

INTRODUCTION

After years of authoritarian rule under the military (“Tatmadaw”),¹ Myanmar’s regime has been transitioning² to a quasi-civilian government, with significant legal, political, economic, and social reforms taking place in the country since 2011.³ Following more than two years of peace negotiations with fifteen armed ethnic groups, on October 15, 2015 the Myanmar government signed a National Ceasefire Agreement with eight rebel armies to end more than sixty-five years of civil war and the United Nations recognized the Agreement as a “milestone.”⁴ Yet, despite providing a framework for negotiations with ethnic groups, the deal is a misnomer.⁵ Subsequently, on November 8, 2015, Myanmar held its first national elections in more than twenty years.⁶ The National League

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¹ Kyaw Yin Hlaing, *Setting the Rules for Survival: Why the Burmese Military Regime Survives in an Age of Democratization*, 22 PAC. REV. 271, 271-87 (2009).

² The term “transitional justice” was first introduced in the early nineties by Neil Kritz to characterize accountability mechanisms for human rights atrocities. Christine Bell, *Transitional Justice, Interdisciplinary and the State of the “Field” or “Non-Field,”* 3 INT’L J. TRANSITIONAL JUST. 5, 7-8 (2009). The term traditionally covered such mechanisms as prosecutions, truth and reconciliation commissions, and institutional reforms and reparations. *Id.* Recently the use of the term has expanded to include regime change and state building. *Id.*

³ Morten B. Pedersen, *How to Promote Human Rights in the World’s Most Repressive States: Lessons from Myanmar*, 67 AUSTL. J. INT’L AFF. 190, 190-91 (2013).

⁴ See Aung Hla Tun, *Myanmar Govt, Rebels Sign Draft Nationwide Ceasefire Accord*, REUTERS (Mar. 31, 2015), <http://www.reuters.com/article/2015/03/31/us-myanmar-peace-iduskbn0mr09f20150331>.

⁵ *Id.*; Wai Moe & Thomas Fuller, *Myanmar and 8 Ethnic Groups Sign Cease-Fire, but Doubts Remain*, N.Y. TIMES (Oct. 15, 2015), http://www.nytimes.com/2015/10/16/world/asia/myanmar-ceasefire-armed-ethnic-groups.html?_r=0.

⁶ See Hnin Yadana Zaw & Aung Hla Tun, *Voting Smooth in One-Time Pariah Myanmar’s First*

for Democracy (“NLD”), Myanmar’s main opposition party, won a landmark victory against the ruling pro-military Union Solidarity and Development Party (“USDP”).⁷ The NLD-dominated Parliament will appoint the President after the new parliamentary members take their seats in February of 2016.⁸ Although the international community has largely perceived Myanmar’s transition into a democratic system⁹ to be a positive change,¹⁰ the legacy of more than half a century of military dictatorship weighs heavily on the country.

The intense militarization of Myanmar, particularly since the early twentieth century, has created significant structural inequality within society. State institutions, laws, and public policies contain a rooted bias, which has advantaged those in power, and led to significant disadvantages for the majority of the population, thus leading to poverty and gender-based violence.¹¹ For a long time women have been marginalized and excluded from positions of power, or influence, under the successive political regimes.¹² For example, the State Law and Order Restoration Council (renamed the State Peace and Development Council (“SPDC”) in 1997), which usurped power in Myanmar in 1988, and the military itself were (and continue to be) largely comprised of men.¹³ Under the SPDC’s rule, which cracked down on any anti-regime dissent, the NLD opposition party was routinely harassed, and over the course of two decades, its leader, Aung San Suu Kyi,¹⁴ was repeatedly placed under house arrest.¹⁵

Free Election in 25 Years, CNBC (Nov. 8, 2015, 4:44 AM), <http://www.cnbc.com/2015/11/08/myanmar-votes-in-its-first-free-election-in-25-years.html>.

⁷ Oliver Holmes, *Final Myanmar Results Show Aung San Suu Kyi’s Party Won 77% of Seats*, GUARDIAN (Nov. 23, 2015, 1:55 AM), <http://www.theguardian.com/world/2015/nov/23/final-myanmar-results-show-aung-san-suu-kyis-party-won-77-of-seats>.

⁸ *Id.*

⁹ Although referred to as a democratic opening, it is unclear whether Myanmar is transitioning to a liberal democracy. Given the continuing prominence of the military in defense, political, and security affairs, observers question the nature of the regime change. See, e.g., Roger Lee Huang, *Re-Thinking Myanmar’s Political Regime: Military Rule in Myanmar and Implications for Current Reforms*, 19 CONTEMP. POL. 247, 252-57 (2013); MONIQUE SKIDMORE & TREVOR WILSON, INTERPRETING THE TRANSITION IN MYANMAR, MYANMAR’S TRANSITION: OPENINGS, OBSTACLES, AND OPPORTUNITIES 3-20, 10 (Nick Cheesman et al. eds., 2012); Mike Farmaner, *Think Burma Is a Democracy Now? Think Again*, HUFFINGTON POST (Nov. 9, 2015, 9:38 AM), http://www.huffingtonpost.com/mark-farmaner/burma-election-democracy_b_8505384.html.

¹⁰ See, e.g., Lee Jones, *The Political Economy of Myanmar’s Transition*, 44 J. CONTEMP. ASIA 144, 144-45 (2014).

¹¹ Ma Khin Mar Mar Kyi, *Engendering Development in Myanmar: Women’s Struggle for San, Si, Sa*, in DEBATING DEMOCRATIZATION IN MYANMAR 306-07 (Nick Cheesman et al. eds., 2014).

¹² *Id.* at 309.

¹³ *Id.*; see also Seng Maw Lahpai, *State Terrorism and International Compliance: The Kachin Armed Struggle for Political Self-Determination*, in DEBATING DEMOCRATIZATION IN MYANMAR 285 (Nick Cheesman et al. eds., 2014).

¹⁴ Aung San Suu Kyi is the leader of the NLD. See, *Profile: Aung San Suu Kyi*, BBC NEWS (Nov. 10, 2014), <http://www.bbc.com/news/world-asia-pacific-11685977>. Between 1989 and 2010, Aung San Suu Kyi was repeatedly placed under house arrest. *Id.* Internationally, she became a highly visible symbol of “peaceful resistance in the face of oppression” inflicted on the people of Myanmar by the Tatmadaw, the Burmese military. *Id.* After Myanmar became a democratic country, she was elected to Parliament in 2010. *Id.*

¹⁵ KYAW YIN HLAING, POLITICAL IMPASSE IN MYANMAR 5-6 (2011),

While Myanmar draws increased international attention, particularly with regard to its political regime change,¹⁶ the implications of Myanmar's transition for women's legal and social status have been largely overlooked.¹⁷ It is true that periods of "transition" potentially "open up" political and social "spaces" for marginalized groups in society, including women, to negotiate mainstream perceptions of gender roles, challenge gender stereotypes, and contest discriminatory cultural practices.¹⁸ "Spaces" also "open up" for women's organizing and activism.¹⁹ Still, there is a risk that each stage of transition may reinforce existing patriarchal attitudes and consequently lead to the exclusion of women from the decision-making processes, particularly when it comes to law-making, political processes, or peace negotiations.²⁰ Recent legal developments in Myanmar, principally the enactment of a series of laws to protect race and religion, prove that transitional periods carry the risk of negative impact on women's gender identity, as well as their political and social "spaces" within society.

While this article considers the social and legal status of Burmese women in general, it is important to note that Myanmar is ethnically and culturally diverse, and women should not be viewed as a monolithic group.²¹ The many ethnic groups in Myanmar are the majority group of Burman and the minority groups of Chin, Kachin, Karen, Kayah, Mon, Rakhine and Shan.²² Each of these ethnic groups has its own distinct traditions, religious practices, and social customs.²³

http://www.cityu.edu.hk/searc/Resources/Paper/WP111_11_Kyaw.pdf

¹⁶ See, e.g., Huang, *supra* note 9.

¹⁷ Natalia Szablewska and Clara Bradley examine human trafficking in Cambodia and Myanmar to explore how transitional justice mechanisms can potentially help to empower women if they engage directly with counter-trafficking initiatives. See Natalia Szablewska & Clara Bradley, *Social Justice Within Transitional Justice: The Case of Human Trafficking and Sex-Work in Cambodia and Myanmar*, in CURRENT ISSUES IN TRANSITIONAL JUSTICE 261, 263-81 (Natalia Szablewska & Sascha-Dominik Bachmann eds., 2015); see also TRANSNAT'L INST., LINKING WOMEN AND LAND IN MYANMAR: RECOGNISING GENDER IN THE NATIONAL LAND USE POLICY 8-22 (2015), https://www.tni.org/files/download/tni-nlup-gender_0.pdf; Ma Khin Mar Mar Kyi, *supra* note 11; PAUL MINOLETTI, WOMEN'S PARTICIPATION IN THE SUBNATIONAL GOVERNANCE OF MYANMAR 8 (2014), <https://asiafoundation.org/resources/pdfs/WomensParticipationintheSubnationalGovernanceofMyanmar.pdf>.

¹⁸ See, e.g., FIONNUALA NÍ AOLÁIN, ON THE FRONTLINES: GENDER WAR AND THE POST-CONFLICT PROCESS 27 (Fionnuala Ní Aoláin et al. eds., 2011).

¹⁹ See, e.g., NADJE AL-ALI & NICOLA PRATT, *Women's Organising and the Conflict in Iraq Since 2003*, 88 FEMINIST REV. 74, 74-75 (2008).

²⁰ FIONNUALA NÍ AOLÁIN, *Women, Security and the Patriarchy of International Transitional Justice*, 31 HUM. RTS. Q. 1055, 1057 (2009).

²¹ This article also does not detail the experiences of sexual orientation and gender identity ("SOGI") minority groups in Myanmar. See generally Lynette J. Chua & David Gilbert, *Sexual Orientation and Gender Identity Minorities in Transition: LGBT Rights and Activism in Myanmar*, 37 HUM. RTS. Q. 1 (2015) (exploring the social and legal landscape, as well as the implications of transition on SOGI minorities).

²² MARTIN SMITH & ANNIE ALLSEBROOK, ETHNIC GROUPS IN BURMA: DEVELOPMENT, DEMOCRACY AND HUMAN RIGHTS 34-65 (1994).

²³ *Id.*

This article is grounded in qualitative research interviews conducted by the author²⁴ with civil society²⁵ actors and policymakers in Yangon, Myanmar, in 2014 and 2015. Part I first examines the context of women's legal and social status in Myanmar and the Myanmar government's obligations under the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")²⁶. Related to this analysis, Part II briefly considers the role of two institutional mechanisms for the advancement of women in Myanmar: the Myanmar National Committee for Women's Affairs and the Myanmar Women's Affairs Federation.

Part III provides an overview of the nature of the regime change in Myanmar and its implications for women. This part will also lay out significant political and legal reforms initiated since the beginning of the transition. Part IV examines the recent adoption of a series of controversial laws—publicly gazetted in 2014—to protect the race and religion. Lobbied for by the Organization for the Protection of Race and Religion ("Ma-Ba-Tha"),²⁷ a Buddhist nationalist movement, the Buddhist Women's Special Marriage Law,²⁸ the Religious Conversion Law,²⁹ the Monogamy Law,³⁰ and the Population Control Law,³¹ restrict women's freedom of choice in matters relating to marriage and family planning, as well as their sexual and reproductive health.³² This series of laws will be examined to consider how

²⁴ This article draws on in-depth, semi-structured, qualitative interviews undertaken by the author with civil society actors and policymakers in Yangon, Myanmar, in December 2014 and April 2015. To protect the individual interviewees their identity is kept confidential. In addition, the author collated primary materials from civil society groups, which help to provide context on women's social and legal status and the implications of Myanmar's transition. The interviews were conducted in both English and in Burmese, with the assistance of an interpreter. The transcripts of the interviews are on file with the author.

²⁵ For the purposes of this article, "civil society" or "civil society organizations" ("CSOs") refer to all associational life, including both formal and informal non-state groups, such as human rights defenders, and local and international non-governmental organizations ("NGOs"). See Francis Fukuyama, *Social Capital, Civil Society and Development*, 22 *THIRD WORLD Q.* 7, 12 (2001) (discussing "civil society").

²⁶ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]. The CEDAW, an international human rights treaty, legally binds all those States parties who sign and ratify the treaty to eliminate all forms of discrimination against women. *Id.* art. 27. The CEDAW was adopted following the United Nations ("U.N.") Decade for Women from 1970-1980, during which a series of world conferences were held on women's rights.

²⁷ See MATTHEW J. WALTON & SUSAN HAYWARD, *CONTESTING BUDDHIST NARRATIVES: DEMOCRATIZATION, NATIONALISM AND COMMUNAL VIOLENCE IN MYANMAR* 1-51 (2014), <http://www.eastwestcenter.org/sites/default/files/private/ps071.pdf> (further discussing Ma-Ba-Tha and the rise of Buddhist ethno-nationalism within Myanmar).

²⁸ Buddhist Women's Special Marriage Law, Pyidaungsu Hluttaw 1376 (2014), *MYANMA ALINN DAILY*, Dec. 3, 2014.

²⁹ Religious Conversion Law, Pyidaungsu Hluttaw 1376 (2014), *MYANMA ALINN DAILY*, Dec. 1, 2014.

³⁰ Monogamy Law, Pyidaungsu Hluttaw 1376 (2014), *MYANMA ALINN DAILY*, Dec. 4, 2014.

³¹ Population Control Healthcare Law (Draft), Pyidaungsu Hluttaw 1376 (2014), *MYANMA ALINN DAILY*, Dec. 2, 2014 (passed by the Myanmar Parliament in April 2015).

³² More than one hundred women groups and CSOs submitted their concerns over the bills to the Myanmar government and released a statement internationally. Zu Zu, *Upper House Passes Controversial "Population Control" Bill*, *IRRAWADDY* (Feb. 20, 2015), <http://www.irrawaddy.org/human-rights/upper-house-passes-controversial-population-control-bill.html>. Specifically, the statement addresses the incompatibility of laws on the protection of race and religion with Myanmar's obligations

women's "spaces" in society, and their legal and social status, are susceptible to manipulation by nationalist forces, more specifically, Buddhist ethno-nationalism,³³ during the current period of transition in Myanmar.

In Part V, the article will discuss the development of Myanmar's first law to address violence against women, and provide an overview of how women's organizations in Myanmar are trying to take advantage of the current transitional period to bring about significant changes in the law. If Myanmar's first anti-violence against women law is enacted, the inclusion of definitions of direct and indirect discrimination could be used to support women's empowerment and their political and social advancement by advocating a deeper understanding and enforcement of gender equality within Myanmar society. In view of these legal developments, Part VI describes the impact of the regime change on the legal and social status of women in Myanmar. The article concludes that without greater recognition of women's political and social roles in society, there is a risk that women will be left behind in Myanmar's transition.

I. WOMEN'S SOCIAL AND LEGAL STATUS: THE CEDAW AND MYANMAR LAWS

Myanmar's legal system is a complex hybrid of multiple sources of law, including common law—a legacy of British colonial rule, and customary law—customary practices that are recognized as legal in nature. Laws of Buddhism, as the religion practiced by the majority of the population in Myanmar, are also codified and form customary law ("Dhammathats").³⁴ A number of laws of British India extended to Myanmar in the nineteenth century remains on the books despite the fact that some of these laws are outdated. For example, the Penal Code of 1861³⁵ includes archaic and discriminatory provisions³⁶ that, even today, have direct implications for women's rights.³⁷ Additionally, minority ethnic groups

under international law, explaining that "[c]lements of the proposed law place restrictions upon women's equality and freedom do not meet international human rights standards, and do not comply with the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) that the Government acceded to in 1997." *Statement of Women's Groups and CSOs on Preparation of Draft Interfaith Marriage Law*, BURMA CAMPAIGN UK para. 3 (May 6, 2014), <http://burmacampaign.org.uk/statement-of-womens-groups-and-csos-on-preparation-of-draft-interfaith-marriage-law/>. Further, the statement suggests that the laws discriminate against all women, "[t]he proposed Interfaith Marriage Act not only discriminates against Myanmar Buddhist women, women of other faiths residing in Myanmar, and indigenous people, but also places the responsibility of preserving race, religion, culture and traditions solely on women." *Id.* para. 9.

³³ *Id.*

³⁴ GENDER EQUAL. NETWORK, MYANMAR LAWS AND CEDAW: THE CASE FOR ANTI-VIOLENCE AGAINST WOMEN LAWS 5 (2013), http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf.

³⁵ Myanmar Penal Code of 1860, India Act XLV (entered into force May 1, 1861) [hereinafter Penal Code (Myan.) (1861)].

³⁶ The Penal Code includes a phrase such as "carnal intercourse against the order of nature," without further explanation as to what behaviors would fall within the scope of this definition. *Id.* ch. XVI, § 377. See also Chua & Gilbert, *supra* note 21, at 16.

³⁷ For example, marital rape is not recognized under the Penal Code with the exception of where the wife is under the age of thirteen years. Section 375 of the Penal Code on rape includes an exception,

each have their own customary laws and customs, although they do not appear to be documented in written form.³⁸

Myanmar acceded to the CEDAW in 1997,³⁹ but the country is not a party to the CEDAW's Optional Protocol.⁴⁰ The Protocol is important because it enables the CEDAW Committee to review complaints submitted by individuals or initiate investigations to determine whether violations of women's rights under the CEDAW have taken place.⁴¹ The CEDAW includes a number of provisions, which articulate both the principle of non-discrimination based on sex and the principle of *de facto* equality—that is, equality in the treatment of, and the opportunities presented to, men and women.⁴² In practice, however, the Myanmar government and society in general are not fully aware of the existence of the CEDAW and its legally binding nature, especially the definition of gender equality in the Convention.⁴³ This lack of awareness is evident in the Myanmar government's long held perception that Myanmar women have already achieved

which states "sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape." Penal Code (Myan.) (1861) ch. XVI, § 375.

³⁸ GENDER EQUAL. NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 6.

³⁹ The Myanmar Government has made a reservation and does not consider itself to be legally bound by article 29 of the CEDAW. CEDAW, *supra* note 26, art. 29. The CEDAW states, "1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court. 2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation. 3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations." *Id.* "Reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations art. 2, ¶ 1(d), May 23, 1969, 1155 U.N.T.S. 331, http://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf.

⁴⁰ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/54/49 (2000).

⁴¹ *Id.* art. 1. This provision states that, "[a] State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2." *Id.*

⁴² Article 1 of the CEDAW prohibits both direct and indirect discrimination, as well as discrimination in both private and public spheres, providing that "[f]or the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." CEDAW, *supra* note 26, art. 1. See also article 4 of the CEDAW on the adoption of temporary special measures by States parties to accelerate *de facto* equality between men and women, which will not be considered to be discrimination for the purposes of the Convention. *Id.* arts. 1, 4.

⁴³ Interview with Confidential Source A (Dec. 8, 2014).

equality and enjoy full rights in all areas of life, whether domestic or public, and political or social.⁴⁴

While there is some evidence⁴⁵ suggesting that women in general have enjoyed an elevated social status within the context of the family,⁴⁶ Khin Mar Mar Kyi, a Myanmar scholar, argued that both the colonial and military eras have served to diminish women's legal, political, and social status through patriarchal power.⁴⁷ The Civil Society Organizations ("CSOs") in Myanmar suggested that traditional practices within society, such as the dominance of men in the public sphere as forensic doctors, lawyers, and the police, limit the advancement of women.⁴⁸ This is one reason to call for better protection of Myanmar's women by the law.

The Constitution of the Republic of the Union of Myanmar prohibits discrimination based on sex,⁴⁹ but it fails to define discrimination either directly or indirectly.⁵⁰ The Constitution also has a number of vague and discriminatory provisions that favor men and are incompatible with the CEDAW.⁵¹ Such

⁴⁴ See Committee on the Elimination of Discrimination against Women (CEDAW), *Consideration of Reports Submitted by State Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Reports of States Parties, Myanmar*, ¶ 4, U.N. Doc. CEDAW/C/MMR/1 (1999) [hereinafter *Myan. Initial Report*]. In 2013, U Soe Muang, Minister of the President's Office stated, "in Myanmar society, there is traditionally little gender discrimination. It is better than other Asian countries . . . women have equal rights with men not only according to the constitution but also by tradition." See MINOLETTI, *supra* note 17, at 3.

⁴⁵ See, e.g., NI NI MYINT, *THE STATUS OF MYANMAR WOMEN 65 (2002)* (discussing history of women's elevation of status); DAW MYA SEIN, *BURMA: THE COUNTRY, THE PEOPLE, THEIR HISTORY, ADMINISTRATION, RESOURCES AND TRADE COMMUNICATIONS, EDUCATION AND RELIGION, RELATIONS WITH INDIA, NATIONALISM, THE FUTURE 8 (1944)* (suggesting that women's position in Burmese society is not significantly different from women in the west) discussed in THARAPI THAN, *WOMEN IN MODERN BURMA 1-18 (2014)* (contesting some of these narratives as merely replicating the state narrative on women's status).

⁴⁶ Social practices perceived to indicate women's elevated social status within the family include a lack of patrilineal surnames, as well as women's role as the manager of the household's financial affairs. See Ma Khin Mar Mar Kyi, *supra* note 11, at 308.

⁴⁷ *Id.*

⁴⁸ WOMEN'S LEAGUE OF BURMA, *RECOMMENDATIONS FROM THE MYANMAR WOMEN'S FORUM (2013)*, <http://womenofburma.org/publications/WLB+WON%20Women%20Forum%20Recommendations%20Oct%202013-1.pdf>.

⁴⁹ "The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection." CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYANMAR 2008 ch. VIII, § 347 [hereinafter CONST. OF MYAN. 2008]. "The Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth." *Id.* ch. VIII, § 348.

⁵⁰ The Myanmar Government's reports to the CEDAW suggest that the unique nature of the fabric of Myanmar's society means that women enjoy equality of social status with men and it is for this reason that there is no formal legal definition of discrimination against women. See Comm. on the Elimination of Discrimination against Women (CEDAW), *Consideration of Reports Submitted by State Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Second and Third Reports of State Parties, Myanmar*, ¶ 31, U.N. Doc. CEDAW/C/MMR/3 (2007) [hereinafter *Myan. Combined Report*].

⁵¹ See Comm. on the Elimination of Discrimination against Women (CEDAW), *Concluding Observations of the CEDAW, Myanmar*, ¶ 10, U.N. Doc. CEDAW/C/MMR/CO/3 (2008) [hereinafter *Concluding Observations of the CEDAW*].

provisions inhibit recognition of the broader potential of females and their roles in society, and cabin women as less capable in certain respects than men. For example, section 352 of the Constitution states:

The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.⁵²

While section 352 of the Constitution prohibits discrimination based on sex of civil servants, this provision is particularly vague because it does not provide any qualifying criteria as to why some positions are suitable only for men. Further, the Constitution guarantees that up to a quarter of seats in the Assembly of the Union (“Pyidaungsu Hluttaw”) must be appointed to military personnel;⁵³ however, the military, as an institution, is predominantly comprised of men. Additionally, the Constitution also fails to extend fundamental rights to all persons regardless of national status. For example, section 348 of the Constitution states that, “[t]he Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.”⁵⁴ Though section 348 appears to address discrimination on the grounds of sex, the Constitution does not include any provisions that define direct and indirect discrimination or are similar to those provisions of the CEDAW that address discrimination based on sex. Further, the granting of fundamental rights only to Burmese citizens can be particularly detrimental to women in some parts of Myanmar because they lack access to the necessary documentation to prove their citizenship.⁵⁵

Discriminatory legislation and customary laws, particularly against minority ethnic women, also continue to remain in force.⁵⁶ For example, the Rohingya,⁵⁷ a Muslim minority group in Rakhine State, have been denied citizenship under the Myanmar Citizenship Law of 1982.⁵⁸ As a result, the law seriously hinders the rights of the Rohingya to freedom of movement, access to medical care, adequate food and housing, and marriage rights.⁵⁹

⁵² CONST. OF MYAN. 2008 ch. VIII, § 352.

⁵³ *Id.* ch. IV, § 74.

⁵⁴ *Id.* ch. VIII, § 348.

⁵⁵ GENDER EQUAL. NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 7.

⁵⁶ *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 30.

⁵⁷ Officially, the Myanmar government does not recognize the Rohingya as an indigenous ethnic group and instead refers to the Rohingya as illegal immigrants from Bangladesh. Amie Hamling, *Rohingya: The Most Persecuted Refugees in the World*, AMNESTY INT’L AUSTL. (Aug. 13, 2014), <http://www.amnesty.org.au/refugees/comments/35290/>.

⁵⁸ Myan. Citizenship Law, Pyithu Hluttaw Law No. 4 (1982).

⁵⁹ *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 42.

Even though the Myanmar government has stressed that consent and independent agreement are essential prerequisites to marriage and divorce,⁶⁰ the CEDAW Committee repeatedly raised concerns that due to unequal distribution of power in relationships between women and men, discriminatory practices relating to the dissolution of marriage and inheritance are common.⁶¹ In addition, attitudes toward gender equality tend to be masked by cultural practices and values,⁶² which influence perceptions of women's gender roles.⁶³ Negative cultural norms, such as deeply rooted stereotypes about the role of women in all areas of life persist in society, especially in rural communities where women are relegated to farming, or mainly taking care of families.⁶⁴ Patriarchal attitudes towards women, particularly the perception that women are weak and therefore require protection, also influence the law.⁶⁵ For example, Buddhist customary law requires that a woman between the age of fifteen and twenty must obtain consent of her father to marry.⁶⁶

The vast majority of Myanmar's population continues to experience high levels of poverty⁶⁷ that adversely affects especially women.⁶⁸ In particular, rural areas are characterized by poverty, illiteracy, inadequate access to medical services, and lack of access to education and social services.⁶⁹ Despite national efforts, such as the training of auxiliary midwives, women do not have access to quality sexual and reproductive health services.⁷⁰ In addition, maternal and infant mortality⁷¹ rates remain high, mainly in rural areas.⁷²

⁶⁰ *Myan. Combined Report*, *supra* note 50, ¶¶ 72, 190-91.

⁶¹ *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 46.

⁶² Some of these cultural practices, norms and values are derived from Buddhist religious practices. Interview with Confidential Source B (Dec. 8, 2014). For example, women's access to Shwedagon pagoda (one of the most important sites of Buddhist religious worship in Yangon) is restricted. *Id.* Women are also not allowed to climb to the second tier of the pagoda. *Id.*

⁶³ Interview with Confidential Source E (Dec. 9, 2014).

⁶⁴ One interviewee explained that women often have a role in the management of a family's financial affairs but this role does not effectively translate into the recognition of women as competent decision-makers, which is often attributed to the head of the household (usually male). *Id.*; *see also* *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 44.

⁶⁵ GENDER EQUAL. NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 5.

⁶⁶ *Id.* at 16.

⁶⁷ In 2013, Myanmar was ranked 150 out of 187 countries in the United Nations Development Programme (UNDP) Human Development Index ("HDI") and is classified as a country with low human development. *See* UNDP, HUMAN DEVELOPMENT REPORT 2014, at 162 (2014), <http://hdr.undp.org/site/s/default/files/hdr14-report-en-1.pdf>.

⁶⁸ Interview with Confidential Source C (Dec. 8, 2014).

⁶⁹ *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 34.

⁷⁰ *Id.* ¶ 38.

⁷¹ As of 2013, Myanmar's maternal mortality rates were 200 per 100,000 live births. *See* UNFPA, THE STATE OF THE WORLD POPULATION 2014, THE POWER OF 1.8 BILLION: ADOLESCENTS, YOUTH AND THE TRANSFORMATION OF THE FUTURE 106 (2014), http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf. Myanmar is the current Chair of the ASEAN Intergovernmental Commission on Human Rights ("AICHR"). AICHR members laid out plans for a regional workshop on maternal mortality in March 2014 and the drafting of a convention on the prevention of violence against women and children in ASEAN. *See* Press Release, 14th Meeting of the ASEAN Intergovernmental Commission on Human Rights, ASEAN INTERGOVERNMENTAL COMM'N ON HUM. RTS. (AICHR) (Feb. 11, 2014), <http://aichr.org/press-release/14th-meeting-of-the-asean->

The inferior status of women in society and unequal power in relationships—as compared to men—diminish their ability to “negotiate safe sexual practices,” such as use of condoms, thereby increasing women’s vulnerability and risk of contracting HIV/AIDS.⁷³ One interviewee stated, “[f]emale sexuality is one of the root cause[s] . . . [of] gender inequality in Myanmar.”⁷⁴ However, discussing sexuality is a taboo,⁷⁵ although women’s organizations are increasingly broaching the topic by teaching women and girls about their bodies, and their sexual and reproductive health.⁷⁶ Suppressive laws on prostitution⁷⁷ have also proved detrimental to the use of safe sexual practices by both women and men because the laws discourage the use of contraception. Before condoms became legalized,⁷⁸ women risked being accused of engaging in sex work if they were found in possession of condoms.⁷⁹ Sex workers, particularly HIV positive sex workers, continue to be branded with a stigma and experience discrimination that puts them at risk of gender-based violence, first because of their occupation as sex workers, and second because of their HIV status.⁸⁰

Violence against girls and women, including domestic violence, sexual harassment, and rape, is prevalent and grossly underreported in Myanmar.⁸¹ Moreover, the perpetrators are often not punished.⁸² In addition, the Myanmar government’s reports regarding its efforts to implement the CEDAW (as required by the CEDAW Committee pursuant to the reporting obligations under the

intergovernmental-commission-on-human-rights/.

⁷² *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 38.

⁷³ *Id.* ¶ 40.

⁷⁴ Interview with Confidential Source O (Dec. 12, 2014).

⁷⁵ Interview with A, *supra* note 43.

⁷⁶ Interview with O, *supra* note 74.

⁷⁷ These laws include the Suppression of Prostitution Act of 1949, amended in 1998, which criminalizes women sex workers for soliciting sex and has a prison term of up to five years in addition to a monetary fine. GENDER EQUAL NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 11. There are several other laws including the Rangoon Police Act, colloquially referred to as “Hmaung Yeip Kho Hmu” or “hiding in the dark shadows.” *Id.* at 11 n.29. This law allows the police to arrest any individual without a warrant who is not able to account satisfactorily for his or her presence close to dwelling houses or other buildings. *See id.* at 11. The SPDC also adopted the Eradication of Prostitution Act in 1989. Interview with Confidential Source F (Dec. 10, 2014).

⁷⁸ Condoms were legalized in part due to international pressure to reduce the spread of HIV/AIDS. GENDER EQUAL NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 12. However, during Myanmar’s recent Water Festival (“Thingyan”) to welcome in the New Year, the Police removed condoms and other forms of birth control from pharmacies in Yangon in a bid to reduce sexual crime during Thingyan. Shwe Yee Saw Myint & Toe Wai Aung, *Birth Control Pulled from Shelves on Police Orders*, MYAN. TIMES, Apr. 15, 2015, <http://www.mmmtimes.com/index.php/national-news/14036-birth-control-pulled-from-shelves-on-police-orders.html>. It is not clear whether this policy was uniformly applied throughout Myanmar, indicating the arbitrary and patchy enforcement of laws.

⁷⁹ GENDER EQUAL NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 12; Interview with C, *supra* note 68.

⁸⁰ Interview with F, *supra* note 77.

⁸¹ *See Concluding Observations of the CEDAW*, *supra* note 51; Interview with Confidential Source M (Dec. 12, 2014).

⁸² Interview with M, *supra* note 81.

Convention)⁸³ fail to provide sufficient data and analysis with respect to complaints about violations of women's human rights.⁸⁴ Women in areas affected by Cyclone Nargis, as well as women in the northern Rakhine State and other remote areas, are particularly vulnerable to gender-based violence.⁸⁵ Marital rape is not recognized as a criminal offense, with the exception when the wife is under the age of thirteen.⁸⁶ Forced or coerced sexual intercourse by a husband seems to be socially acceptable, or at least is not recognized as marital rape.⁸⁷ Further, society is generally apathetic towards this social problem as this attitude is tellingly reflected in the proverb "if you beat your wife until her bones are broken, she will love you more [or] [ah yoe kway aung yite mha, ah thae sway aung chit]."⁸⁸

In addition, there are numerous reported cases of sexual assault committed by men in the armed forces⁸⁹ against rural ethnic women living in peripheral regions of the country, or near the Myanmar-Thailand border. These are the regions where protracted armed conflicts and insurgencies against the Myanmar government have taken place.⁹⁰ Diaspora organizations have been active in directing their advocacy efforts to draw attention to Security Council Resolution 1325 ("SCR 1325"), Security Council Resolution 1820 ("SCR 1820"), and subsequent resolutions on women, peace, and security, as sources of law that could be used to confront this problem.⁹¹ Adopted in 2000, SCR 1325 is the first Security Council Resolution to address the impact of armed conflict and its aftermath on women. SCR 1325

⁸³ Under article 18, paragraph 1 of the CEDAW, State parties should provide a report on administrative, judicial, legislative, and other measures taken (including any difficulties) to fulfill the provisions of the CEDAW after one year into the entry into force and thereafter every four years. CEDAW, *supra* note 26, art. 18, ¶ 1.

⁸⁴ The Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children in ASEAN, which Myanmar has committed to, recognizes the need to adopt a holistic approach to violence against women including undertaking research, data collection and its analysis. Association of Southeast Asian Nations, The Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children in ASEAN 1, ¶ 6 (Oct. 2013), http://www.ohchr.org/Documents/Issues/Women/WG/ASEANdeclarationVaW_violenceagainchildren.pdf. The Declaration was signed on the occasion of the 23rd ASEAN summit in October 2013. *Id.* ¶ 1. Further, though non-binding, the declaration recognizes the responsibility of individual ASEAN states in relation to obligations made under the CEDAW. *Id.*

⁸⁵ See *Concluding Observations of the CEDAW*, *supra* note 51.

⁸⁶ Penal Code (Myan.) (1861) ch. XVI, § 375 (stating that "sexual intercourse by a man with his own wife, the wife not being under 13 years of age is not rape").

⁸⁷ GENDER EQUAL. NETWORK, BEHIND THE SILENCE: VIOLENCE AGAINST WOMEN AND THEIR RESILIENCE, MYANMAR 3 (2014), http://www.burmalibrary.org/docs20/GEN-2014-11-Behind_the_Silence-en-ocr-tpo.pdf.

⁸⁸ *Id.* at 4.

⁸⁹ In 2011, the ASEAN Inter-Parliamentary Myanmar Caucus ("AIPMC") emphasized the need for ASEAN Intergovernmental Commission on Human Rights to monitor and report human rights violations committed by the Myanmar Army. See ASEAN Inter-Parliamentary Caucus, *AIPMC Statement on Current Military Offensive and Rights Abuse by the Myanmar Army in Ethnic Areas*, BURMA PARTNERS (July 22, 2011), <http://www.burmapartnership.org/2011/07/aipmc-statement-on-current-military-offensive-and-rights-abuse-by-the-myanmar-army-in-ethnic-areas/>.

⁹⁰ *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 24.

⁹¹ S.C. Res. 1325 (Oct. 31, 2000); S.C. Res. 1820 (June 19, 2008); S.C. Res. 1888 (Sept. 30, 2009); S.C. Res. 1889 (Oct. 5, 2009); S.C. Res. 1960 (Dec. 16, 2010).

encompasses three pillars: conflict prevention; women's participation in conflict resolution and peace building; and protection from gender-based and sexual violence.⁹² Subsequent Security Council Resolutions, including SCR 1820, focus explicitly on the protection of women from sexual violence in armed conflict.⁹³ Because Myanmar has experienced protracted armed insurgency movements in several parts of the country, and incidents of rape and sexual violence against women have been reported,⁹⁴ the normative framework on women, peace, and security is highly relevant. However, interviewees suggested that referring to these resolutions is politically sensitive⁹⁵ and will be unlikely to trigger a meaningful response. First, the dialogue about "human rights and democracy" within Myanmar has only been possible since 2011, when the formal transition toward a quasi-civilian government began.⁹⁶ Second, because SCR 1325 engages with the issues of sexual violence and armed conflict, it is contentious,⁹⁷ particularly as the government has routinely downplayed and denied that soldiers in the Myanmar army have raped and sexually assaulted local women.⁹⁸

Although the Myanmar government claims that women are serving in state organizations and ministries, women's involvement in leadership and decision making roles remains low at the national level.⁹⁹ Despite general lack of recognition of women as leaders, there are notable exceptions.¹⁰⁰ In Karen State,¹⁰¹ for example, women instead of men head many households.¹⁰² As a result of armed conflict and migration, more women have taken on leadership roles, including in their communities.¹⁰³ As for the associational life in general, the Association(s) Registration Law was enacted in 2014,¹⁰⁴ but the Law appears to be

⁹² See S.C. Res. 1325, *supra* note 91; Amy Barrow, *Women, Peace and Security: Mainstreaming Gender in Transitional Justice Processes*, in *WOMEN AND TRANSITIONAL JUSTICE: THE EXPERIENCE OF WOMEN AS PARTICIPANTS* 34, 38-40 (Lisa Yarwood ed., 2012).

⁹³ See S.C. Res. 1820, *supra* note 91; Amy Barrow, *UN Security Council Resolutions 1325 and 1820: Constructing Gender in Armed Conflict and International Humanitarian Law*, 92 *INT'L REV. RED CROSS* 221, 223 (2010).

⁹⁴ *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 22.

⁹⁵ Interview with E, *supra* note 63.

⁹⁶ See Winston Set Aung, *Myanmar Reforms Gathering Momentum*, in *DEBATING DEMOCRATIZATION IN MYANMAR* 3 (Nick Cheesman et al. eds., 2014).

⁹⁷ S.C. Res. 1325, *supra* note 91; Interview with E, *supra* note 63.

⁹⁸ In response to civil society reports of 175 incidents of rape cases in southern, eastern and northern parts of Shan State, the government claimed that the field investigations had identified 38 old cases, 135 unreal cases, and only 2 cases were true. *Myan. Combined Report*, *supra* note 50, ¶ 59.

⁹⁹ *Id.* ¶¶ 91-92; *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 28.

¹⁰⁰ Interview with Confidential Source L (Dec. 10, 2014).

¹⁰¹ "Karen" is considered a matriarchal culture. See HARRY IGNATIUS MARSHALL, *THE KAREN PEOPLE OF BURMA: A STUDY IN ANTHROPOLOGY AND ETHNOLOGY* 131-34 (1922).

¹⁰² Interview with L, *supra* note 100.

¹⁰³ *Id.*

¹⁰⁴ The Association(s) Registration Law was passed on July 20, 2014. Interview with Confidential Source K (Dec. 11, 2014). Initially, the draft law, which was published in newspapers, required mandatory registration of all organizations. *Id.* Further, the law included severe penalties and punishments for failing to register CSOs and obtain a registration card. *Id.* After significant opposition to the draft law, revisions were made and registration is now voluntary. *Id.*

unreasonably restrictive because only formally registered organizations may legally receive donor funding.¹⁰⁵ As a result, some women's organizations have encountered funding and operational restrictions.¹⁰⁶ Women's empowerment organizations also face significant challenges in finding ways effectively to explain and justify the aims and objectives of their work to alleviate gender inequality for the purposes of registration;¹⁰⁷ particularly, given that the government's official rhetoric repeats that women enjoy full equality with men in Myanmar.¹⁰⁸

II. INSTITUTIONAL MECHANISMS FOR THE ADVANCEMENT OF WOMEN

Although the legal landscape for women's rights may appear bleak, with the Constitution and other Myanmar laws containing both explicitly and implicitly discriminatory provisions, in the aftermath of the Beijing Declaration and Platform for Action in 1995, the Myanmar government established two institutional mechanisms¹⁰⁹ for the advancement of women and promotion of gender equality—the Myanmar National Committee for Women's Affairs (“MNCWA”) and the Myanmar Women's Affairs Federation (“MWAF”). First, the MNCWA launched in 1996 to support the socio-economic development of Myanmar's women and the institution serves as national-level “machinery” for the advancement of women in Myanmar.¹¹⁰ Second, the MWAF was formed on December 20, 2003 to support the cooperation of the MNCWA with non-governmental organizations.¹¹¹

Similar to other national institutions, the MNCWA is primarily responsible for advancing national policies concerning women and their development in Myanmar. The MWAF coordinates between the government and non-governmental sectors in several areas, including education, health, and violence against women.¹¹² In August 1997, the MNCWA adopted the Myanmar National Action Plan for the Advancement of Women (“National Action Plan”) in which the

¹⁰⁵ Association(s) Registration Law, Pyidaungsu Hluttaw Law No. 31, ch. VII, § 28 (2014) (“Any Registered local organization under this law shall have the right to file a law suit, to fund raising activities, receive funding and open a bank account and own properties or assets.”).

¹⁰⁶ Without formal registration, organizations cannot open a bank account in the name of the organization. Interview with Confidential Source D (Dec. 9, 2014). International donors are sometimes reluctant to transfer money to private bank accounts because of their domestic legal requirement. *See id.*

¹⁰⁷ Many CSOs are yet to be registered. *Id.* This is not to say that the government is unaware of the existence of these CSOs. *Id.* The government indeed is aware of the CSOs, particularly because of the role CSOs played in the disaster response operations during Cyclone Nargis and its aftermath. *Id.*

¹⁰⁸ *Myan. Initial Report, supra* note 44, ¶ 9; *Myan. Combined Report, supra* note 50, ¶ 15.

¹⁰⁹ In 1995, the Beijing Declaration and Platform for Action (“BPFA”) called for the adoption of national machineries to support the advancement of women in society. Fourth World Conference on Women, *Report of the Fourth World Conference on Women*, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995) [hereinafter *Fourth World Conference on Women*]. Strategic objective H of BPFA specified that institutional mechanisms should act as a catalyst to drive gender into legislation, public policy and national programs. *Id.* Myanmar adopted such national machinery, namely the Myanmar National Committee for Women's Affairs, shortly after the adoption of the BPFA. *Id.*

¹¹⁰ *Myan. Combined Report, supra* note 50, ¶ 15.

¹¹¹ *Id.* ¶ 16.

¹¹² *Id.* ¶¶ 17, 20.

organization identified six critical areas in need of improvement: education, health, economy, culture, violence against women, and violence against the girl-child.¹¹³ In practice, however, it appears that the National Action Plan has not been implemented, particularly given that local women's organizations and the United Nations field-based staff are unaware of the Plan.¹¹⁴

Civil society actors¹¹⁵ have questioned the effectiveness of the MNCWA and MAAF as institutional mechanisms for the advancement of women because "elite" women, who are either well connected or are the wives of the government officials, are the heads of these organizations.¹¹⁶ Some interviewees suggested that the MNCWA and MAAF are akin to government operated non-governmental organizations¹¹⁷ and lack independence from the government. With multiple branches throughout Myanmar, the reach of the MNCWA and MAAF in society has been significant,¹¹⁸ although the influence of these institutions seems to be waning.¹¹⁹ One interviewee explained that until 2004-2005, the MAAF was quite powerful as an organization and had done some important work in combating violence against women, including accepting and reviewing complaints from women.¹²⁰ However, the way in which the complaints of gender-based violence were handled by the MAAF did not meet the international standards and some of MAAF's practices were unethical, such as victim blaming.¹²¹ Since the initiation of the transition to civilian rule, the role of the military generals has somewhat shifted, and as a result the power of the MAAF has diminished.¹²²

The organizational structure of the MNCWA and MAAF and the influence of elite women on these institutions are problematic. As suggested by one interviewee,¹²³ policies relating to the development of women are often shaped by personal interests, and in that, they fail to reflect adequately "ordinary" women's concerns.¹²⁴ Elite women¹²⁵ appear to lack gender sensitivity and awareness of international standards and norms on gender equality. For example, they initially refused to recognize coerced sexual intercourse within marriage as rape.¹²⁶ Notwithstanding, elite women are the leaders of the MNCWA and MAAF—the only institutional mechanisms that are charged with promulgating the CEDAW and

¹¹³ *Myan. Initial Report*, *supra* note 44, ¶ 8.

¹¹⁴ Interview with E, *supra* note 63; Interview with A, *supra* note 43.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Interview with A, *supra* note 43.

¹¹⁸ *Id.*; Interview with E, *supra* note 63.

¹¹⁹ Interview with E, *supra* note 63.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Interview with A, *supra* note 43.

¹²⁴ *Id.*

¹²⁵ *Id.*; Interview with E, *supra* note 63.

¹²⁶ Interview with E, *supra* note 63.

eliminating discrimination against women in Myanmar.¹²⁷ Further, the MNCWA's activities are restricted because the organization does not receive sufficient budgetary allocations.¹²⁸ The lack of government funding is not unique to Myanmar. Many institutions working towards the advancement of women in other jurisdictions face similar constraints, such as the Hong Kong Special Administrative Region of the People's Republic of China.¹²⁹

III. REGIME CHANGE IN MYANMAR AND ITS IMPLICATIONS FOR WOMEN

The year of 2011 marked the beginning of Myanmar's transition away from direct military rule to a democratic system.¹³⁰ To date, there has been limited analysis¹³¹ of how Myanmar's transition is impacting women's legal and social status both in terms of normative developments at the macro level (i.e., the adoption of laws and policies on gender equality) and at the micro level (i.e., impact of laws and policies on women's lives on the ground level). The question

¹²⁷ Strategic objective H of BPFA specified that institutional mechanisms should act as a catalyst to drive gender into legislation, public policy and programs. It states, "[b]ased on a strong political commitment, create a national machinery, where it does not exist, and strengthen, as appropriate, existing national machineries, for the advancement of women at the highest possible level of government; it should have clearly defined mandates and authority; critical elements would be adequate resources and the ability and competence to influence policy and formulate and review legislation; among other things, it should perform policy analysis, undertake advocacy, communication, coordination and monitoring of implementation." Fourth World Conference on Women, *supra* note 109, ¶ 203(b).

¹²⁸ The CEDAW Committee has called for Myanmar's institutional mechanisms to be strengthened, including financial and human resources to enable the effective promotion of the CEDAW and gender equality within society. See *Concluding Observations of the CEDAW*, *supra* note 51, ¶ 16. The CEDAW Committee has specifically stated that the composition of Institutional Mechanisms for the Advancement of Women should include full-time women professionals at both State and local levels. See *id.*

¹²⁹ For example, in Hong Kong, the Women's Commission does not receive adequate funding to appoint full-time women professionals. The Chief Executive of the Hong Kong Special Administrative Region appoints both non-official members, as well as *ex-officio* members to the Women's Commission. *Membership*, WOMEN'S COMM'N HONG KONG, http://www.women.gov.hk/mono/en/about_woc/membership.htm (last visited Sept. 30, 2015, 6:12 PM). Each member of the Women's Commission occupies an honorary role. *Id.* Members are also full-time professionals in different fields. Press Release, *The Government of the Hong Kong Special Administrative Region, Appointment to Women's Commission*, LABOUR & WELFARE BUREAU (Jan. 2, 2015), <http://www.lwb.gov.hk/eng/press/02012015.htm>. This leaves the efficacy of members to fulfill the Women's Commissions mandate open to scrutiny. In its Concluding Observations on the combined seventh and eighth periodic reports of China in November 2014, the CEDAW Committee stated that "[t]he Committee is concerned that the Women's Commission, which is mandated to promote the advancement of women in Hong Kong, China, has a weak mandate and lacks the resources necessary to undertake gender mainstreaming and other activities." Comm. on the Elimination of Discrimination against Women, *Concluding Observations on the Combined Seventh and Eighth Periodic Reports of China*, ¶ 50, U.N. Doc. CEDAW/C/CHN/CO/7-8 (2014).

¹³⁰ See Morten B. Pedersen, *Myanmar's Democratic Opening: The Process and Prospect of Reform*, in *DEBATING DEMOCRATIZATION IN MYANMAR* 26-28 (Nick Cheesman et al. eds., 2014).

¹³¹ See, e.g., Engy Abdelkader, *Myanmar's Democracy Struggle: The Impact of Communal Violence upon Rohingya Women and Youth*, 23 PAC. RIM L. & POL'Y J. 511, 511-13 (2014); Zin Mar Aung, *From Military Patriarchy to Gender Equity: Including Women in the Democratic Transition in Burma*, 82 SOC. RES. 531, 531 (2015).

of how regime change is affecting women's status in what has been one of the world's most repressive countries remains to be answered.

A. *The Political Shift*

In his inaugural speech as president, Thein Sein announced a significant shift in the leadership and direction of Myanmar's governance sharply contrasting it with earlier periods of military dictatorship.¹³² Thein Sein has adopted a series of socio-economic and political reforms to liberalize social, political, and economic institutions to facilitate the transition¹³³ from authoritarian rule by the military to a quasi-civilian government. While no longer under a direct military rule, critics pointed out that Myanmar may be recognized as a "diminished authoritarian regime," as the military remains dominant despite its diminishing despotic powers.¹³⁴ Significantly, under section 109(b) of the Constitution, 25% of seats in the Parliament are reserved for military officials.¹³⁵ In effect, the pro-military Union Solidarity and Development Party dominated the Parliament from 2011 to 2015,¹³⁶ and women have been historically underrepresented in the Parliament—for example, from 2011 to 2015 they held only 6% of seats.¹³⁷

Most importantly, the military no longer perceives emerging political activities as a threat against the Republic of the Union of Myanmar or a potential threat against national security.¹³⁸ One of the implications of this change from military to semi-civilian governance was the granting of amnesty to political prisoners.¹³⁹ Further, the government appears to have reached out and in some cases cooperated with local and international civil society actors and NGOs,¹⁴⁰

¹³² Earlier periods of governance, including the SPDC's, were particularly oppressive, which undermined the flourishing of associational life. See Kyaw Yin Hlaing, *Understanding Recent Political Changes in Myanmar*, 34 CONTEMP. SE. ASIA 197, 199 (2012).

¹³³ The transition that is taking place has been recognized as a case of top-down regime transition: from the devolution of power by the military to the transition of power to the Myanmar society. See, e.g., Huang, *supra* note 9, at 248; see generally Mary Callahan, *The Generals Loosen Their Grip*, 23 J. DEMOCRACY 120 (2012).

¹³⁴ The military's despotic powers have included typical features of authoritarian regimes such as a ban on political pluralism and censorship, which have eased during the period of transition. See Huang, *supra* note 9, at 248; MONIQUE SKIDMORE, *KARAOKE FASCISM: BURMA AND THE POLITICS OF FEAR* 33-57 (2004); IAN HOLLIDAY, *BURMA REDUX: GLOBAL JUSTICE AND THE QUEST FOR POLITICAL REFORM IN MYANMAR* 59-80 (2011).

¹³⁵ CONST. OF MYAN. 2008 ch. IV, § 109(b), stipulating that the Pyithu Hluttaw (the Upper House of Parliament) can have "no[] more than 110 [of the 440 total] Pyithu Hluttaw representatives who are the Defence Services personnel nominated by the Commander-in-Chief of the Defence Services in accord with the law."

¹³⁶ INT'L CRISIS GRP., *MYANMAR'S POST-ELECTION LANDSCAPE*, ASIA BRIEFING N° 118, at 17 (2011), <http://www.crisisgroup.org/~media/Files/asia/south-east-asia/burma-myanmar/B118%20Myanmars%20Post-Election%20Landscape.pdf>.

¹³⁷ *Proportion of Seats Held by Women in National Parliaments (%)—Myanmar*, WORLD BANK, <http://data.worldbank.org/indicator/SG.GEN.PARL.ZS> (last visited Nov. 27, 2015).

¹³⁸ Callahan, *The Generals Loosen Their Grip*, *supra* note 133, at 122.

¹³⁹ See generally Ian Holliday, *Myanmar in 2012: Toward a Normal State*, 53 ASIAN SURV. 93 (2013).

¹⁴⁰ For example, in 2012 the International Committee of the Red Cross ("ICRC") was also allowed

including dissident groups such as the 88 Generation Peace and Open Society Group,¹⁴¹ exiles, and other blacklisted activists.¹⁴² For example, several former rebels, who had fought against the military regime, are now directly engaged with the Myanmar government in the reform process under the auspices of the Myanmar Peace Center.¹⁴³

B. Legal and Political Reforms

The adoption of several progressive laws in 2011, including the Labour Organization Law,¹⁴⁴ and Peaceful Assembly Law,¹⁴⁵ appear to allow for the formation of unions and provide for the right to strike,¹⁴⁶ “opening up spaces” for formal activism by both men and women. Further, journals and publications, which cover news, religion, education, and public affairs, are no longer required to be submitted prior to publication for approval by the Press Scrutiny and Registration Division.¹⁴⁷ The advantages of these legal developments include the strengthening of civil society networks, which can now operate in less clandestine conditions, though women’s organizations continue to adopt a low profile and many of them have not been formally registered under the new Association(s) Registration Law.¹⁴⁸

Most significantly, there appears to be reconciliation between Myanmar’s president, the military, and the main opposition party—NLD and its leader Aung

to resume visits to inspect prison conditions after a seven-year hiatus. Paul Vricze, *After 7 Years “Essential” Red Cross Prison Visits Resume*, IRRAWADDY (Dec. 21, 2012), <http://www.irrawaddy.org/burma/after-7-years-essential-red-cross-prison-visits-resume.html>.

¹⁴¹ The 88 Generation Peace and Open Society Group is a group comprised of former student leaders who participated in the 1988 pro-democracy demonstrations against General Ne Win and the Burmese Socialist Programme Party that had ruled the country as a one-party State. Min Zin, *Is Burma’s Opposition Ready For the Post-Aung San Suu Kyi Era?*, FP GRP. (Aug. 18, 2015), <http://foreignpolicy.com/2015/08/18/is-burmas-opposition-ready-for-the-post-aung-san-suu-kyi-era-election/>. The CSO works to strengthen the civil society and peace in Myanmar. *Id.*

¹⁴² For example, Nyo Ohn Myint is currently an Associate Director of the Peace Dialogue Program of the Myanmar Peace Center in Yangon. See MYAN. PEACE CTR., <http://www.myanmarpeace.org/> (last visited Oct. 12, 2015). He was formerly head of an exile organization based in Chiang Mai, the Foreign Affairs Committee of the National League for Democracy-Liberated Area, which was highly critical of the military regime. See *id.*; see generally DEREK TONKIN, *The Burmese Exile Community and the National Reconciliation Process*, in PRISMS ON THE GOLDEN PAGODA: PERSPECTIVES ON NATIONAL RECONCILIATION IN MYANMAR 152 (Kyaw Yin Hlaing ed., 2014) (discussing other Burmese Diaspora organizations and their engagement in the national reconciliation process).

¹⁴³ MYAN. PEACE CTR., *supra* note 142.

¹⁴⁴ Labour Organization Law, Pyidaungsu Hluttaw Law 7 (2011).

¹⁴⁵ Right to Peaceful Assembly and Peaceful Procession Act, Pyidaungsu Hluttaw Law No. 15 (2011).

¹⁴⁶ See, e.g., Labour Organization Law, § 22 (stating that “[t]he labour organizations shall carry out peacefully in carrying out holding of meetings, going on strike and carrying out other collective activities in accord with their procedure, regulations, by-laws and any directives prescribed by the relevant Labour Federation”).

¹⁴⁷ BENJAMIN ISMAIL, BURMESE MEDIA SPRING 8, 14-23 (Dec. 2012), <http://www.refworld.org/docid/51dc0bc84.html>.

¹⁴⁸ Interview with D, *supra* note 106.

San Suu Kyi.¹⁴⁹ This suggests that political “spaces” are “opening up” as a result of Myanmar’s transition.¹⁵⁰ After receiving permission from the Myanmar government to re-register as a political party, the NLD was also able to participate in by-elections in April 2012 and Aung San Suu Kyi was elected to Parliament,¹⁵¹ a situation unimaginable only a decade earlier.

Recently, following Myanmar’s historic elections on November 8, 2015—the first nationwide election since the transition to a nominally civilian government—the NLD won a majority of seats in the Parliament.¹⁵² The ruling USDP party took only approximately forty seats.¹⁵³ While the current leaders and military have indicated that they will accept the election results,¹⁵⁴ commentators suggested that relations between Aung San Suu Kyi and the military will remain antagonistic.¹⁵⁵ Further, the Constitution currently denies the presidency to individuals with foreign children, thus preventing Aung San Suu Kyi from becoming President.¹⁵⁶ Not deterred by this prohibition, Aung San Suu Kyi suggested that effectively she will be a *de facto* leader “above the president,”¹⁵⁷ which may potentially lead to a constitutional crisis.

Scholars Brown and Ni Aolain suggested that changes in governance during transitional periods may give the impression of a “transformed political landscape,” but patterns of women’s exclusion often persist and opportunities to integrate women into political and peace processes may even shrink.¹⁵⁸ In the November 8, 2015 elections, women comprised 13% of all candidates, a significantly greater proportion than in previous years.¹⁵⁹ However, there are many obstacles and

¹⁴⁹ MARY P. CALLAHAN & DAVID I. STEINBERG, *DRIVERS OF POLITICAL CHANGE IN POST-JUNTA, CONSTITUTIONAL BURMA* 11, 31 (2012). This report was prepared for the U.S. Agency for International Development Asia Bureau.

¹⁵⁰ SKIDMORE & WILSON *supra* note 9, at 5.

¹⁵¹ *Id.* at 6; *Burma’s Aung San Suu Kyi Makes Parliamentary Debut*, BBC NEWS (July 9, 2012), <http://www.bbc.com/news/world-asia-18767357>.

¹⁵² Oliver Holmes, *Aung San Suu Kyi Wins Outright Majority in Myanmar Election*, GUARDIAN (Nov. 13, 2015, 12:34 AM), <http://www.theguardian.com/world/2015/nov/13/aung-san-suu-kyi-wins-myanmar-landmark-election>.

¹⁵³ Oliver Holmes, *Much Still at Stake in Myanmar After Aung San Suu Kyi’s Election Victory*, GUARDIAN (Nov. 13, 2015, 11:17 AM), <http://www.theguardian.com/world/2015/nov/13/aung-san-suu-kyi-haggling-myanmar-military-election>.

¹⁵⁴ *Id.*

¹⁵⁵ Editorial, *The Guardian View on Myanmar’s Elections: A Notable Victory but Tough Times Still Lie Ahead*, GUARDIAN (Nov. 9, 2015, 3:09 PM), <http://www.theguardian.com/commentisfree/2015/nov/09/the-guardian-view-on-myanmar-elections-a-notable-victory-but-tough-times-still-lie-ahead>.

¹⁵⁶ Vijay Joshi & Esther Htusan, *Aung San Suu Kyi Wins Seat—But Cannot Become President*, INDEPENDENT (Nov. 11, 2015), <http://www.independent.co.uk/news/world/asia/myanmar-burma-election-aung-san-suu-kyi-wins-seat-but-cannot-become-president-a6729566.html>.

¹⁵⁷ *Id.*

¹⁵⁸ Kris Brown & Fionnuala Ní Aoláin, *Through the Looking Glass: Transitional Justice Futures Through the Lens of Nationalism, Feminism and Transformative Change*, 9 INT’L J. TRANSITIONAL JUST. 127, 134-35 (2015).

¹⁵⁹ Charlotte England, *Female Candidates Face Fierce, Unfair Fight in Myanmar’s Elections*, GUARDIAN (Nov. 5, 2015, 6:13 AM), <http://www.theguardian.com/global-development/2015/nov/05/myanmar-elections-female-candidates-face-fierce-unfair-fight-cheery-zahau>.

barriers to women's participation in politics. As Pyo Let Han of Yangon-based Women's Political Action Group stated in an interview with *The Guardian*, "women need the support of their community and family, as well as self-belief. Cultural norms, reinforced by almost 50 years of rule by an all-male military junta, mean most women do not have these prerequisites."¹⁶⁰

C. The Call for Greater Participation of Women in Decision-Making Roles

Myanmar is at a pivotal juncture of its transition and civil society actors call for greater participation of women in decision-making processes across judicial, legislative, and administrative sectors, as well as in Myanmar's peace processes.¹⁶¹ Economically and politically, however, this transitioning State is susceptible to influence from its previous form, including from the Myanmar elite and previous power structures, which seem to constrain the radical transformation of women's legal and social status in society.¹⁶²

Historically, men have occupied decision-making roles in Myanmar, as the country has been ruled by the military since 1962.¹⁶³ One interviewee suggested that the military as an institution would undergo limited changes, if any.¹⁶⁴ The future role of the military is the proverbial "elephant in the room" because everyone is aware of the military's role in the current transition, but no one has addressed what the role of the military will become.¹⁶⁵ As discussed, the dominance of the military in political affairs is clearly cemented throughout the text of the Constitution, which may prove to be a hindrance by potentially limiting women's opportunities to advance and become key political players in Myanmar's transition.

The prominence of the NLD leader, Aung San Suu Kyi, an iconic and highly visible figure both within Myanmar and internationally, presents an additional challenge for the ongoing development of the women's movement in Myanmar. One interviewee suggested that as daughter of General Aung San, Myanmar's national hero, Aung San Suu Kyi is an elite actor and she is not in a position to represent "ordinary" women, despite the personal sacrifices she has made, including enduring restrictions placed upon her freedom of movement during more than a decade of house arrest.¹⁶⁶ Further, it is not feasible to expect that Aung San Suu Kyi will be able either to represent all Burmese women or fill in the "gender gap" on the basis that she is a woman herself. Civil society actors suggested that it is important to look beyond Aung San Suu Kyi to the many women who are

¹⁶⁰ *Id.*

¹⁶¹ WOMEN'S LEAGUE OF BURMA, *supra* note 48.

¹⁶² Brown & Ni Aoláin, *supra* note 158, at 134.

¹⁶³ Interview with B, *supra* note 62.

¹⁶⁴ Interview with Confidential Source I (Dec. 10, 2014).

¹⁶⁵ *Id.*

¹⁶⁶ Civil society actors even suggested that Aung San Suu Kyi herself needs to learn more about the social and legal status of women. Interview with A, *supra* note 43; Interview with B, *supra* note 62.

underprivileged and marginalized within society as they risk being forgotten.¹⁶⁷ Some interviewees questioned Aung San Suu Kyi's capability to push the regime to adopt democratic changes and thought that her policies are unclear.¹⁶⁸ These weaknesses may undermine her ability to lead all of the political forces together, specifically the NLD, 88 Generation Peace and Open Society Group, ethnic groups, Myanmar's youth, and the CSOs.¹⁶⁹

In an interview with *The Guardian*, Pyo Let Han of the Yangon-based Women's Political Action Group explained that with the exception of Daw Aung San Suu Kyi, Myanmar society does not view women as leaders.¹⁷⁰ Very few women still occupy senior level policy-making positions today; although, since the opening up of Myanmar, more women are now visible in the public service sector in Yangon,¹⁷¹ the former capital and the most developed city in the country. The formal recognition of women in the public sphere does not appear to extend beyond this level and women have been excluded from both the political transition and the peace negotiation process with the ethnic rebel groups.¹⁷² No women have been included in a leadership capacity during the negotiations of the Nationwide Ceasefire Agreement.¹⁷³ The CSOs are actively trying to promote women's inclusion in Myanmar's peace process by providing training on analytical and leadership skills,¹⁷⁴ particularly to ethnic women's groups in Chin, Kachin, and Shan States, where armed conflict continues to rumble on.¹⁷⁵ Nonetheless, recent legal developments, specifically a series of laws on the protection of race and religion, point to how women's legal and social status is susceptible to contestation. Hence, the adoption of these laws may undermine the transformative potential of the transitional period for Burmese women.

IV. RISING BUDDHIST ETHNO-NATIONALISM: THE ENACTMENT OF THE PROTECTION OF RACE AND RELIGION LAWS

The House of Nationalities, the upper house of Myanmar's Parliament ("Amyotha Hluttaw"), recently adopted a controversial series of laws on the Protection of Race and Religion.¹⁷⁶ Religious freedom for Christians, Muslims,

¹⁶⁷ Interview with B, *supra* note 62.

¹⁶⁸ Interview with K, *supra* note 104.

¹⁶⁹ *Id.*

¹⁷⁰ England, *supra* note 159.

¹⁷¹ Interview with Confidential Source J (Dec. 12, 2014).

¹⁷² *Id.*

¹⁷³ JENNY HEDSTRÖM, WHERE ARE THE WOMEN? NEGOTIATIONS FOR PEACE IN BURMA, THE SWEDISH BURMA COMMITTEE 5-12 (2013), http://www.burmakommitten.org/wp-content/uploads/2013/05/Where-are-the-women_SBC-May-2013large2.pdf.

¹⁷⁴ Interview with C, *supra* note 68; Interview with Confidential Source G (Dec. 10, 2014).

¹⁷⁵ Interview with C, *supra* note 68.

¹⁷⁶ *Id.* The laws include four bills: the Buddhist Women's Special Marriage Law, Religious Conversion Law, Monogamy Law, and Population Control Healthcare Law.

and other non-Buddhist groups was restricted under the military regime;¹⁷⁷ but the transitional period has seen a surge in Buddhist ethno-nationalism.¹⁷⁸ Driven by Ma-Ba-Tha—part of a loosely coordinated Buddhist nationalist movement called “969,”¹⁷⁹ these laws, which restrict interfaith marriage between Muslims and Buddhists, potentially undermine women’s status and “spaces” within society. They restrain women’s freedom of choice in relation to family planning, marriage, and sexual and reproductive health. Ma-Ba-Tha and “969” are highly influential in grassroots and rural areas where women remain particularly disadvantaged.¹⁸⁰ While historically militarization has been directly linked to extreme forms of nationalism,¹⁸¹ the rise in ethno-nationalism Buddhism during the transitional period¹⁸² also serves to solidify patriarchal attitudes towards women in Myanmar.¹⁸³

A. *The Population Control Law*

The Population Control Law is a part of the Protection of Race and Religion Laws.¹⁸⁴ The Law allows the Myanmar government to control women’s reproductive rights.¹⁸⁵ The preamble to the Law states that its aim is to alleviate poverty and improve maternal health.¹⁸⁶ Significantly, the Law is designed to limit the number of births in areas riddled with socio-economic problems that relate to high population density or high population growth.¹⁸⁷ According to the Population Control Law, women should wait at least thirty-six months after the last birth before they may give birth to another child.¹⁸⁸ The current Chairman of the House of Nationalities’ Bill Committee and member of USDP, Khin Muang Yi, publically stated that the 36-month period of birth spacing is in line with the World Health Organization’s (“WHO”) recommendations.¹⁸⁹ While the WHO does recommend

¹⁷⁷ WALTON & HAYWARD, *supra* note 27, at 5.

¹⁷⁸ *Id.* at 10-14.

¹⁷⁹ “969” is a symbol derived from a play on words of Buddhist scripture and is used to counter “786”—shorthand that Muslims use in some parts of Asia. *See id.* at 14 (explaining the Ma-Ba-Tha and “969” movements).

¹⁸⁰ *Id.* at 14-16.

¹⁸¹ Ma Khin Mar Mar Kyi, *supra* note 11, at 307.

¹⁸² *See* Associated Press In Rangoon, *UN Urges Burma to Condemn Monk Who Called Envoy “Bitch” and “Whore,”* GUARDIAN (Jan. 22, 2015), <http://www.theguardian.com/world/2015/jan/22/un-urges-burma-leader-condemn-monk-envoy-bitch-whore>. In January 2015, Yanghee Lee, a visiting (female) U.N. envoy was called a “bitch” and a “whore” by Wirathu, an ultranationalist Buddhist monk in response to concerns expressed by the UN regarding the Protection of Race and Religion Bills. *Id.*

¹⁸³ *See* GENDER EQUAL. NETWORK, MYANMAR LAWS AND CEDAW, *supra* note 34, at 5.

¹⁸⁴ Zu Zu, *supra* note 32.

¹⁸⁵ Population Control Healthcare Law (Draft), Pyidaungsu Hluttaw 1376 (2014).

¹⁸⁶ *Id.*

¹⁸⁷ *See* RICHARD HORSEY, NEW RELIGIOUS LEGISLATION IN MYANMAR, CONFLICT PREVENTION AND PEACE FORUM 5 (2015). Horsey explains that socio-economic problems could relate to maternal and child mortality, food security concerns, as well as the overall socio-economic climate in the country. *Id.*

¹⁸⁸ Population Control Healthcare Law, ch. I, § 2(c).

¹⁸⁹ Zu Zu, *supra* note 32.

birth spacing,¹⁹⁰ this recommendation is not intended to restrict women's choices about birth spacing and number of children, but rather to allow women to make informed decisions about family planning.¹⁹¹

Civil society actors pointed to the Population Control Law as an example of the Myanmar government's lack of understanding of gender equality, particularly in relation to reproductive rights.¹⁹² As one interviewee stated:

If it's about women's reproduction, it is about women's reproductive rights, but the Bill doesn't mention anything about reproductive rights so yes of course they are talking about reproductive health issues but they do not recognize women's reproductive rights. So that's why I still doubt that the government really understands what are women[s] rights.¹⁹³

The Population Control Law clearly contravenes the CEDAW, which obligates the State parties to take appropriate actions to eliminate discrimination against women in marriage and family relations. Specifically, article 16(e) of the CEDAW requires that women have "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."¹⁹⁴ The Population Control Law also contravenes constitutional provisions against discrimination on the basis of sex by imposing restrictions on women's reproductive rights.¹⁹⁵ Further, Horsey suggested that the Population Control Law could be used effectively as a "moral and legal justification" for regional regulations limiting the number of children, such as Regional Order 1/2005.¹⁹⁶ This Order was issued for Maungdaw Township in Rakhine State to restrict Muslim couples from having more than two children.¹⁹⁷

B. The Buddhist Women's Special Marriage Law

The purpose of the Buddhist Women's Special Marriage Law is to give meaningful protection to Buddhist women who marry non-Buddhist men to practice their religion freely.¹⁹⁸ The Law does not apply to a marriage between

¹⁹⁰ WORLD HEALTH ORG., REPORT OF A WHO TECHNICAL CONSULTATION ON BIRTH SPACING 13-15 (2005), http://www.who.int/maternal_child_adolescent/documents/birth_spacing.pdf.

¹⁹¹

Family Planning/Contraception Factsheet N° 351, WORLD HEALTH ORG. (2015), <http://www.who.int/m ediacentre/factsheets/fs351/en/>.

¹⁹² Interview with C, *supra* note 68.

¹⁹³ *Id.*

¹⁹⁴ CEDAW, *supra* note 26, art. 16, ¶ 1.

¹⁹⁵ CONST. OF MYAN. 2008 ch. VIII, § 348, stating that, "[t]he Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth."

¹⁹⁶ TWP. PEACE & DEV. COUNCIL OF MAUNGDAW, REGIONAL ORDER NO. 1/2005 (2005). *See* FORTIFY RIGHTS, POLICIES OF PERSECUTION: ENDING ABUSIVE STATE POLICIES AGAINST ROHINGYA MUSLIMS IN MYANMAR app. III (2014).

¹⁹⁷ HORSEY, *supra* note 187, at 5.

¹⁹⁸ Buddhist Women's Special Marriage Law, Pyidaungsu Hluttaw 1376, pmb. (2014).

two Buddhists.¹⁹⁹ Instead, Myanmar customary law and the monogamy law govern Buddhist marriage.²⁰⁰ According to the customary law, a presumption of marriage exists if Burmese Buddhists live together as man and wife, and while formal registration of the marriage is encouraged, it is not legally required.²⁰¹ However, according to the Buddhist Women's Special Marriage Law, if a Buddhist woman and non-Buddhist man want to marry they must apply to register the marriage in the area they are living.²⁰² In this respect, the Law²⁰³ is similar to the earlier Buddhist Women's Special Marriage and Succession Act of 1940, which stipulated that a notice of intended marriage should be given and that a marriage would be solemnized without objection only after a fourteen-day period.²⁰⁴ Existing *de facto* marriages between non-Buddhist men and Buddhist women would also have to be registered according to the Buddhist Women's Special Marriage Law,²⁰⁵ thus creating an arbitrary distinction between customary law and statutory law. Further, the Law does not apply to Buddhist men who marry non-Buddhist women, clearly embedding a discriminatory gendered distinction in laws regulating marriage.

Significantly, the Buddhist Women's Special Marriage Law²⁰⁶ includes several requirements that non-Buddhist men who want to marry Buddhist women must agree to follow before marriage. Among these requirements are restrictions on freedom of speech, including the condition that non-Buddhist men cannot insult Buddhism verbally or in a written form.²⁰⁷ Yet, there is little guidance about what would amount to such insulting behavior under this Law.²⁰⁸ Tellingly, an incident in March of 2015 with promotional materials, which depicted Buddha wearing a pair of headphones, landed three restaurateurs in jail, suggesting that the threshold for behavior considered insulting or damaging to Buddhism is low.²⁰⁹ Buddhist women must be able to practice their Buddhist religion freely,²¹⁰ and if a non-Buddhist man violates their freedom of religion rights under the Law, he is liable for up to three years of imprisonment and a monetary fine.²¹¹ The Law also

¹⁹⁹ *Id.* ch. II, §§ 4-5.

²⁰⁰ *See id.* ch. II, §§ 4, 7. The law does not apply to marriage between two non-Buddhists whose marriage would be regulated by their religion or customs and subject to other applicable laws, including the monogamy law.

²⁰¹ Interview with C, *supra* note 68.

²⁰² Buddhist Women's Special Marriage Law, ch. IV, § 11.

²⁰³ *Id.*

²⁰⁴ The Buddhist Women's Special Marriage and Succession Act, Burma Act XXIV, 1939 (Dec. 30, 1939), §§ 1, 6, 10 (entered into force Apr. 1, 1940).

²⁰⁵ Buddhist Women's Special Marriage Law, ch. I.

²⁰⁶ *Id.*

²⁰⁷ *Id.* ch. V, § 24(g).

²⁰⁸ *Id.*

²⁰⁹ Wai Moe & Austin Ramzy, *Myanmar Sentences 3 to Prison for Depicting Buddha Wearing Headphones*, N.Y. TIMES (Mar. 17, 2015), http://www.nytimes.com/2015/03/18/world/asia/myanmar-sentences-3-to-prison-for-defaming-buddhism.html?_r=0.

²¹⁰ Buddhist Women's Special Marriage Law, ch. V, § 24(a).

²¹¹ *Id.* ch. X, § 39. The law imposes the most serious prison term of three years if a non-Buddhist

valorizes Buddhist women as being particularly vulnerable to exploitation by non-Buddhist men and in need of protection from non-Buddhist men—in contrast with other women in Myanmar. Nonetheless, this type of “protection” undermines women’s freedom of choice in matters of marriage and results in the victimization of Buddhist women.

Akin to other nationalist narratives and feminism movements occurring in Asia and the Middle East in the late nineteenth and early twentieth centuries, the Buddhist ethno-nationalist narrative in Myanmar focuses on women’s bodily integrity.²¹² These nationalist narratives have presented a selected history of events in order to legitimize authority and power in the process of state building, and women’s gender roles were often implicated in this process.²¹³ As Enloe so aptly described:

[It is] because they see women as the community or the nation’s most valued possessions; the principle vehicles for transmitting the whole nation’s values from one generation to the next; bearers of the community’s future generations—crudely, nationalist wombs; the members of the community most vulnerable to defilement and exploitation by oppressive alien rulers; and most susceptible to assimilation and cooption by insidious outsiders.²¹⁴

In Myanmar, civil society’s opposition to the Buddhist Women’s Special Marriage Law has been met with resistance from the Buddhist ethno-nationalist movements.²¹⁵ For example, after voicing their disapproval of this Law, some civil society actors faced significant harassment, such as accusations of being married to Muslims, or receiving sexually explicit images and even death threats from religious extremists.²¹⁶ Despite receiving reports of these incidents, the authorities took no action to address the threats.²¹⁷

Given that the Buddhist Women’s Special Marriage Law²¹⁸ protects only Buddhist women, the passage of this divisive Law undermines the peace process

man forces his Buddhist wife to abandon the Buddhist faith or attempts to convert his wife to a different religion. *Id.* ch. IX, § 24(e), ch. X, § 39. The law includes a lesser sentence of up to six months of imprisonment for a non-Buddhist husband who violates any provision of the law relating to the practice of the religious faith of his Buddhist wife, such as the women’s right to have Buddhist statues and images of worship at home, make religious donations, say prayers or listen to Buddhist teachings, and read Buddhist scriptures. *Id.* ch. IX, §§ 24(c)-(d), ch. X, § 38.

²¹² See KUMARI JAYAWARDENA, *FEMINISM AND NATIONALISM IN THE THIRD WORLD* 257 (1986); see generally Karima Omar, *National Symbolism in Constructions of Gender: Transformed Symbols in Post-Conflict States*, 5 *SETON HALL J. DIPL. & INT’L REL.* 49 (2004).

²¹³ See NIRA YUVAL-DAVIS, *GENDER & NATION* 3 (1997).

²¹⁴ CYNTHIA ENLOE, *BANANAS, BEACHES & BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS* 54 (1st ed. 1990) (emphasis added).

²¹⁵ Interview with K, *supra* note 104.

²¹⁶ *Id.* Some civil society actors reported receiving sexually explicit images with derogatory language. *Id.* They also reported that monks harassed them, and their family members, by calling them on the phone. *Id.*

²¹⁷ *Id.*

²¹⁸ Buddhist Women’s Special Marriage Law, Pyidaungsu Hluttaw 1376, ch. V, §§ 24-25 (2014).

with the ethnic rebel groups in Myanmar by creating discriminatory distinctions between Buddhist, non-Buddhist, and ethnic women.²¹⁹

C. The Monogamy Law

The Monogamy Law²²⁰—aimed at promoting monogamous relationship practices and preventing adultery and polygamy—seems to address the CEDAW Committee’s concerns that the existing laws in Myanmar do not prohibit the practice of polygamy.²²¹ The Monogamy Law applies to all citizens and persons living permanently or temporarily in Myanmar.²²² The Law created a criminal offence under section 494 of the Criminal Code to prevent the contract of a second marriage or illicit cohabitation with another person.²²³ However, the Monogamy Law does not apply retroactively, and therefore any marriage entered into in accordance with former laws, including religious or customary law, will remain unaffected by the Monogamy Law.²²⁴ Civil society actors commented that while this particular Monogamy Bill might have been well intentioned in its attempt to prevent polygamous marriages, education about the Law should have been provided before the enactment of the Bill in order to strengthen the understanding of its implications.²²⁵ Without adequate awareness of the Monogamy Law’s aim and objectives within society, the Law may adversely affect women who have less power in negotiating their marital relationships.

D. The Religious Conversion Law

The Religious Conversion Law prohibits compelling any person to change her or his religion through undue influence, and a violation of this provision could lead to imprisonment of up to one year.²²⁶ The Law²²⁷ requires that a person who voluntarily wishes to convert to another religion must apply to a Registration Board, a body formed under the Law tasked with screening and certifying religious conversions.²²⁸ The Registration Board is also charged with evaluating whether an individual was induced, intimidated, or unduly pressured to convert to a different religion and will either withhold or issue the religious conversion certificate based on the gathered evidence and applicant’s admission.²²⁹ While the Religious Conversion Law applies to both men and women who wish to convert to another

²¹⁹ Interview with Confidential Source N (Dec. 12, 2014).

²²⁰ Monogamy Law, Pyidaungsu Hluttaw 1376 (2014).

²²¹ See *Concluding Observations of the CEDAW*, *supra* note 51.

²²² Monogamy Law, ch. I, §§ 3(a)-(b).

²²³ Penal Code (Myan.) (1861) ch. XX, § 494.

²²⁴ Monogamy Law, ch. V, § 18.

²²⁵ Interview with C, *supra* note 68.

²²⁶ Monogamy Law, ch. V, § 15, ch. VI, § 18.

²²⁷ Religious Conversion Law, Pyidaungsu Hluttaw 1376 (2014).

²²⁸ *Id.* ch. II, § 5.

²²⁹ *Id.* ch. III, §§ 10(b)(1)-(2).

religion, when it is considered in the light of the Buddhist Women's Special Marriage Law, the Religious Conversion Law is arguably intended to protect Buddhist women in interfaith marriages against religious conversion. Procedurally, the registration requirement encroaches upon the freedom of conscience, and religion or belief.²³⁰ However, many monastics have supported the Law in response to the rumors that Muslim men marry Buddhist women in order to convert them to Islam.²³¹

E. Social Consequences of the Protection of Race and Religion Laws

Civil society actors expressed their concern that the enforcement of the Protection of Race and Religion Laws will result in moral exploitation and prevent freedom of religion that will be hard to safeguard within the judicial system of Myanmar that is already corrupted.²³² Some interviewees described the system not only as weak but also as "broken."²³³ They pointed to the need to strengthen gender equality provisions of the Constitution and suggested that the Constitution itself needs to be overhauled.²³⁴ The adoption of the Protection of Race and Religion Laws generally was perceived to be an act of discrimination against women because these laws violate women's sexual and religious rights and allow the Myanmar government to intrude upon and control their private life.²³⁵ In effect, these laws reinforce gendered cultural assumptions, which are played out through the limitation of women's freedom to make choices about their own bodies. As one interviewee stated, "[the State] uses women[']s sexuality as a tool. This is really unacceptable."²³⁶

The manipulation of women's gender identity and "spaces" in Myanmar's society is not a new phenomenon and other critics have pointed to the "increased regulation of women's bodies when the body politic is threatened."²³⁷ While

²³⁰ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 18 (Dec. 10, 1948) ("Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.").

²³¹ WALTON & HAYWARD, *supra* note 27, at 16.

²³² Interview with C, *supra* note 68.

²³³ Interview with A, *supra* note 43.

²³⁴ *Id.*

²³⁵ Interview with E, *supra* note 63. While civil society groups strongly oppose the Protection of Race and Religion Laws, commentators have noted that some women support them. Walton and colleagues discussed how interviews conducted in Rakhine State, Myanmar, revealed that some women were afraid of being raped by Muslim men. See Matthew J. Walton et al., *Why Are Women Supporting Myanmar's "Religious Protection Laws"?*, E. ASIA FORUM (Sep. 9, 2015), <http://www.eastaforum.org/2015/09/09/why-are-women-supporting-myanmars-religious-protection-laws/>. Ma-Ba-Tha monks also have pledged that these laws defend women. *Id.* This may be one reason why some women are willing to support the Laws as a way to protect Buddhism and to prevent sexual violence, even though the Laws do not cover physical or sexual violence.

²³⁶ *Id.*

²³⁷ Monique Skidmore, *Buddha's Mother and the Billboard Queens: Moral Power in Contemporary Burma*, in *WOMEN AND THE CONTESTED STATE* 171 (Monique Skidmore & Patricia Lawrence eds., 2007).

particularly detrimental to women, these recent legal developments should also sound an alarm domestically and internationally about the nature of the regime change in Myanmar and the pervasive influence of Buddhist ethno-nationalist movements on laws and policies, which undermine the constitutional protections against using religion for political purposes.²³⁸ Despite these challenges, the current transitional period provides an important platform for the development of “other voices” to contest Buddhist ethno-nationalist narratives and for reframing gender related policies that emphasize protection and empowerment of women in line with fundamental human rights.

V. DEVELOPING THE NATIONAL LAW ON PREVENTION OF VIOLENCE AGAINST WOMEN IN MYANMAR

The adoption of laws on the Protection of Race and Religion carves out a road, which is inimical to women’s gender equality. However, in 2012, the Ministry of Social Welfare started drafting Myanmar’s first anti-violence against women law with advice from and in cooperation with the Gender Equality Network (“GEN”)²³⁹ and the United Nations, thus creating a potentially empowering path for women.²⁴⁰ In October 2014, the MNCWA²⁴¹ and the Ministry of Social Welfare also launched a ten-year National Strategic Plan for the Advancement of Women (2013-2022) (“NSPAW”)—the first plan of its kind spearheaded by the Ministry.²⁴² The NSPAW²⁴³ replicated the twelve priority areas identified in the Beijing Declaration and Platform for Action from 1995.²⁴⁴ Significantly, a key objective under the NSPAW is the development and strengthening of laws,

²³⁸ See CONST. OF MYAN. 2008 ch. VIII, § 364 stating that, “[t]he abuse of religion for political purposes is forbidden. Moreover, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial and religious communities or sects is contrary to this Constitution. A law may be promulgated to punish such activity.”

²³⁹ The GEN is an inter-agency network based in Yangon that acts as a coordinating body for CSOs working on gender and women’s rights in Myanmar, with a network of over sixty national and international NGOs, the CSOs, as well as U.N. agencies and technical resource persons working in Myanmar. *Gender Equality Network (GEN—formerly the Women’s Protection Technical Working Group)*, LOCAL RES. CTR., YANGON (Dec. 19, 2012), <http://www.lrcmyanmar.org/en/ngo-donor-profiles/gender-equality-network-gen-%E2%80%93-formerly-women%E2%80%99s-protection-technical-working-group>. The GEN was formerly known as the Women’s Protection Technical Working Group and was founded in response to Cyclone Nargis in 2008. *Id.* The GEN began by voicing women’s needs in connection with the Cyclone response mechanisms, and drafted various guidance documents. *Id.*

²⁴⁰ Interview with Confidential Source P (Dec. 12, 2014).

²⁴¹ See MYAN. NAT’L COMM. FOR WOMEN’S AFF., NATIONAL STRATEGIC PLAN FOR THE ADVANCEMENT OF WOMEN 2013-2022, at 4 (2013). The MNCWA was established in 1996 and re-established in 2012 according to the policies of the new government. *Id.*

²⁴² *Id.*; Interview with E, *supra* note 63.

²⁴³ MYAN. NAT’L COMM. FOR WOMEN’S AFF., *supra* note 241, at 5.

²⁴⁴ See Fourth World Conference on Women, *supra* note 109. The BPFA includes twelve key priority areas—women and livelihoods; women, education and training; women and health; violence against women; women and emergencies; women and decision-making; institutional mechanisms for the advancement of women; women and human rights; women and the media; women and the environment and the girl child.

systems, and structures to eliminate violence against women and girls, as well as strengthening of the understanding of women's rights at all levels of the government and in political parties.²⁴⁵

When progress on the draft of the national law on prevention of violence against women stalled in late 2014,²⁴⁶ the passage of the Protection of Race and Religion Laws accelerated through the Myanmar Parliament.²⁴⁷ Civil society actors suggested that the delay in the drafting of the National Law on Prevention of Violence against Women was caused by a political manipulation of the process by some policymakers.²⁴⁸ In particular, one interviewee suggested that some parliamentarians might not be comfortable with the process of engaging or consulting with civil society actors during the development of the law.²⁴⁹

The GEN conducted extensive research on Myanmar's existing laws in light of the CEDAW, to call for any anti-violence against women law to include a formal definition of direct and indirect discrimination, as well as substantive equality.²⁵⁰ Such definitions currently do not exist in Myanmar's legal framework.²⁵¹ Documenting violence against women, particularly sexual violence, is inherently problematic.²⁵² As Heise suggested, the data on coerced sex is often unavailable in many jurisdictions due to a tendency to overlook issues of gender in mainstream research.²⁵³ In an effort to provide evidence-based research, the GEN commissioned qualitative research interviews in Yangon and Mawlamyine, the fourth largest city in Myanmar, with women who experienced intimate partner violence.²⁵⁴ These women reported that they were victims of many forms of

²⁴⁵ MYAN. NAT'L COMM. FOR WOMEN'S AFF., *supra* note 241, ¶¶ 10, 15(a)1.

²⁴⁶ Interview with P, *supra* note 240. The draft of the anti-violence against women law was supposed to be finalized in late December 2014. *Id.*

²⁴⁷ See Nobel Zaw, *Union Parliament Passes Population Control Bill*, IRRAWADDY (Apr. 7, 2015), <http://www.irrawaddy.org/burma/union-parliament-passes-population-control-bill.html>; Nobel Zaw, *Union Parliament Passes "Interfaith Marriage" Bill*, IRRAWADDY (July 8, 2015), <http://www.irrawaddy.org/burma/union-parliament-passes-interfaith-marriage-bill.html>; Feliz Soloman, *Burma Parliament Approves Contentious Race and Religion Bills*, IRRAWADDY (Aug. 20, 2015), <http://www.irrawaddy.org/election/news/burma-parliament-approves-contentious-race-and-religion-bills>. The Laws on the Protection of Race and Religion were introduced in the Myanmar's Parliament in 2014, and the bills were publically gazetted in the Myanmar press in early December 2014 and subsequently passed as law in 2015. *Id.* The Population Control Law was passed in April 2015. *Id.* The Buddhist Women's Special Marriage Law was passed on July 7, 2015. *Id.* The Religious Conversion Law and Monogamy Law were passed in August 2015. *Id.*

²⁴⁸ Interview with C, *supra* note 68.

²⁴⁹ *Id.*

²⁵⁰ GENDER EQUAL. NETWORK, *DEVELOPING ANTI-VIOLENCE AGAINST WOMEN LAWS, DISCUSSION PAPER 2 CONTENT OPTIONS 2-4*, 33-38 (2013), http://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf.

²⁵¹ See *Concluding Observations of the CEDAW*, *supra* note 51.

²⁵² LORI HEISE ET AL., *SEXUAL COERCION AND REPRODUCTIVE HEALTH: A FOCUS ON RESEARCH 7-20* (1995).

²⁵³ *Id.* at 31.

²⁵⁴ See GENDER EQUAL. NETWORK, *BEHIND THE SILENCE*, *supra* note 87, at 1 (recognizing the increasing investment on the part of the government of the Republic of the Union of Myanmar, as well as other national and international actors to undertake evidence-based research on violence against women).

violence, such as economic, emotional, as well as physical (including sexual) intimate partner violence.²⁵⁵

Civil society actors also reported that violence against women was increasing in Myanmar.²⁵⁶ The interviewees suggested that one of the causes of violence was economic hardship, particularly in poor areas and slums, as economic reforms failed to trickle down to the masses.²⁵⁷ For example, Karen State has high levels of gender-based violence not only as a result of armed conflict but also due to socio-economic factors, such as substance abuse.²⁵⁸ The stigma surrounding sexual violence and rape also prevents many women from reporting cases to the police, particularly given the lack of adequate access to the justice system and psychosocial support services.²⁵⁹

There are many reasons why it is difficult for many women to access the justice system. Socio-economically, women lack resources to take a case to court and in some instances even the money to take public transportation to report rape.²⁶⁰ Further, sexual violence and incidents of rape, especially child rape, are often reported to the CSOs working on women's rights²⁶¹—a fact that could indicate a lack of trust in the police and the criminal justice system.²⁶²

The draft of the National Prevention of Violence against Women Law, which is yet to be enacted by Myanmar's Parliament, has taken more than two years to develop and has been revised several times as requested by the government.²⁶³ During the initial drafting process, Myanmar's "elite" women resisted recognizing marital rape as a crime.²⁶⁴ According to one interviewee, it proved challenging to convince representatives of the MWAF and MNCWA that coerced sexual intercourse within marriage should be classified as rape, though this classification is now accepted.²⁶⁵ In effect, the "elite" women's resistance to the recognition of multiple forms of gender-based violence may contribute to reinforcing patriarchal perceptions about women's gender roles in Myanmar's culture.

²⁵⁵ *Id.* at 2.

²⁵⁶ Interview with A, *supra* note 43; Interview with L, *supra* note 100.

²⁵⁷ Interview with B, *supra* note 62.

²⁵⁸ Interview with L, *supra* note 100.

²⁵⁹ Interview with K, *supra* note 104. There are no safe houses, temporary shelters, or psychosocial support services in Myanmar. *Id.* The interviewee explained that one case involved a father who raped his twelve-year-old daughter. *Id.* He was a widower. *Id.* A policewoman took care of the girl when the father was under arrest. *Id.* It was unclear what the authorities would do with the girl and whether she would be taken to an orphanage because there are no shelters for women and children who experience domestic and sexual violence. *Id.*

²⁶⁰ Interview with A, *supra* note 43.

²⁶¹ Interview with O, *supra* note 74.

²⁶² Interview with A, *supra* note 43.

²⁶³ Interview with P, *supra* note 240. Civil society actors also have been cautious that the draft bill's release for public consultation should not coincide with recently adopted laws on the protection of race and religion because the release could be detrimental to securing wider support for the anti-violence against women law. *Id.*

²⁶⁴ Interview with E, *supra* note 63.

²⁶⁵ *Id.*

VI. CONTESTED “SPACES” DURING TRANSITION—WOMEN AND REGIME CHANGE

The current regime change in Myanmar appears to have allowed the CSOs to carry out their work with greater transparency. Though previously not feasible, the dialogue about women’s human rights in Myanmar is currently shifting away from one based on women’s protection to gender equality.²⁶⁶ Especially vulnerable groups of women, such as sex workers, have been able to engage with Parliamentarians and raise awareness that they experience discrimination and violence in the course of their work.²⁶⁷ “Fragrant flowers of the night,” or “Kha Yay,” as they are called in colloquial language, live at the very “bottom of society,” but they have “dared to voice out in [Myanmar] society” to politicians and the police so as to secure greater understanding of the risks they face.²⁶⁸ Myanmar’s first anti-violence against women law will also potentially broaden the understanding of gender equality through the inclusion of definitions of direct and indirect discrimination against women, which are not included in the current legal framework.

The nature of Myanmar’s military-initiated, political transition is carefully orchestrated.²⁶⁹ There appears to be a clear disconnect between rising women’s participation in civil society, limited recognition of women in the political process, and the exclusion of women in the formal peace process. The military, as well as armed insurgent groups, are male-dominated and the ceasefire negotiations have been conceptualized as a military issue, off-limits to women,²⁷⁰ thus prohibiting female engagement. Though historic, the signing of the Nationwide Ceasefire Agreement between the government and several ethnic rebel groups²⁷¹ is representative of women’s exclusion at a pivotal point in the process of designing any subsequent transitional justice mechanisms for both gender justice and sustainable peace. This is not to suggest that the inclusion of women in peace negotiations will automatically address any “gender gap,”²⁷² but the notable absence of women in leadership roles in this process is damaging in and of itself. Myanmar’s experience in this regard is not unique.²⁷³ Although women are

²⁶⁶ *Id.*

²⁶⁷ Interview with F, *supra* note 77.

²⁶⁸ *Id.*

²⁶⁹ Interview with I, *supra* note 164; ROBERT H. TAYLOR, *THE ARMED FORCES IN MYANMAR POLITICS: A TERMINATING ROLE?* 2 (2015).

²⁷⁰ Interview with I, *supra* note 164.

²⁷¹ See Hla Tun, *supra* note 4.

²⁷² See, e.g., Fionnuala Ní Aoláin & Eilish Rooney, *Underenforcement and Intersectionality: Gendered Aspects of Transition for Women*, 1 INT’L J. TRANSITIONAL JUST. 338, 350 (2007) (discussing how women’s participation should be advocated with caution).

²⁷³ See U.N. WOMEN, *WOMEN’S PARTICIPATION IN PEACE NEGOTIATIONS: CONNECTIONS BETWEEN PRESENCE AND INFLUENCE*, UNITED NATION ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN 1 (2012), <http://reliefweb.int/sites/reliefweb.int/files/resources/03AWomenPeaceNeg.pdf>. The U.N. recognizes a clear gap between global and regional peace treaty commitments and the reality of peace processes where women continue to be excluded. *Id.*

actively working on peace initiatives at an informal level in other contexts,²⁷⁴ they generally continue to be excluded during the negotiations of ceasefire and peace agreements.²⁷⁵

While women are excluded from the formal political and peace processes in Myanmar, there are highly capable women within civil society circles that are ready to join or lead these initiatives.²⁷⁶ One male interviewee suggested that the issue of women's inclusion is not necessarily one of women's capability but rather an issue of lack of trust, or the inability of women to build trust with the current military-backed, USDP-led, government.²⁷⁷ This interviewee suggested that women's organizations are important for the purpose of advocacy, but they lack the strategic insight to engage with the military and elite politics, describing some of the CSOs (not only women CSOs) as too "single-minded" and "linear" in their thinking.²⁷⁸ Conversely, other interviewees suggested that some women's groups within Myanmar have tried to engage with the military-backed, USDP-led government but this approach has proved to be unpopular with diaspora organizations that have long lobbied for the government to be boycotted.²⁷⁹ Interestingly, these diaspora organizations were perceived by some interviewees to be "radical" in their campaigns and advocacy.²⁸⁰ One interviewee suggested that such an approach is not feasible for the CSOs working internally within Myanmar and tacit engagement is preferable.²⁸¹

Many interviewees, both female and male, reiterated that capability is not an issue, but that instead, the problem lies with the receptiveness of male leaders to women's participation in Myanmar's political and peace processes.²⁸² As one interviewee stated, "[t]he capabilities [are] deep and wide but it's the opportunity and willingness of males to change . . . [that] is the openness of men and the capability of the community to open up to initiatives led by women."²⁸³

Civil society actors recognized that important developments in relation to women's rights were taking place in Myanmar.²⁸⁴ However, the missing link is an adequate conceptualization and framing of gender equality,²⁸⁵ as well as the

²⁷⁴ See generally Amy Barrow, "[It's] Like a Rubber Band." *Assessing UNSCR 1325 as a Gender Mainstreaming Process*, 5 INT'L J.L. CONTEXT 51 (2009).

²⁷⁵ Fionnuala Ní Aoláin, *Political Violence and Gender During Times of Transition*, 15 COLUM. J. GENDER & L. 829, 830 (2006).

²⁷⁶ Interview with J, *supra* note 171.

²⁷⁷ Interview with I, *supra* note 164. The interviewee suggested that some women were seen as "too clever" in the eyes of men and uncompromising, which inhibits the engagement of these women's organization with the government. *Id.*

²⁷⁸ Interview with I, *supra* note 164.

²⁷⁹ Interview with L, *supra* note 100.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*; Interview with C, *supra* note 68.

²⁸³ Interview with J, *supra* note 171.

²⁸⁴ Interview with C, *supra* note 68.

²⁸⁵ *Id.*

necessary political will to support gender justice.²⁸⁶ Gender equality appears to be a secondary concern for elite actors within the government, if even considered at all. While the adoption of the NSPAW suggests that the current Myanmar government acknowledges that women's rights and equality are integral to Myanmar's development, the adoption of laws on the Protection of Race and Religion indicate that the military-backed and USDP-led government's understanding of gender equality in line with the CEDAW and international law standards is clearly lacking. These legal developments suggest that rather than opening a window of opportunity, the current period of transition in Myanmar may also potentially allow for the reinforcement of patriarchal and Buddhist ethno-nationalist sentiment that shuts down opportunities for women and may prove to be detrimental to the advancement of women in the long-term.

CONCLUSION

Transitional periods provide an opportunity to contest discriminatory cultural practices and work towards "gender justice" within society. However, as Reilly suggested, that opportunity requires a sustained commitment to understanding the implications of how "patriarchy, militarism and nationalism, including different forms of racism, interact to produce gendered identities and experiences that are inimical to women's human rights in both conflicts and transitions."²⁸⁷ These tensions similarly appear to apply in Myanmar, where women's organizations, in their efforts to promote alternative narratives of Burmese women's unmet legal needs, must grapple with the intersections between militarism (arguably still a stronghold of power given the military's continuing influence), Buddhist ethno-nationalism, and patriarchy.

The laws on the protection of race and religion inspired by and adopted under pressure of the Buddhist ethno-nationalist movement reinforce narrow constructions of women's identity, inhibit recognition of women's freedom of choice and bodily autonomy, and create division within society. These laws potentially undermine other positive legal and policy developments designed to support the advancement of women, including Myanmar's first anti-violence against women law.²⁸⁸ The speed with which the laws on the protection of race and religion have swept through Myanmar's Parliament also signals that they are largely supported by elites within the establishment, with limited consideration of civil society groups²⁸⁹ or the international community's opposition to the laws.²⁹⁰

²⁸⁶ *Id.*

²⁸⁷ Niamh Reilly, *Seeking Gender Justice in Post-Conflict Transitions: Towards a Transformative Women's Human Rights Approach*, 3 INT'L J.L. CONTEXT 155, 158 (2007).

²⁸⁸ GENDER EQUAL. NETWORK, DEVELOPING ANTI-VIOLENCE AGAINST WOMEN LAWS, *supra* note 250.

²⁸⁹ Zu Zu, *supra* note 32.

²⁹⁰ See, e.g., *Burma: Drop Draft Religion Law: Legislation Would Exacerbate Anti-Muslim Discrimination, Violence*, HUMAN RIGHTS WATCH (May 29, 2014), <https://www.hrw.org/news/2014/05/>

Thus, traditional patriarchal attitudes towards women's legal and social status, compounded by Buddhist ethno-nationalist narratives, could be further institutionalized going forward at the detriment of women's human rights. It remains to be seen whether following its recent success in the polls, the NLD, Aung San Suu Kyi's party, will be able to rule effectively and deliver laws and policies that strengthen women's legal and social status. Tellingly, however, there has been no indication that the NLD will repeal the package of laws on race and religion. Without recognition and support from multiple stakeholders, including political parties and elites (for example, through enacting Myanmar's first anti-violence against women law), there is a risk that women will be left behind in Myanmar's transition.

29/burma-drop-draft-religion-law; *Myanmar: UN Experts Alarmed at Draft Bill Imposing Restrictions on Religious Conversion*, UN NEWS CTR. (June 20, 2014), <http://www.un.org/apps/news/story.asp?NewsID=48094#.VotWGrnoutE>.